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# Statement of Qualifications in OSHA Counseling and OSHA

## *Litigation Matters*

The OSHA attorneys of our Environmental Safety and Toxic Torts group have extensive credentials in the wide variety of matters and issues arising under the Occupational Safety and Health Act and its state counterparts. Our OSHA attorneys have garnered unparalleled experience in OSHA accident and fatality investigations, union and employee complaints, and compliance with national and state enforcement programs and initiatives aimed at protecting employee safety and health. In addition to our nationally recognized OSHA defense practice, our attorneys proactively assist clients in establishing compliance programs for various OSHA standards and state civil and criminal workers compensation laws. We manage and oversee internal OSHA compliance audits and safety reviews. Our OSHA attorneys have experience in all of the federal OSHA jurisdictions and all of the state run – OSHA programs. We maintain a high degree of credibility with, and have earned the respect of OSHA Area Directors as well as the OSHA Review Commission. Our experience includes a substantial amount of successful litigation with numerous successes at trials and in appeals.

Our OSHA attorneys have addressed multitudes of issues that arise in a broad range of industries, including steel and heavy metals manufacturing, explosives, propellants and munitions, commercial, residential and road construction, chemical manufacturing (including hydrochloric acid, nitric acid, nitric oxide, sulfuric acid, sodium hydroxide, pentachlorophenol, sodium hypochlorate, sulfur trioxide, starch, toluene diisocyanate, methanol, carbon black, metal oxides, tantalum), meatpacking, paints and coatings, adhesives, inks and solvents, pharmaceutical manufacturing, medical products, paper and plastics packaging, plastics manufacturing, commercial laundries, dry cleaning plants, lime operations and cement manufacturing, railcar manufacturing and maintenance, tanker manufacturing and maintenance, ammonia refrigeration systems, outdoor advertising, alumina manufacturing and aluminum extruding, petrochemical refining, building and roofing materials, cell tower construction and use, printing, batteries manufacturing and recycling, lighting, food and beverage processing, transportation of chemicals and mining products, laboratory products, soaps/surfactants/cleaners, fertilizers, and the waste treatment and disposal industry. Because of the breadth of our practice, we offer unparalleled experience in responding to OSHA matters.

In addition to overseeing inspections and defense of OSHA citations, our OSHA attorneys provide immediate and comprehensive responses to workplace catastrophes which result in fatalities, multiple injuries, and evacuations. Our attorneys use their exhaustive experience to calmly and competently handle fatalities and serious injuries with professionalism and compassion, while ensuring appropriate response to the inevitable regulatory investigations which occur immediately following a workplace

catastrophe. Our catastrophe response team of attorneys manage not only the OSHA inspections arising from workplace catastrophes, they also handle EPA investigations, Chemical Safety Board investigations, union investigations, media inquiries, and environmental obligations often associated with accidents and catastrophes.

## *Experience*

The following is a summary of some of the Firm's OSHA experience:

- Preparation and review of required OSHA Programs and defense of same; e.g., hazard communication; lockout tagout; confined space entry; fall protection; emergency evacuation; bloodborne pathogen; powered industrial trucks; process safety management; fire brigades; and electrical safety and lock out tagout.
- Workplace violence: We assist clients in developing prevention and emergency plans and employee training. We assist clients in managing outbreaks of violence or threats violence and related investigation. We assist in OSHA investigation of workplace violence incidents.
- Ergonomics: We assist clients in the development of ergonomics and repetitive motion prevention programs and manage and oversee internal evaluations of potential ergonomic issues. We work with outside experts (Ergonomists) to conduct hazard analysis and hazard control. We represent our clients in OSHA ergonomics inspections and have successfully defended against OSHA ergonomics citations.
- Union organizing campaigns: We assist clients in responding to employee complaints and OSHA inspections that are a common tactic used by organized labor during union organizing campaigns.

## *Representative Cases*

- Judgment entered in favor of client after trial vacating citations relating to railroad car maintenance facility and CALOSHA's claim that the railcar must be equipped with standard guardrails. Court agreed that we established that guardrails were not feasible and hence the exception to the standard applied to the facility's operations.
- Represented major Illinois road construction company in investigation of fatality on interstate highway 80/94 in Indiana involving crushing injury to highway inspector when a bridge piling fell from a crane and struck the inspector. After aggressively defending the Company in the Indiana OSHA inspection interviews of employees, the agency concluded the inspection with no citations being issued to the client.

- Represented employer in extensive investigation involving accident during cleaning activities and use of explosives in electric utility boiler. Successfully negotiated settlement of various issues of first impression under federal explosive and confined space standards, including willful citations and dismissal of various citations.
- We are representing a major company in the commercial laundry industry before the U.S. Occupational Safety and Health Review Commission and State Plan OSHA Commissions in multiple OSHA enforcement actions brought in federal and state jurisdictions across the country. Most of these actions were triggered by union complaints as part of a corporate campaign against the company. The citations include several willful citations and allege, among other things, employee exposure to bloodborne pathogens (HIV, Hepatitis) and to various hazards involving laundry equipment and maintenance. All willful citations have been vacated or reclassified as other than willful, and the penalties have been substantially reduced. In addition, OSHA vacated a serious citation that alleged the company failed to test employees to ensure that the Hepatitis B vaccine was effective and that would have required a significant and expensive abatement effort. The overall settlement strategy allowed for consistent programs to be adopted across various jurisdictions.
- Successfully defended contractor against significant citations involving fatal accident in industrial cleaning operations including alleged willful citations. Negotiated settlement involving withdrawal of willful citation and numerous confined space entry citations.
- We are representing an Alaskan oil refining company in an OSHA proceeding in Alaska involving a fatality occurring when an independent contractor truck driver died as a result of an apparent fall off of his tanker truck while picking up a load of asphalt at the Company's refinery. The fatality was inspected by Alaska OSHA and citations were issued alleging that the company had a legal duty to provide fall protection to non-employees who were working on their own vehicles at the refinery. We have contested the citations for the company and are defending this case of first impression involving refinery operations in Alaska and other locations.
- Successfully defended multi-employer citations against general contractor in Kansas City arising from fall protection and scaffolding violations by subcontractors at the worksite. All citations were withdrawn by OSHA.
- Successfully defended metals manufacturer against OSHA citations relating to South Carolina warehouse operations and fatal accident involving overhead cranes and warehouse design. Settled case by obtaining dismissal of citations relating to critical operational practices.
- Represented explosives manufacturer in an extensive TOSHA investigation and citations totaling \$380,000 relating to a fatal accident and explosion at a defense industry manufacturing facility.

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Successfully settled various issues of first impression in Tennessee involving process safety management standard and explosives standards.

- Represented a major telecommunications company before the U.S. Occupational Safety and Health Review Commission regarding an accident occurring in Alabama when a 1,000 foot telecommunications tower collapsed, killing 3 employees who were working at the 750 foot level when it fell. After targeted discovery upon OSHA, they agreed to withdraw the citations.
- Successfully defended client before the Occupational Safety and Health Review Commission involving multi-employer citations against a project manager following a trenching accident that critically injured a trenching subcontractor's employee.
- Successfully managed fatality inspection for a trucking transport bulk carrier in Michigan relating to a confined space entry fatality resulting in minimal citations being issued to the client. Ultimately obtained a favorable settlement with dismissal of numerous citations.
- Obtained a verdict after trial dismissing citations against newspaper distribution company associated with fatal accident to independent contractor newspaper delivery person. We successfully challenged OSHA's position that reflective vests are required personal protective equipment under OSHA's PPE standard. OSHA appealed the case to the federal Occupational Safety and Health Review Commission claiming the delivery person was an employee of distributor and the PPE standard applied. The Review Commission dismissed OSHA's case sustaining the Company's position that the delivery person was an independent contractor and not an employee. OSHA therefore had no jurisdiction to issue citations to our client.
- Successful defense of willful citation issued to client for alleged failure to properly modify, inspect and maintain press brake at facility which caused serious personal injury to operator. Case was unique because the facility was an OSHA VPP site (OSHA's highest safety rating) and this is believed to be the first time that a VPP site has ever received a willful citation. We recommended that the case be submitted to mediation and OSHA agreed. The case was mediated in Arkansas and the willful citation was withdrawn. The settlement was very favorable to the client and it is believed that the Company will be able to maintain its VPP status as a result of the positive communications which were generated with the agency during the mediation.
- Successful defense of an OSHA multi-employer citation issued to a poultry company as a result of a fatal fall by an outside contractor through a temporary floor opening grate in a chicken feed mill. We visited the site after the accident and personally managed the OSHA inspection which resulted in one citation. We attended the OSHA informal settlement conference in Birmingham, Alabama and convinced the Area Director to withdraw the citation in return for an informal letter

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requesting the Company to survey the floor openings in all of its feed mills and report back that such conditions were in compliance.

- Successful defense of willful citations issued to major international manufacturer of food packaging containers in Illinois for alleged failure to train Hispanic employee operators in lockout/tagout and machine guarding programs and to enforce such programs. The inspection followed a serious workplace accident to an operator. The workforce is primarily Hispanic and OSHA contended that the training which contained English components was inadequate. After there was no movement by OSHA to resolve the citations, we were able to convince the agency to transfer the case to mediation where the case resolved with withdrawal of the willful citation and the Company's agreement to conduct a third party audit of its presses and to adopt the audit recommendations.
- Successful defense of two serious lockout tagout citations for the company's facility in the City of Industry, California resulting from an accident to a maintenance employee during a maintenance operation. We assisted the client in developing an aggressive defense of independent employee misconduct to the citation. The Solicitor eventually conceded that the defense was sustainable but in order to avoid trial agreed to reclassify the citations to General(meaning no serious hazard to an employee) and reduce the penalties from \$36,000 to \$2,500.
- Successful defense of OSHA Section 11(c)retaliation complaints made by two employees in Aurora, Illinois claiming that they were retaliated against by the utility company because they complained that they became very ill allegedly because of the design of the plumbing system at the facility for the drinking water which they contended was contaminated by hazardous boiler cleaning chemicals in the waterline had been connected to a boiler. We managed the OSHA inspection and retained a plumbing consultant as well as a hydrologist to measure the water quality. As a result, the complaints were dismissed by the agency and no citations were issued for water quality.
- Successful defense of multiple citations issued to company in Denver, Colorado relating to alleged fire and health hazards in the mechanics pits in the bus maintenance garages due to the chemicals used by the mechanics and bus emissions. The citations would have required the redesign of hundreds of mechanics pits around the country at the cost of millions of dollars. We retained industrial hygienists to conduct a survey of the pits and demonstrate that there was no hazard. After the survey was completed, the citations were withdrawn.
- Successfully defended hazard communication and fall protection citations in Indiana resulting in complete withdrawal of all citations.

- Successfully defended citations against outdoor advertising company in Ohio for alleged fall protection violations resulting in complete withdrawal of all citations.
- Successfully resolved fall protection citations against outdoor advertising company resulting in all citations being reduced to "other than serious" classifications with zero penalty.
- Successfully defended fall protection citations against outdoor advertising company resulting in all citations being completely withdrawn.
- Employee suffered severe degloving, crushing and amputation injuries to his dominant hand as a result of an accident involving a web printing press. Cal/OSHA cited the employer for violations of "Lock Out/Tag Out" and "Hand Protection" regulations. The citations included 3 "General" and 1 "Serious - Accident Related" carrying penalties of \$18,840. Following a hearing on the employer's appeals, the Division withdrew one of the General citations. The Judge granted the employer's appeals as to all remaining citations. In addition, the injured employee filed a "Serious & Willful" petition before the Workers' Compensation Appeals Board, thus exposing the employer to significant additional penalties (one-half of the total workers' compensation benefits) had we not successfully appealed the Serious Cal/OSHA citation.
- Fatality accident involving a 21 year-old employee assisting in the cleaning of a nitrogen reactor at a refinery. The employee was conducting his job duties "in-vessel;" the accident occurred during his attempted egress. Cal/OSHA cited the employer under various Fall Protection, Confined Space, and Emergency Response regulations. The issued citations included 1 "General" citation (with 6 "Items"), 2 "Serious" citations, and 1 "Serious - Accident Related" citation. Following discovery and extensive negotiations with the DOSH Legal Unit, the citations were reduced to 2 General and 1 Serious. Penalties of \$44,850 were also reduced to \$10,060. In addition to a third-party wrongful death action, the accident resulted in a criminal prosecution by the Los Angeles County District Attorney's Office. In the criminal action we worked closely with criminal defense counsel to reduce 12 charged felony counts to 2 misdemeanors.
- We are representing a telecommunications construction company, in a fatality involving an employee fall from a telecommunications tower in Colorado. The client received multiple willful citations relating to fall protection equipment, training and procedures. We have been managing an extensive OSHA inspection of the Company's fall protection compliance programs.
- Successfully managed simultaneous fatality inspections arising from two separate fatal fall accidents on a road construction project that occurred within 45 days of one another before the Occupational Safety and Health Review Commission. The successive deaths raised considerable complicating issues for the inspections, yet only minor citations were ultimately issued. Obtained favorable settlement of citations, including withdrawal of citations.

- Electrical explosion and fire in newspaper printing facility involving electrical arc blast occurring during maintenance operation, injuring two employees. Following accident, we assisted client in managing OSHA inspection as well as in developing remedial plan to conduct electrical safe work practices training for client maintenance employees. Defended OSHA citations and negotiated favorable settlement with OSHA.
- Defended willful citations arising out of accident at plastics manufacturing facility in Ada, Oklahoma involving amputation type injury to employee on plastic forming press. Able to obtain dismissal of citations based upon statute of limitations.
- Represented Illinois municipal employer in first impression, high profile enforcement action involving citations issued alleging that a computer equipment installation in front seat of police patrol car created a safety hazard for police officers in the event of a vehicular collision. After researching applicable industry practices and regulations of the federal Department of Transportation and meeting with the Illinois Department of Labor, the agency agreed to withdraw the citations.
- Defended religious institution in high profile inspection of fire in downtown Chicago office building involving multiple deaths in fire escape when employees became trapped. One employee of the institution died in the fire escape. After the incident, we managed the OSHA inspection. Our representation was successful and no citations were issued because we established that the client had conducted emergency fire and escape training prior to fire.