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Insurance Loss Control Association

ILCA E-News

September, 2011

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**We are looking for volunteers to serve on the ILCA Board of Directors**

**This is a great opportunity to serve on a professional committee, help select future conference topics and locations, and earn additional CEU points towards the maintenance of your CSP designation.**

**Contact Scot Gudenrath at [scot.gudenrath@countryfinancial.com](mailto:scot.gudenrath@countryfinancial.com) or Betty Ayrton at [bayrton@aol.com](mailto:bayrton@aol.com)**

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**2011 Conference Update**

**Double Tree Worthington room rate for our Annual Conference of \$109 a day will EXPIRE on September 12<sup>th</sup>. Reserve your room prior to the 12<sup>th</sup> to secure our discounted room rate. Call 614-885-3334 or visit their website at [http://doubletree1.hilton.com/en\\_US/dt/hotel/CMHWNDT-DoubleTree-by-Hilton-Hotel-Columbus-Worthington-Ohio/index.do](http://doubletree1.hilton.com/en_US/dt/hotel/CMHWNDT-DoubleTree-by-Hilton-Hotel-Columbus-Worthington-Ohio/index.do)**

Visit SEA Limited's website at [www.sealimited.com](http://www.sealimited.com) for an overview of our second field trip for the 2011 Conference. SEA Limited is a recognized worldwide leader in forensic analysis, testing, and investigation. Their firm provides a wide range of services to reveal the cause of product, material and/or structural failures.

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2011 Conference Update and Agenda

OSHA EXPANSION Article by Mark A. Lies II, & Elizabeth Leifel Ash

Ergonomics Programs and Interventions

# Conference Agenda

Monday, October 3<sup>th</sup>, 2011

7:00 am <i>Upper Terrace</i>		Full Breakfast
7:30 am <i>Outside Alder</i>		Registration
8:00 <i>The Alder</i>	<i>General Session</i>	<b>Welcome &amp; Opening Remarks</b> Scot Gudenrath, President, ILCA Country Financial
8:15-9:45 <i>The Alder</i>	<i>General Session</i>	<b>“The Growing Threat from Product Recalls &amp; Product Liability Lawsuits”</b> Randall Gooden, President Randall Gooden International
9:45-10:00 <i>Upper Terrace</i>	<i>General Session</i>	Break
10:00-10:30 <i>The Alder</i>	<i>General Session</i>	<b>ILCA Business Meeting</b> Scot Gudenrath, President, ILCA Country Financial
10:30-12:00Noon <i>The Alder</i>		<b>“Building Construction Classifications”</b> Ken Lowery, ISO
12:00-1:00pm <i>Upper Terrace</i>		Lunch
1:00-2:15 <i>The Alder</i>	<i>General Session</i>	<b>“TBA”</b> John Kneiss Chubb
2:15-2:30 <i>Upper Terrace</i>		Break
2:30-4:00 <i>The Alder</i>	<i>General Session</i>	<b>“Cooking Fire Protection &amp; NFPA 96 – 2011 Changes”</b> R. T. Leicht, The Fire Marshal’s Office for Dover, Delaware
4:00-5:00 <i>The Alder</i>	<i>General Session</i>	<b>“Workers Comp”</b> Mark Briggs, CSP, ARM Director of Risk Management Ohio State University

**5:00PM**      *General Session*      **Closing Remarks**  
*The Alder*      Scot Gudenrath, President, ILCA, Country Financial

**5:00-6:00**  
*Upper Terrace*      **Reception**  
                                 **Sponsored by: ILCA**

**Dinner on your own!**

**Tuesday, October 4<sup>th</sup>, 2011**

**7:00 am**      **Full Breakfast**  
*Upper Terrace*

**8:00-9:00**      *General Session*      **“Risk Transfer”**  
*The Alder*      David Ludwin, Product & General Liability Director,  
                                 CNA

**9:00-10:15**      **“Bed Bugs”**  
*The Alder*      Steve Garvy, CPP, Senior Risk Engineering Consultant  
                                 Zurich Services Corporation

**10:15-10:30**      **Break**  
*Upper Terrace*

**Concurrent Sessions**

**10:30-12:00Noon**

<i>The Alder</i>	<i>Oak Hill</i>
<b>“Industrial Explosion Protection”</b> Michael D. Hard, SET Hard Fire Suppression Systems, Inc. & David Grandaw	<b>“Workplace Violence”</b> Chuck Smith, Director Security/Protective Services Ohio Health

**12:00-1:00pm**      **Lunch**  
*Upper Terrace*

**1:25-1:30**      **LOAD BUSES FROM LOBBY TO FIELD TRIPS TO THE OHIO STATE UNIVERSITY AND SEA, Ltd**  
Please be sure you are on the correct bus.

Thank you for your cooperation.

**4:00**      **SHARP**      **Load buses from The Ohio State University and SEA, Ltd.**

for the return trip to the Hotel.

4:30  
Upper Terrace

Grab a Snack

Dinner on your own!

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Wednesday, October 5<sup>th</sup>, 2011

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7:00 am  
Upper Terrace

Full Breakfast

8:00-9:45

Concurrent Sessions

<i>The Alder</i>	<i>Oak I-III</i>
<p><b>“Drug Testing in the Private Industry”</b></p> <p>Cheri B. Hass, Partner, Downes Fishel Hass Kim, Attorneys at Law</p>	<p><b>“Emergency Services”</b></p> <p>Fred Bales, ISO</p>

9:45-10:00  
The Terrace

“Break”

10:00-11:30 *General Session*  
The Alder

**“ The Elements of an Effective Accident Analysis Program”**  
Brett Gillilan, Ohio Bureau of Workers’ Compensation

11:30-11:45 *General Session*  
Alder

**Closing Remarks**  
Jack Aroucette, President, ILCA

Adjourn

**See you at ILCA 2012**

**October 7, 8, and 9, 2012**

**DoubleTree Worthington/Columbus, Ohio**

Additional information will be posted on the website.

[www.insurancelosscontrol.org](http://www.insurancelosscontrol.org)

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# OSHA EXPANSION FALL HAZARD LIABILITY FOR HOST EMPLOYERS

BY MARK A. LIES II<sup>1</sup>  
AND  
TIMOTHY R. GERLACH<sup>2</sup>

## INTRODUCTION

It is a fact of everyday business life that many employers will, from time to time, be required to engage outside contractors to perform a variety of services at the employer's facility that the employer cannot perform with its own employees. Recently, OSHA has begun to expand the employer's liability for OSHA compliance for employees of the outside contractor under its multi-employer workplace liability. A recent decision in the case of *Secretary of Labor v. Ryder Transportation Services*, OSHRC Docket No. 10-0551 (ALJ, February 28, 2011) is of concern because it is one that most employers who own a fixed facility will face at some time if they engage an outside contractor to perform services, in this case, on the roof of the facility, either on the roof itself or on equipment, such as HVAC units, located there. This liability involves the hazard of the outside contractor employees being exposed to injury because of fall hazards, either from the leading edge of the roof or from skylights or other openings in the roof.

## RYDER FACILITY

The employer in this case, Ryder Transportation Services (Ryder), owned a facility that it used to rebuild automotive equipment for its vehicles. Since 2006, no Ryder employee had been on the roof and the roof was classified as a restricted area and its employees were forbidden to access the roof. The roof had a number of skylights which were unguarded.

In 2009, Ryder requested an outside electrical contractor, M.C. Dean (Dean), that it had used to perform work at the facility to perform work installing exhaust fans near the ceiling inside of the building. After the fans were installed and failed to function, the Dean employees decided to access the roof to determine why the fans, which protruded through the roof, did not function. The Dean employees utilized their own aerial lift to access the roof. A Dean journeyman electrician got out of the lift and walked to one of the exhaust fans. As the employee walked across the roof back to the aerial lift using a different route, he fell through a skylight to his death.

## MULTI-EMPLOYER WORKPLACE LIABILITY

OSHA cited Ryder for the exposure of the Dean employee to the unguarded skylight.<sup>3</sup> Ryder could not be cited for the exposure of any of its own employees who had not accessed the roof. Using its multi-employer workplace doctrine, OSHA cited Ryder as the "controlling employer" for failing to protect the Dean employee from the hazard.

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<sup>1</sup> Any inquiries relating to this article can be addressed to Mark A. Lies, II. Mr. Lies is a Labor and Employment Lawyer and Partner with Seyfarth Shaw LLP, 131 S. Dearborn Street (Suite 2400) Chicago, IL 60603; (312) 460-5877; mlies@seyfarth.com. He specializes in occupational safety and health, employment law and related litigation.

<sup>2</sup> Mr. Lies wishes to thank Timothy R. Gerlach for his valuable assistance in the preparation of this article. Mr. Gerlach is a second year law student at the University of Cincinnati College of Law and is presently interning for the Honorable Judge Steven E. Martin at the Hamilton County Court of Common Pleas, located in Cincinnati, Ohio. He intends to pursue a career in civil litigation after graduation. He can be reached at (513) 238-4729 or TimothyRGerlach@gmail.com.

The Administrative Law Judge found that the multi-employer workplace doctrine did apply and that Ryder was the controlling employer. He vacated the citation on a finding that Ryder had “neither actual nor constructive knowledge that an employee would be exposed to unguarded skylights that were *remote* from his work area” (emphasis added). OSHA has taken an appeal of the decision, claiming that Ryder had such knowledge.

### **HOST EMPLOYER LIABILITY**

This decision represents a further confirmation of the extent of liability for the host or “controlling” employer under the doctrine. Now, any employer who engages an outside contractor to perform work on its roof is potentially exposed to liability if it does not confirm that the outside contractor employees are protected from any fall hazards on the roof. This will require the host employer to insure that skylights are guarded, as well as the leading edge of the roof, or that the employees are utilizing some other form of fall protection while accessing the roof. This is more troublesome because many host employers have no knowledge of the applicable regulations and are relying upon the outside contractor to have such awareness, as well as appropriate fall protection for their employees. It is also a certainty that this liability will eventually extend to outside contractors coming to the employer’s worksite to perform all manner of services, including electrical, plumbing, excavation, structural repairs, etc.

### **RECOMMENDATIONS**

In order to avoid such potential liability, the host employer should consider the following actions:

- conduct a job hazard analysis of its facility, in this case the roof, to determine whether these are fall hazards, such as unguarded skylights, roof exhaust vents, other roof equipment which could pose a fall hazard
- once the job hazard analysis has been completed, consider what type of fall protection is required and feasible for employees and outside contractors who may be accessing the roof or equipment located on the roof
- after the feasible means of fall protection are identified, develop a written procedure that incorporates these measures and also sets out the process for “authorized” employees to access the roof and under what circumstances such access is permissible and what type of fall protection will be required
- conduct documented training for the “authorized” employees who access the roof, monitor their compliance and discipline the employees who are non-compliant
- when the employer is utilizing and outside contractor to perform work on the roof or equipment on the roof, conduct and document a meeting with the outside contractor and provide the outside contractor with information on the presence and location of any fall hazards on the roof or equipment
- confirm and document that the outside contractor has been informed of these hazards and that the outside contractor has the means and methods to provide the necessary fall protection for its employees and that it will supervise, monitor and enforce compliance with its fall protection program

If the host or controlling employer undertakes these actions, it will minimize its potential liability for fall hazards on the roof for its own employees and those of the outside contractor.

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<sup>3</sup> The outside contractor, M.C. Dean, was also cited by OSHA for failure to guard the skylight through which its employee fell. The citation was affirmed by the Administrative Law Judge.

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NIOSH has provided several online tools for evaluating Ergonomics for different industries or work tasks. See below for links to several of these eTools or use the following address for the full web page:  
<http://www.cdc.gov/niosh/topics/ergonomics/>

## **Ergonomics Programs and Interventions**

### [Simple Solutions: Ergonomics for Construction Workers](#)

DHHS (NIOSH) Publication No. 2007-122 (August 2007)

The solutions in this booklet are practical ideas to help reduce the risk of repetitive stress injury in common construction tasks. While some solutions may need the involvement of the building owner or general contractor, there are also many ideas that individual workers and supervisors can adopt.

### [Ergonomic Guidelines for Manual Material Handling](#)

DHHS (NIOSH) Publication No. 2007-131 (April 2007)

This booklet is written for managers and supervisors in industries that involve the manual handling of containers. It offers suggestions to improve the handling of rectangular, square, and cylindrical containers, sacks, and bags.

### [Conference Proceedings: Prevention of Musculoskeletal Disorders for Children and Adolescents Working in Agriculture](#)

DHHS (NIOSH) Publication No. 2004-119 (June 2004)

The purpose of this document is to provide a summary of a national conference that was held in Cincinnati, Ohio, May 6-7, 2002. The agricultural safety and health experts who attended the meeting identified specific topic areas regarding WMSDs among children and adolescents working in agriculture for which little or no research exists.

### [Easy Ergonomics: A Guide to Selecting Non-Powered Hand Tools](#)

DHHS (NIOSH) Publication No. 2004-164 (September 2004)

This document presents an easy to use guideline for selecting or purchasing the best available ergonomically designed non-powered hand tools.

[En Español](#)  [\[PDF - 3 MB\]](#) 

### [Elements of Ergonomics Programs: A Primer Based on Workplace Evaluations of Musculoskeletal Disorders](#)

DHHS (NIOSH) Publication No. 97-117 (1997)

This publication describes the basic elements of a workplace program aimed at preventing work-related musculoskeletal disorders. It includes a "toolbox," which is a collection of techniques, methods, reference materials, and sources for other information that can help in program development.

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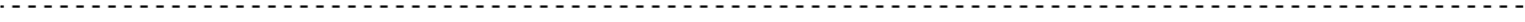


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