

Drawing the line: Does heightened legal enforcement 'cultivate change' in the construction industry?, Construction Dive, ft. Erik Ortmann

Erik Ortmann, partner in Kaufman Dolowich & Voluck's Long Island office, was quoted in Kim Slowey's article in *Construction Dive* on criminal cases in the construction industry.

Kim wrote: Construction is a dangerous business. Working with cranes and other pieces of heavy, high-risk equipment is standard operating procedure, and one slip with the many hazardous tools like chainsaws or screw guns could result in a life-changing injury, or worse. Construction workers are placed in perilous situations every day, from the bottom of a trench to rooflines several stories high, all of which require vigilance on behalf of employers and employees alike to reduce the chance of work site tragedies.

A surge in prosecution of construction cases

But is there an environment of increasing enforcement by prosecutors?

It's the law of averages," said Erik Ortmann, partner at Kaufman Dolowich & Voluck in New York. "The more work that's going on, the more likely it is that something will happen." It's not just because someone has done something wrong necessarily, he said, but there is more of an opportunity for accidents. This fact, combined with increased enforcement and a renewed focus on safety, naturally results in more enforcement activity, Ortmann said.

Who holds the responsibility on a job site?

However, construction is an inherently dangerous industry. Where is the line between accident and criminal liability?

In most cases, Ortmann said, it comes down to knowledge and willfulness. "If a company is in the practice of willfully disregarding the health and safety of their employees, that's a far cry from a circumstance where an accident has occurred," he said. That is really where the line can be drawn.

"Who do you point the finger at and say, 'This person is responsible?'"

The problem with a construction site, Ortmann said, is that there are so many "cooks in the kitchen" that it's difficult to determine where exactly the blame lies. "General contractors, subcontractors, engineers, designers, owner activity — these are all these things in play, so to say that one party bears responsibility much more than somebody else is not the easiest thing to do," he said. "Who do you point the finger at and say, 'This person is responsible?'"

Even worse, he said, is trying to determine whether someone is responsible to the point of criminal liability. "It's a real challenge from a prosecutorial standpoint," Ortmann added.