



# **38TH CRCA TRADE SHOW & SEMINARS**

**JANUARY 19-21, 2022  
DRURY LANE, OAK BROOK TERRACE, IL**

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# 2022 CRCA TRADE SHOW & SEMINARS SPONSORS

## CANVAS BAG



## RAFFLE



## COFFEE BREAK



## SANITIZER STATIONS



## BREAKFAST



# Steep Slope Protection: What Contractors Need to Know

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Cotney Attorneys & Consultants







## Trent Cotney & Tray Batcher

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# STEEP SLOPE LEGAL PROTECTION: WHAT CONTRACTORS NEED TO KNOW

FEATURING TRENT COTNEY & TRAY BATCHER  
JANUARY 2022







# 5 COMMON PROBLEMS WITH STEEP SLOPE

- Nail Pattern
- Deck Sufficiency
- Structural Load
- Warranty Issues
- Aesthetic Issues

# NAIL PATTERN

- Follow applicable code, e.g. Chicago Building Code
- Follow manufacturer specifications
  - It is important to review and follow manufacturers' specifications for specific fasteners and patterns required. This pertains to shingles, tile, and other steep slope products.
  - Manufacturers will specify the size, type, and coatings they require as well the minimum amount of fasteners and patterns necessary for the roof assembly you are installing.
- Problems with nailing:
  - Overdriven nails
  - Missed nails
  - Nails that are not driven properly
- Investigation through attic



# DECK SUFFICIENCY

- Issues with deck:
  - Water damage – deck replacement performed on a time and materials basis
  - Undulations caused by deck or underlying structural components
  - Unforeseen moisture
  - Address contractually

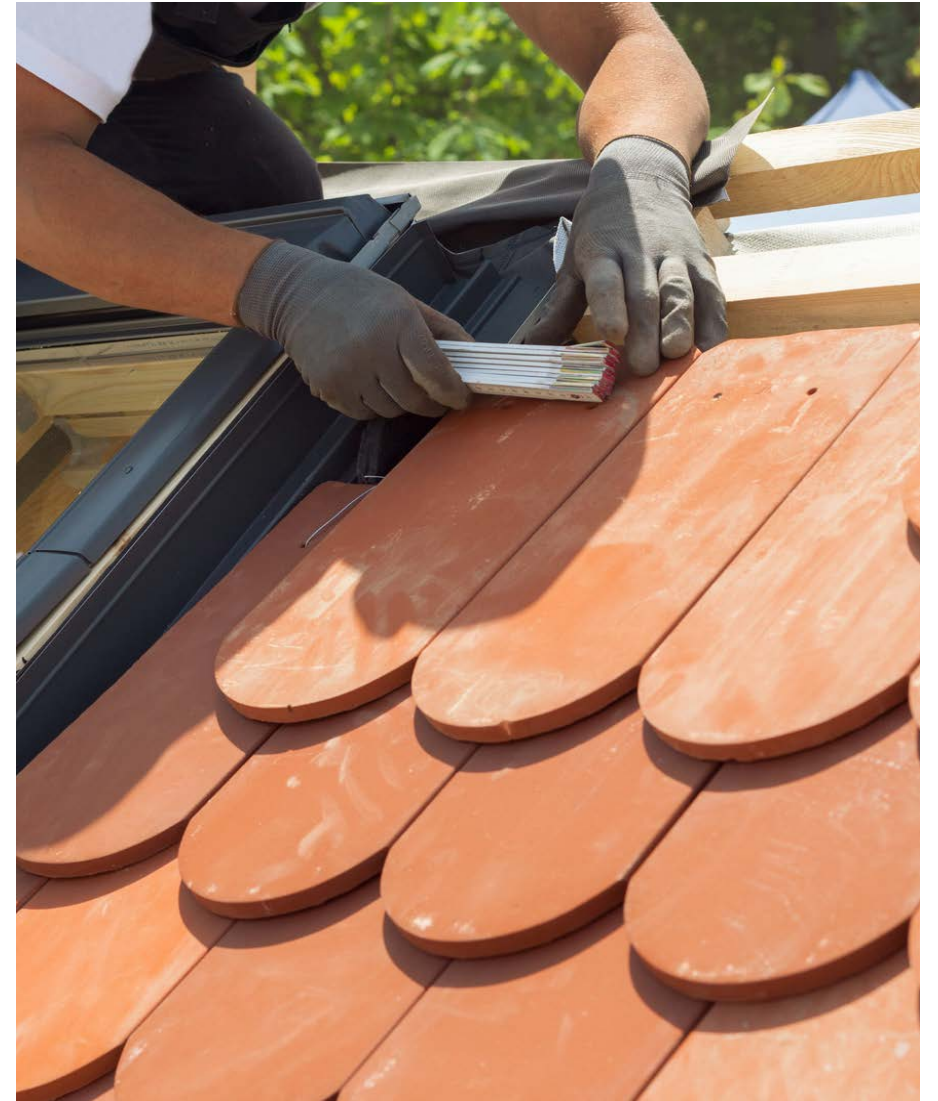


# DECK SUFFICIENCY CONTRACT PROVISION

- Contractor's commencement of roof installation indicates only that Contractor has visually inspected the top surface of the roof deck for visible defects. Contractor shall not be liable for the structural sufficiency, quality of construction, undulations, or moisture content of the roof deck.

# STRUCTURAL LOAD

- Identifying structural sufficiency of roof system is important, especially if switching systems to heavier standing load: slate, concrete tile, etc.
- Snow weight may result in collapse. Dead loads and snow loads are considered when the roof's supporting structure is designed, but they do not take into account the additional weight that you will add to the roof with your staged materials. It is important to properly spread the load out over the joists when stacking and storing your roof materials to prevent collapse if it snows.
  - Opportunity to sell maintenance
- Comply with ice barrier for ice dam and wind driven rain backup under roofing material to counteract ice dams.





# WARRANTY ISSUES

- Offering correct manufacturer warranty
- Creating a limited workmanship warranty that exempts:
  - Work done by others
  - Failure to maintain
  - Wind speed that exceeds design specification
- Respond to warranty claims timely but include notice provisions in your contract to mitigate damage



# WARRANTY CONTRACT PROVISION

Unless otherwise provided: **THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WHATSOEVER INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** All warranties/guarantees provided by Contractor, if any, shall be deemed null and void if Customer fails to strictly adhere to the payment terms contained in the Agreement. All warranties and guarantees if any, provided under the Agreement are solely for the original Customer and are non-transferable, unless otherwise agreed to by Customer and Contractor in writing. Any express warranty provided, if any, by Contractor is the sole and exclusive remedy for alleged construction defects, in lieu of all other remedies, implied or statutory.

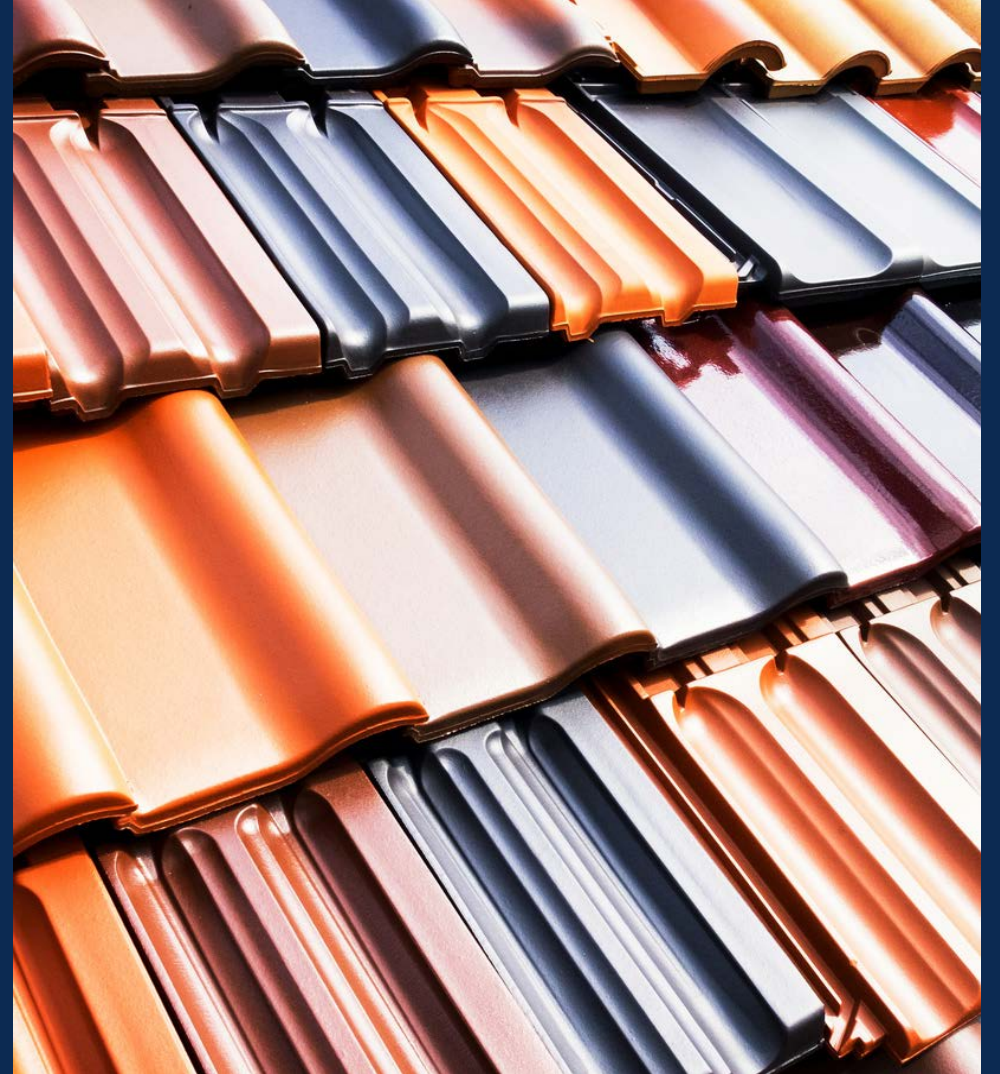


# NOTICE PROVISION

It is Customer's duty to notify Contractor in writing within **three (3) days** of the occurrence of any claim, defect or deficiency arising out of work, services or materials provided by Contractor under this Agreement ("Occurrence"). Failure of the Customer to provide written notice of the Occurrence shall result in the Customer waiving all claims that may be brought against Contractor arising out of or relating to the Occurrence, including claims arising in law, equity, contract, warranty (express or implied), tort or federal or state statutory claims.

# AESTHETIC ISSUES

- Color Match
- Oil Canning
- Tobacco Juicing







# COLOR MATCH

- Where colors are to be matched, Contractor shall make reasonable efforts using standard colors and materials but does not guarantee a perfect match.
- All materials and work shall be furnished in accordance with normal industry tolerances for color, variation, thickness, size, weight, amount, finish, texture and performance standards.



# OIL CANNING

Metal roofing and especially length flat-span sheet-metal panels often will exhibit waviness, commonly referred to as “oil-canning”. The degree of oil-canning and the appearance of the panels will vary depending on factors such as length and color of panels, alloy, gauge, galvanizing process, substrate condition, and exposure to sunlight. Oil-canning pertains to aesthetics and not the performance of the panels and is controlled by Roofing Contractor. The type of metal roofing panels specified can affect the degree of oil-canning. Roofing Contractor is not responsible for oil-canning or aesthetics. Oil-canning shall not be grounds to withhold payment or reject panels of the type specified.

# TOBACCO JUICING

Although rare, it is possible that the materials installed on the project may leach or cause a residue to form. This condition normally referred to as "tobacco juicing" does not affect your warranty or the performance of your roof system. Therefore, Contractor disclaims all liability related to any leaching or formation of tobacco-juicing residue that may form.



# **BONUS ISSUE 1: UTILITIES UNDER DECK**

Unforeseen Decking Lines: Installation of a new roof to the deck area of the building requires nails and/or screws to be inserted into the deck area. By code, electrical, telephone, security wiring, HVAC wiring and lines should not be installed directly beneath the roof deck. If you are aware of these or any other such lines please notify us immediately as the Contractor will not be responsible for the puncture of improperly installed lines or lines within three inches of the roof deck. Customer assumes and accepts full responsibility for any repair or replacement that may be necessary.

## **BONUS ISSUE 2: DRIVEWAY CRACKS**

Customer acknowledges that the price of the work to be performed anticipates the use of heavy equipment and or trucks to roof-top materials. It is possible that the driveway, curbs, or walkways may be cracked or damaged because of the weight of the equipment or trucks. Accordingly, contractor disclaims liability for any cracks or damages caused to the driveway, curbs or walkways. If customer would prefer the contractor to hand lift the materials, the contract price will need to be increased to reflect the additional labor cost.

# STEEP SLOPE SAFETY

- Most cited standards:
  - 1926.501(b)(13) – residential fall protection standard
  - 1926.501(b)(11) – steep roof fall protection standard
  - 1926.1053 – ladder violations
  - 1926.501(b)(1) – unprotected sides and edges
  - General Duty Clause – employer must keep employees safe from recognized hazards





# STEEP SLOPE SAFETY

- Critical Documentation:
  - Safety manual – sign off sheets, Spanish, up to date
  - Evidence of discipline – written write ups, suspensions, terminations
  - Re-training documentation
  - Toolbox talks – key issues faced in the field
  - Safety audits – equipment and in-field
  - Third party consultants
  - OSHA 10s and 30s



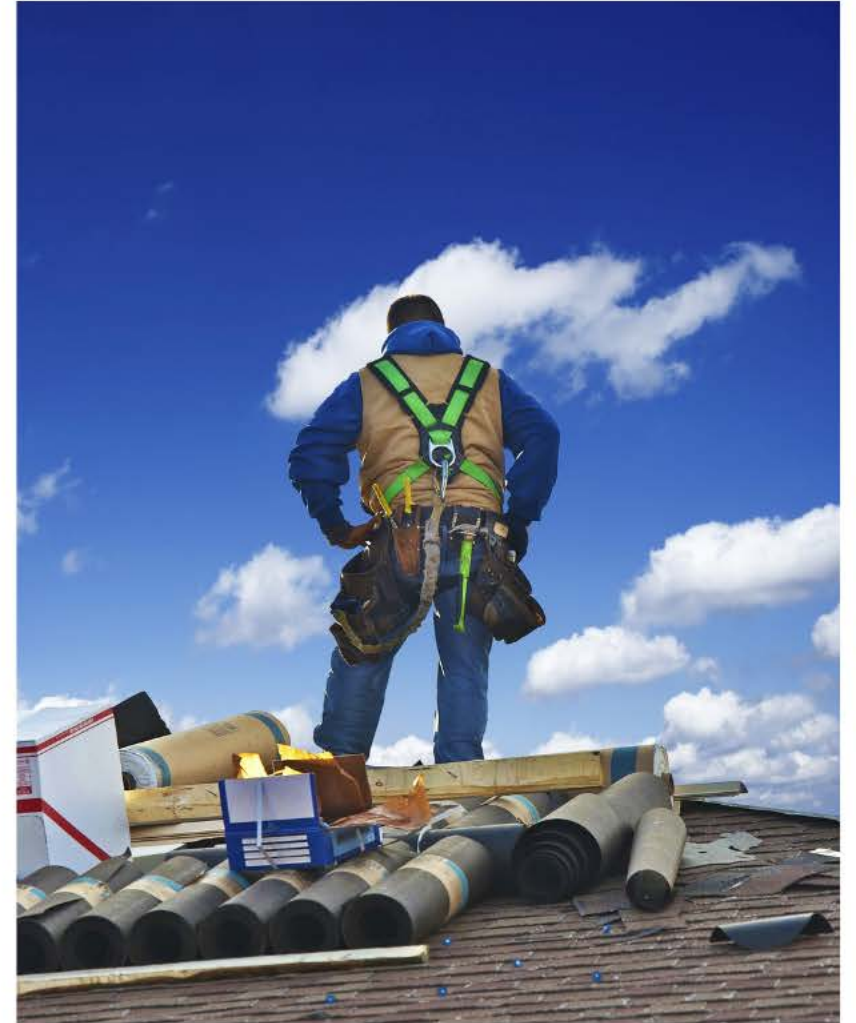


# COVID-19 SAFETY

- Except for emergencies, restrict job site trailer access
- All job site meetings are virtual – Zoom, Teams, Google Hangouts, CompanyCam
- If anyone on the jobsite appears ill, they are sent home immediately.
- Ensure your workforce arrives with all appropriate PPE and water. Limit loaning of PPE and water due to safety and supply shortages (not to mention OSHA issues).
- Daily reporting – switch to virtual only. Text a photo or use other program to convey info.
- Use virtual meetings (Zoom, Teams, etc.) to maintain minimum distance rule.
- Discontinue in person safety training – go to virtual.
- Sanitize and clean worksite

# ISSUES WITH SUB LABOR

- Misclassification
- Safety/OSHA
- Construction Defects and Quality Control
- Insurance Coverage and Defense
- Licensure and Adherence to Regulations



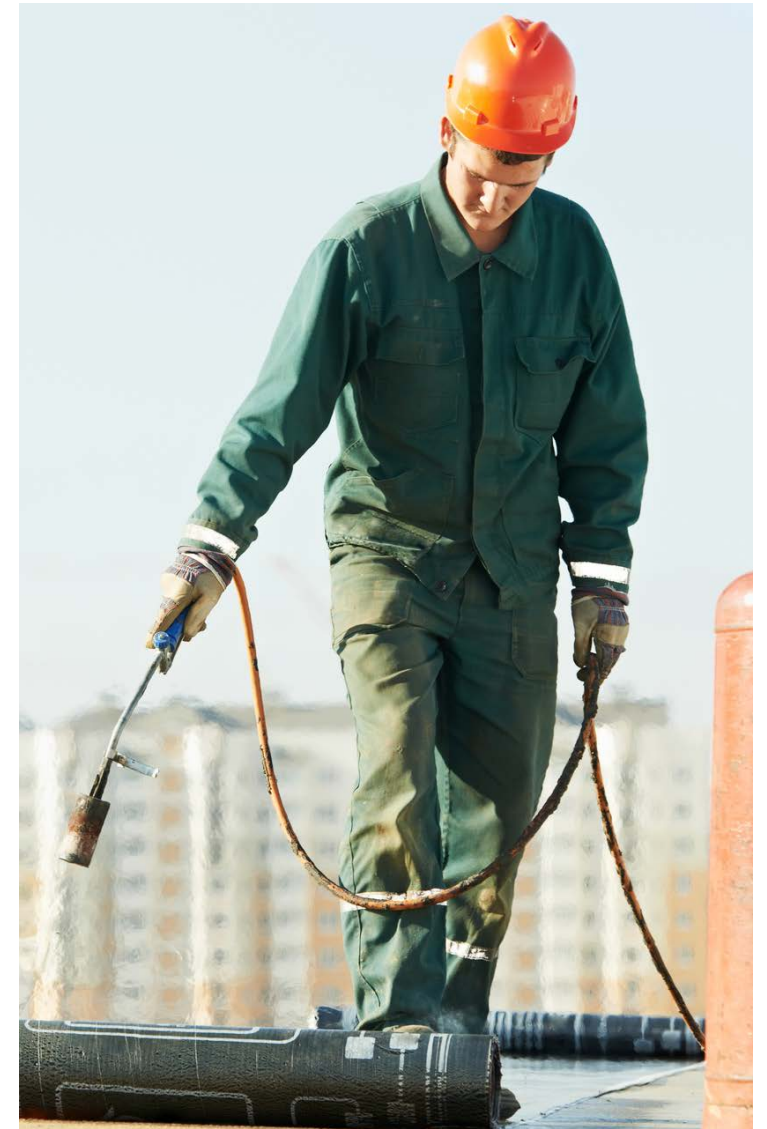


# INDEPENDENT CONTRACTOR VS EMPLOYEE

- Benefits of “Independent Contractor” as Subcontractor
  - Savings on payroll
  - Withholding taxes
  - Savings on benefit expenses
  - Reduced liability for injury on the job
  - Limit liability with government agencies
- Problem – Must Actually Be An “Independent” Subcontractor
  - Independent Contractor agreement: Not Enough
  - 1099 v. W2: Not Enough
  - Economic Realities Test

# INDEPENDENT CONTRACTOR VS EMPLOYEE

- The Seven Factors of the Economic Realities Test (Current)
  1. the extent to which the services rendered are an integral part of the principal's business
  2. the permanency of the relationship
  3. the amount of the alleged contractor's investment in facilities and equipment
  4. the nature and degree of control by the principal
  5. the alleged contractor's opportunities for profit and loss
  6. the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor
  7. the degree of independent business organization and operation





# THE MULTI-EMPLOYER WORKSITE AND OSHA

What is the Multi-Employer Worksite Doctrine?

- In projects involving multiple employers, OSHA makes a determination as to whether one employer may be responsible for the actions of another employer on that site
- Whether one is responsible for the actions of the other depends on OSHA's classification of the employment relationship

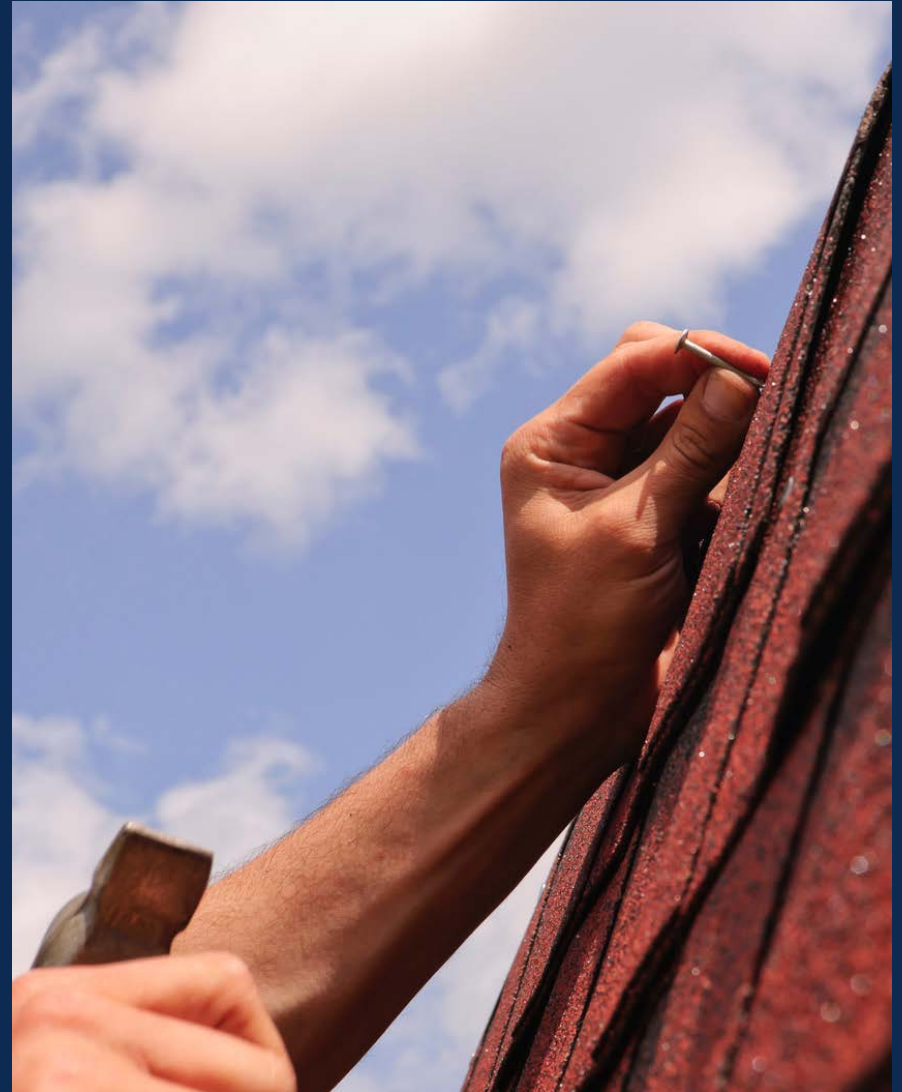


# WHAT ARE THE CLASSIFICATIONS?

- **Creating Employer** – one that has caused a hazardous condition that violates an OSHA standard
- **Exposing Employer** – one whose own employees are exposed to the hazard
- **Correcting Employer** – one who is engaged in a common undertaking, on the same worksite as the exposing employer, and is responsible for correcting the hazard
- **Controlling Employer** – one who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them

# DEFENSES TO MULTI-EMPLOYER WORKSITE

- Demonstrate inability to correct safety and health hazards
- General supervision is not enough... or is it?
- Contract Provisions



# THE ANTI-CONTROLLING CONTRACTOR PROVISION

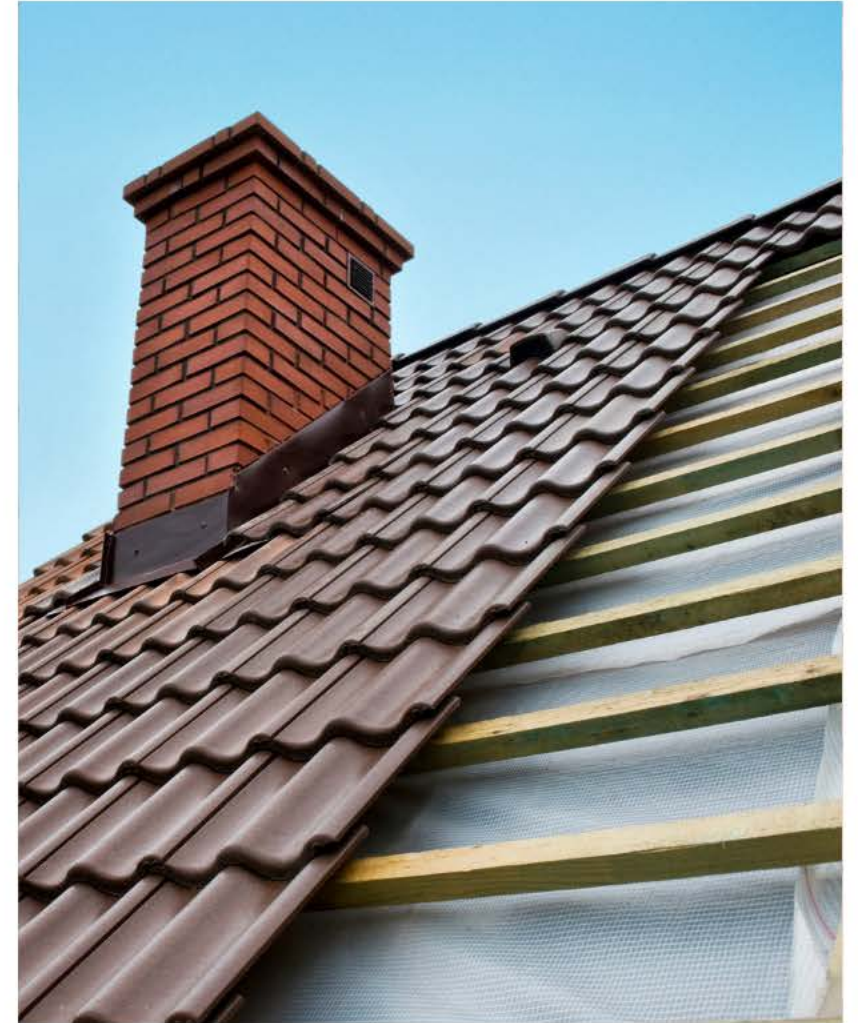
Subcontractor as Controlling Contractor Provision:

“Subcontractor understands and acknowledges that Subcontractor shall control and implement all required safety procedures, and that Contractor shall only perform occasional inspections to determine conformance with the plans and specifications for the project. As a result, Contractor shall not be able to ensure Subcontractor (while working for Contractor) adherence to safety standards and the OSH Act or applicable state health and safety plans because Contractor cannot reasonably be expected to prevent, detect or abate violative conditions by reason of its limited role on the project. Therefore, Subcontractor shall be solely responsible for controlling safety on the jobsite as it relates to Subcontractor.”



# **LIMITING LIABILITY FOR CONSTRUCTION DEFECTS**

- **Baseline Rule**
  - The Prime Contractor is liable to the Owner for defects caused by its Subcontractor
- **Contract Provisions to Limit or Shift Liability**
  - Limiting Liability: Notice Provisions
  - Shifting Liability: Indemnification Provisions
  - Insuring Liability: Additional Insured Clause





# ADDITIONAL INSURED PROVISION

- Purpose
  - To “make good” on subcontractor’s indemnity obligations
- Limitations — be aware of the extent of AI Coverage from your subcontractors.
- Considerations
  - Make sure the requirements of both the insurance policy and the Contract Documents are followed to properly effectuate AI coverage



# CONCLUSION

- Watch out for most common issues in steep slope roofing.
- Fine tune your contract and warranty.
- Be proactive with documentation that will help you prove your claims and defend against government and customer claims.
- Closely monitor any sub crews to ensure quality control and compliance.



# CONTACT US!



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