

# NEW YORK CONSTRUCTION LAW UPDATE

*This article is written and published by Vincent T. Pallaci, Esq. Mr. Pallaci is a partner with the New York law firm of Kushnick Pallaci, PLLC. His practice focuses on construction law. Mr. Pallaci is also the publisher and author of the New York Construction Law Update blog (<http://newyorkconstructionlawupdate.blogspot.com>) and the New York Mechanic's Liens blog (<http://nymechanicsliens.blogspot.com>)*

## **Construction Collapses: Responding to the Emergency from a Legal Standpoint**

The construction industry is dangerous. Major construction accidents can involve both a risk to life and property damage that can sometimes reach liability in the millions of dollars. In tight urban environments, like New York City, the risk of damage from construction on an adjoining property is particularly high. One of the most severe situations that can pose a risk to life and property on a construction site is a collapse. Whether the collapse is of a new structure that fails, an adjoining structure that was undermined, or, as New York City has recently experienced, a tower crane failure, the collapse can be devastating. The natural instinct is, of course, to immediately see to the protection of life. Unfortunately, little attention is given to the legal consequences that will certainly come out of the collapse. Contractors must, like any other business, take steps to protect their business (including the jobs that they create) even in the face of sometimes tragic circumstances surrounding a collapse.

While calling your lawyer right after a collapse might be the last thing on your mind, it shouldn't be. Most good detectives will tell you that the majority of crimes that are solved are solved on evidence gathered within the first 48 hours after the incident. The civil liability that comes out of a construction collapse is no different. By contacting your attorney as soon as possible after the collapse you allow him or her to:

1. Visit the scene while it is still in relatively the same state as it was during at the time of the accident. Your attorney can use both photographs and video recordings to "preserve" the evidence that expert consultants may need later on after litigation has commenced. Many times because the site has already been severely altered by the time litigation comes along, the experts retained to determine causation are limited in their ability to fully investigate because they are not able to inspect it. While photographs and videos are not a substitute for an onsite investigation, they are the next best thing for

purposes of litigation and may provide evidence that is critical to the ultimate determination of the case.

2. Identify and interview witnesses. Memories fade with the passage of time. Witnesses to the collapse might not remember details in a deposition 3 years after the collapse, but they most likely will remember even small details within the first 48 hours. Identifying these witnesses will be easiest at the time of the accident because they are still most likely on site. Finding the names and locations of witnesses 2 or 3 years after the project can often be difficult and sometimes impossible especially where the witnesses worked for other contractors or subcontractors. People die, move away or simply forget. But getting their stories at the time of the collapse can limit the damage of missing witnesses later down the line. If a witness is particularly important, your attorney can get him or her to provide a written statement then and there and even an affidavit if necessary. By gathering the written statements at the time of the collapse, their memories are preserved and, if they are deposed 3 years later, they will more likely be able to recall the details after reviewing their own statements taken shortly after the collapse.

3. Direct your office staff on document identification, location and preservation. Construction litigation is very document intensive. A complex construction dispute, especially a collapse where the cause, liability and damages are disputed, can easily involve the exchange of tens of thousands of pages of documents. By interacting with your office staff immediately after the collapse your attorney can begin identifying the important documents right away and explain the importance of proper document retention. Too many times I have been in a deposition where a witness insists a crucial document exists but nobody can find it. Identifying the document right after the incident and implementing a document retention and preservation policy will prevent that important document from disappearing (especially when the project may be completed several years before the document is requested in litigation).

4. Identify contractual provisions that may have been triggered. When a tragedy like a major collapse happens you probably aren't even thinking of going and reading your contract. But doing so is a necessity. There could be provisions in there regarding who you must notify of the situation and how. There could be provisions regarding what notices you must provide of the expected delays that will result from the collapse. There may be provisions regarding how you must submit a request for an extension of the contract time as a result of the collapse. There could be numerous other crucial time sensitive provisions that are triggered by the collapse. By notifying your attorney and getting him or her involved early, you reduce the risk that these contractual obligations may be missed.

5. Notify all of the property insurers of the incident. Your insurance company is going to want to begin its own investigation as soon as possible. Most likely, your policy itself

will require you to notify them of the incident "as soon as practicable" and failure to do so can result in a loss of coverage. Insurers should always be put on notice in writing and by delivering the notice to the location identified in your policy. In addition to your own policy, you may want to put others on notice of the incident as well, including any policies for those that may have added you as an additional insured for the project.

A construction collapse can devastate your business but it doesn't have to put you out of business. After the initial shock of the situation passes, you must remember that you have to take steps to protect your company. Remember, your employees depend on you for their livelihood and you shouldn't put their jobs at risk because you mishandled the situation.