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LOW SLOPE LEGAL UPDATE

TRENT COTNEY
General Counsel



Introduction

Process to determine biggest legal issues

Legal Issues and case studies

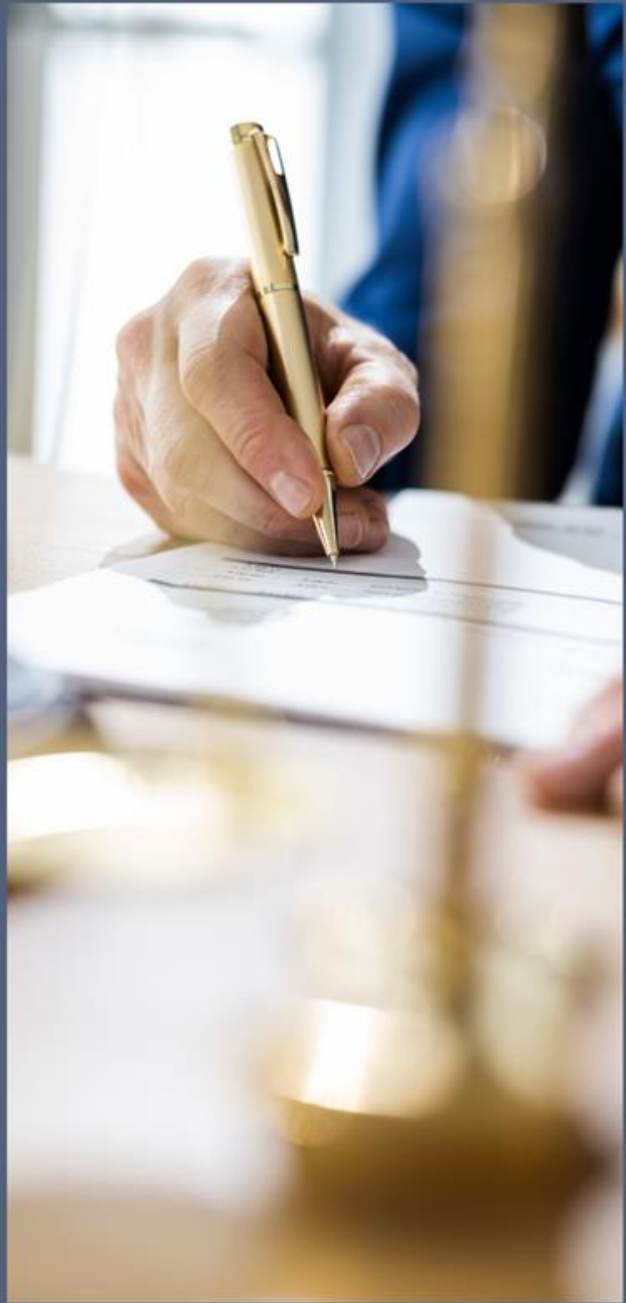
Contract provisions

OSHA defense on low slope

Latest Issues with Materials

- Volatility has stabilized.
- Prices may continue to increase.
- Decreased demand may also impact availability.
- Manufacturers pre-shipping materials
 - Check your applicator agreement.
 - You can refuse early shipment, but...
 - Make sure to inventory on site before acceptance.





PRICE ACCELERATION PROVISION

If there is an increase in the actual cost of the labor or materials charged to the Contractor in excess of 5% subsequent to making this Agreement, the price set forth in this Agreement shall be increased without the need for a written change order or amendment to the contract to reflect the price increase and additional direct cost to the Contractor. Contractor will submit written documentation of the increased charges to the Prime Contractor/Owner upon request. As an additional remedy, if the actual cost of any line item increases more than 10% subsequent to the making of this Agreement, Contractor, at its sole discretion, may terminate the contract for convenience.

***** Beware the anti-price escalation provision.*****



ANTI-PRICE ESCALATION

All prices provided by Subcontractor for this Project are firm and are not subject to price escalation or change order resulting from material or equipment price increases or unavailability. The fixed price sum provided by Subcontractor is intended to include all increases in cost, foreseen or unforeseen, including, without limitation, taxes, labor and materials, shipping and freight costs, warranty costs, and fuel charges, all of which is to be borne solely by the Subcontractor. In addition, Subcontractor shall not be entitled to any increase in the contract sum or additional time as a result of supply chain issues, material volatility, or delays resulting from material or equipment temporary or permanent unavailability.

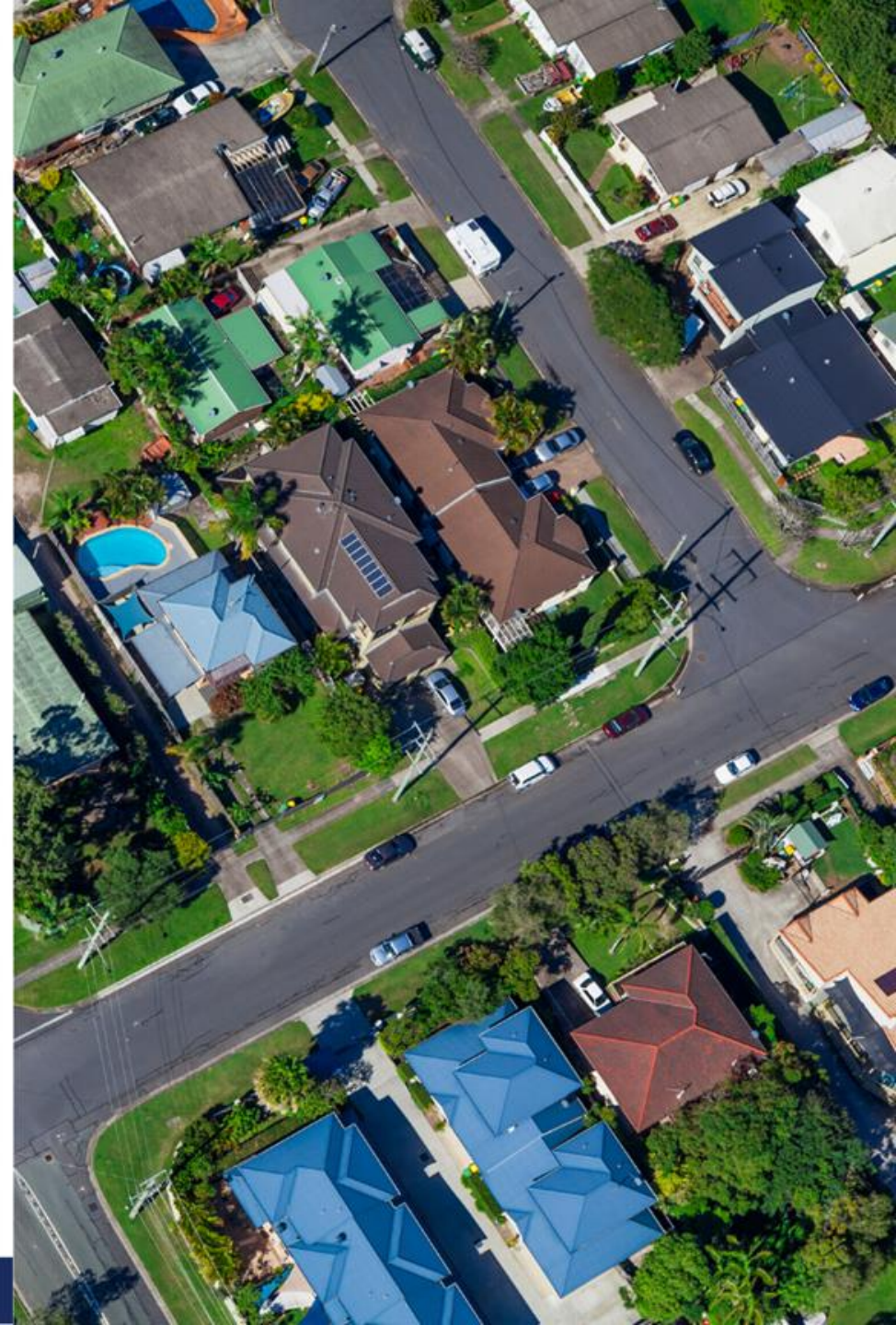


MATERIAL AVAILABILITY PROVISION

- Due to material shortages, Customer may experience delays related to the inability to timely obtain materials for this project. In the event of such a delay, Contractor shall notify Customer, and Customer agrees to provide Contractor with an extension of time for any delay attributable to the temporary inability to obtain materials.

Material Substitution

In the event that any specified material or equipment becomes unavailable either temporarily or permanently after the contract is executed, provided that such availability is a result of factors beyond Contractor's control, then in the event of temporary unavailability, the contract time shall be extended to reflect the duration of time that the contractor is delayed by the unavailability, and in the case of permanent unavailability, the contractor shall be excused from providing said material or equipment and allowed to provide an available substitute. To the extent an available substitute is provided by Contractor under this provision, any increase in the cost between the originally specified material and equipment and the substitute shall be paid by the Owner to the Contractor.





HOW TO DEAL WITH LIQUIDATED DAMAGES

- Remember with LD claims, you are just seeking more days to beat the claim.
- Use excusable, concurrent delay such as delay caused by others to knock back days.
- Obtain extensions for every day needed including weather-related delay.
- Use same contractual arguments we mentioned to defend against LDs.
- Rework the schedule to accommodate the lead times so you are maximizing efficiency without acceleration.

Performance Bond Issues

- Trend of General Contractors making claims against roofing contractors performance bonds based on delay.
- Generally, surety supports roofing contractor.
- Be aware of the 3.1 conference.
- Mitigate risk with the surety



LOW SLOPE ROOFING ISSUE: FACER DELAMINATION





Facer Delamination

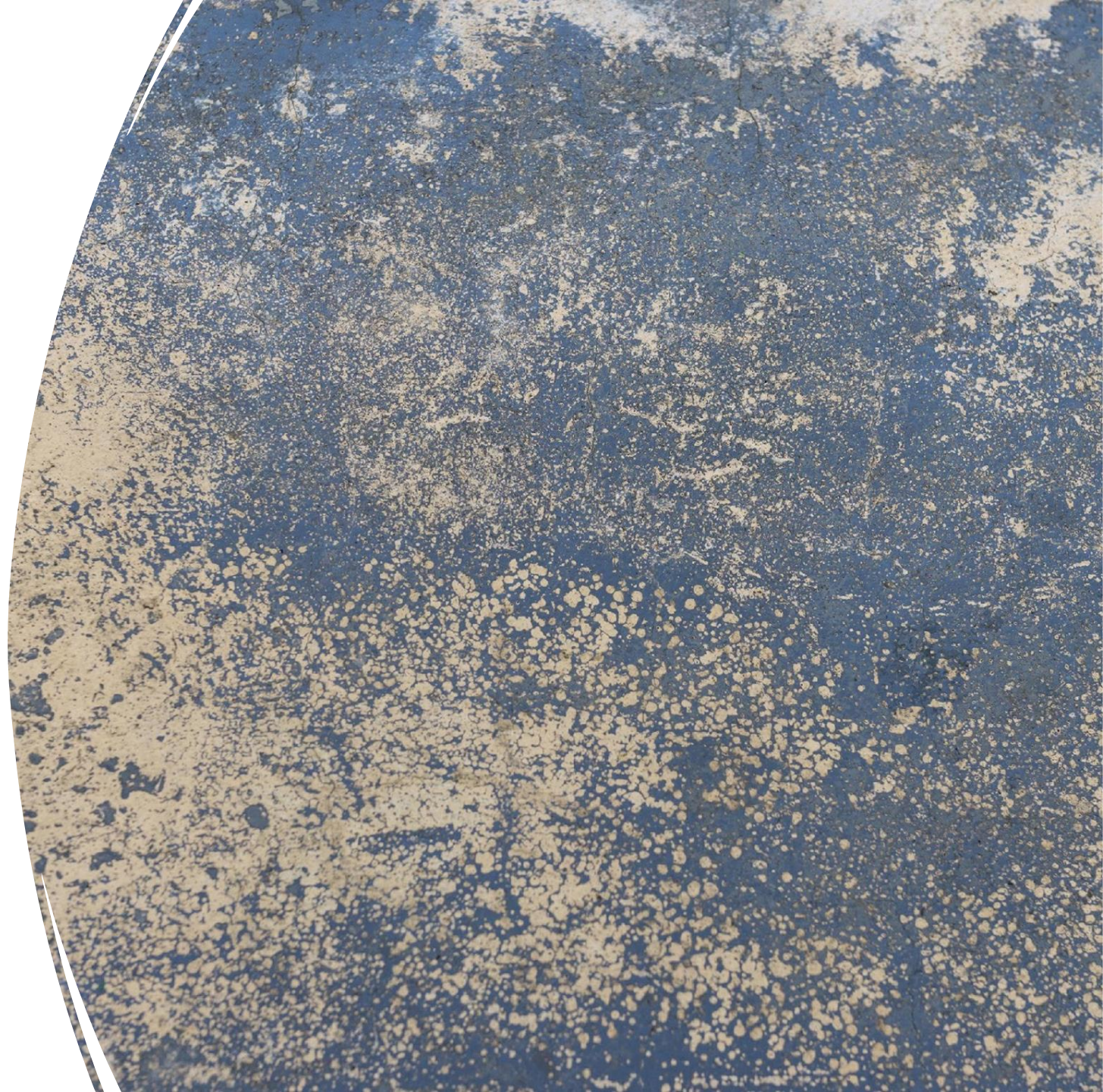
- Direct adhesion of a single-ply system without using a cover board
- Uptick in moisture-based failure with direct adhesion
- Often causes facer delamination

Contract Provision

- In the event the scope of work requires direct adhesion of a single-ply system without the use of a cover board, Contractor disclaims liability for any damage that may occur as a result including, without limitation, facer delamination.

Deck Acceptance

- A variety of legal issues occur when a roofing contractor contractually accepts defects in a roofing deck.
- These defects could include:
 - Structural problems
 - Undulations that result in ponding
 - Moisture content



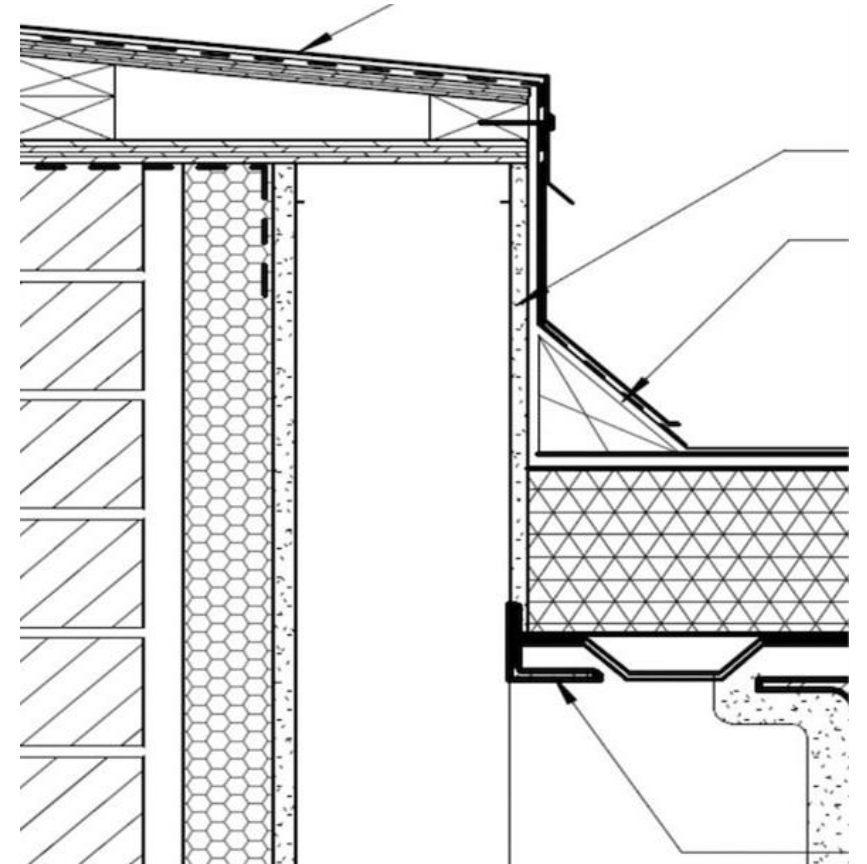


Acceptance of Deck

- Contractor's commencement of roof installation indicates only that Contractor has visually inspected the surface of the roof deck for visible defects. Contractor is not responsible for the structural sufficiency, quality of construction, undulations, fastening or moisture content of the roof deck or other trades' work or design and their effect on the roof and roofing materials.

Roof to Wall Connection Issues

- Water intrusion often occurs at roof to wall connections as a result of flashing issues, prior construction, transition from dissimilar materials, and poor design.
- Accounting for the issues of other's construction in the contract should be considered.



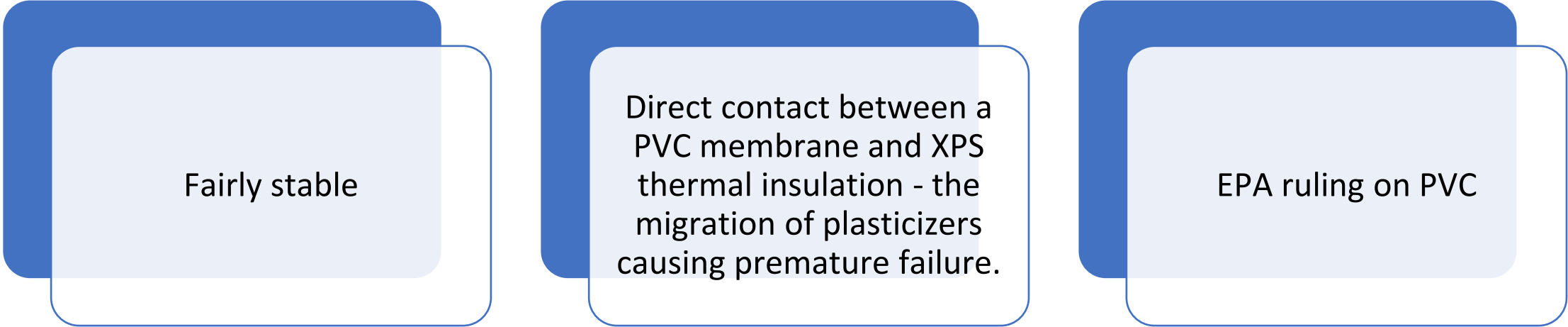
Roof to Wall Connection Provision

- Contractor disclaims liability for damages caused by water, air, or vapor intrusion at roof to wall connections resulting from structural movement, improper wall anchorage, improper installation of work not performed by contractor, or other events outside contractor's reasonable control.

Survey of Low Slope Issues – Single Ply TPO

- Seam failures caused by cold welds or dirty welds.
- Premature aging and seam failures due to prolonged exposure to intense heat.
- Punctures and tears from blowing storm debris and improper maintenance procedures.

Survey of Low Slope Issues – Single Ply PVC



Fairly stable

Direct contact between a
PVC membrane and XPS
thermal insulation - the
migration of plasticizers
causing premature failure.

EPA ruling on PVC

Survey of Low Slope Issues - EPDM

- Punctures in, or damage to, the membrane.
- Shrinkage
- Incorrectly installed or improper flashing
- Wrinkles extending into roof seams

Survey of Low Slope Issues – BUR and Modifieds

Modified seam failures due to not correctly preparing embedded granules on end laps of flashings.

Too much heat or too little during torching

Poor drainage causing premature failure of the systems



OSHA and Low Slope Citations



1926.501(b)(1)

- "Unprotected sides and edges." Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

Low Slope Roofing Citations

- [1926.501\(b\)\(10\)](#)
- "Roofing work on Low-slope roofs." Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix A to subpart M of this part), the use of a safety monitoring system alone [i.e. without the warning line system] is permitted.

Skylight-related Citations

- [1926.501\(b\)\(4\)](#)
- "Holes."
- [1926.501\(b\)\(4\)\(i\)](#)
- Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes.
- [1926.501\(b\)\(4\)\(ii\)](#)
- Each employee on a walking/working surface shall be protected from tripping in or stepping into or through holes (including skylights) by covers.
- [1926.501\(b\)\(4\)\(iii\)](#)
- Each employee on a walking/working surface shall be protected from objects falling through holes (including skylights) by covers.

CONTACT US!



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