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CREJ FRONT PAGE • Jun. 23, 2008

## Construction Accidents Put Focus on Recovery from Disaster

### General contractor for San Diego Hilton expects to finish on time in December after May explosion

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A handful of construction accidents in and out of California have put the recovery effort for those kinds of incidents into focus.

Some projects will be able to move on relatively quickly, while others may be delayed for some time while investigators sort through the injuries, deaths and property damage. In fact, while one hotel high-rise resumed construction in downtown San Diego within days of an on-site explosion last month, it could be years before claims related to the accident are settled.

An explosion at the construction site for the \$350 million, 1,190-room Hilton San Diego Bayfront Hotel on May 19 injured 13 workers.

As of press time, three people working for a subcontractor remain in the hospital recovering from burns, according to Cuyler McGinley, district operations manager for Greeley, Colo.-based general contractor **Hensel Phelps Construction Co.** A fourth person who was hospitalized with broken bones caused by falling debris went home on May 23.

While fire officials have indicated that the explosion originated at the source of a natural gas leak in a fifth-floor mechanical room, it has not been determined what ignited the gas. Floors four through seven on the north side of the 30-story building were damaged.

Investigations by the California Division of Occupational Safety and Health, or Cal-OSHA, insurance companies and engineers are ongoing.

Hensel Phelps expects to complete the hotel project on time in December. Atlanta-based **Portman Holdings** and **Phelps Program Management**, a division of Hensel Phelps, are developing the project for **Hilton Hotels Corp.**

The hotel was determined to be structurally sound on May 20 and construction resumed soon after on floors that were not damaged.

"As a general contractor, our role is that we have to react quickly after the initial incident and try and put together a logical plan to move forward," McGinley said. "Really, that plan started the very next day. We split our operation into two separate tasks."

One team will complete the hotel project where construction left off. The other team will do nothing more than clean up the damaged areas, once investigators finish their inspections, then rebuild and complete construction on the damaged floors.

By May 20, there were 250 people back at work on the Hilton site, according to McGinley. He said there were about 300 people at the Hilton project each day before the explosion occurred.

"As opposed to taking the original team and subcontractor team backwards, we want a separate team to work on that," McGinley said. "With the insurance, there's a process that has to run its course, but there is a lot of activity going on on that site."

#### Insurance Concerns

Jeff Cavnac, principal at San Diego-based insurance brokerage **Cavnac & Associates**, said there are four kinds of insurance that are generally considered after a construction accident: coverage for property, loss of income, personnel and third-party liability.

Subcontractors and the general contractor usually have coverage for property losses and are required by law to have workers' compensation insurance to cover jobsite injuries.

"There does not appear to be any loss of income [for the Hilton project] because they do intend to open on time," Cavnac said. "If it was delayed six months, the owner would suffer six months of lost income."

It is the third-party liability coverage that could extend the settlement of claims related to injuries and property damage for years after construction is complete.

To rebuild quickly after a construction accident such as the Hilton explosion, he said contractors and project owners have to be proactive by getting all the parties together, including all of the insurance companies, to work on solving problems without slowing the project down.

Lynn Knauf, policy manager in Chicago for the **Property Casualty Insurers Association of America**, said sorting out insurance claims from a construction site accident becomes much more complicated when people are injured.

"Generally, they're covered by workers' compensation policies," Knauf said. "But if people on the street are injured or workers are killed and the contractors are sued by the family members, it gets more tricky."

According to the Bureau of Labor Statistics, the 2006 injury rate in construction was 5.9 cases per 100 workers, down from 6.3 in 2005. The construction industry had 1,226 workplace fatalities in 2006, representing a 3 percent increase from a year prior.

According to the California Department of Industrial Relations, there were 107 workplace fatalities from injuries at construction sites around the state in 2006. Of those deaths, 43 were caused by falls. In 2007, Cal-OSHA investigated 56 construction fatalities, where 20 incidents were the result of falls.

Kate McGuire, a spokeswoman from the Department of Industrial Relations, said the Cal-OSHA investigation into the Hilton explosion is ongoing.

McGuire said it usually takes two to three months to complete an investigation, though state law allows up to six months. Cal-OSHA investigators typically determine what happened then decide if there were any violations of the health and safety code. If so, fines are assessed.

### Other Incidents

The Cal-OSHA investigation also is ongoing into a May 29 Chula Vista incident in which a demolition worker was crushed by a falling beam and a June 12 incident in which a man fell 15 stories to his death at a downtown San Diego condominium project.

In Chula Vista, the worker was employed by **Whillock Contracting**, which is taking down the last three of 66 buildings no longer occupied by Goodrich Corp. The San Diego Unified Port District and city of Chula Vista are working on redevelopment plans for the site and hundreds of acres around it along San Diego Bay.

At the 40-story, 679-unit Vantage Pointe condominium project under construction in downtown San Diego, a 21-year-old ironworker was identified by the San Diego County Medical Examiner's Office in media reports as Valentin Michel Madrigal of Chula Vista, who was working for El Cajon-based subcontractor **Kaylake Industries** when he fell from the 35th floor to a balcony on the 10th floor.

McGuire said Madrigal was on a platform shoring up rebar and wearing a positioning device with a belt around his waist and a hook on either side. When he attempted to hook onto an anchor, he missed, lost his balance and fell.

In two separate incidents in New York City, construction cranes collapsed and fell on nearby residential buildings on March 15 and May 30, killing at least eight people.

In the March incident, a steel support gave way when contractors building a 46-story condominium tower tried to lengthen the crane. Seven people were killed, a four-story townhouse building was demolished and surrounding structures were damaged.

The crane that fell in May crashed into a 23-story apartment building, killed one construction worker and injured two others.

"When it comes to writing commercial insurance policies, everybody's risk goes up with the risk of earthquakes or hurricanes, but in a commercial building project where costs are predictable, the cost of the insurance goes up based on the insured - their finances and their history," Knauf said. "For a company with a crane accident, it will be costly at best to get their next insurance coverage."

Hensel Phelps had at least one other accident this decade at a California hotel project. In 2000, two employees for a drywall subcontractor fell to their deaths at the Sheraton Grand Sacramento Hotel, where Hensel Phelps was the general contractor, when the door on a construction elevator failed. The workers' families won a \$6 million settlement in 2002. Hensel Phelps and two subcontractors were each fined \$36,000 by Cal-OSHA.

Hensel Phelps prides itself on the company's safety record, however. According to the company's corporate brochure, its experience modifier rating, which indicates the amount of losses for workers' compensation insurance, is half of the construction industry average. Additionally, Hensel Phelps has been recognized by OSHA and the **Associated General Contractors** for its safety record.

### Safety Concerns

George Berger, a partner in the San Diego office of **Allen Matkins Leck Gamble Mallory & Natsis LLP** and a litigator who has experience in construction and insurance claims, said he has worked with builders that have built great projects, but if there's a loss of life or a major incident during construction, that's often the first thing they think about even if the finished product is a success.

Berger said that insurance companies often cover jobsite accidents with a provision excluding or limiting coverage for an explosion that causes property damage or personal injury. Some policies exclude only certain types of explosions.

"I don't know the coverage of the general contractor and subcontractors for this event [at the Hilton], but you can be sure it's one of the things being closely analyzed now," Berger said.

There are situations where the extra cost for unforeseen damages are very carefully spelled out in the contract between the project developer or owner and the general contractor.

"They'll know how much extra time will be allowed and on whose dime," Berger said. "Sometimes contracts will not allocate those extra costs and time delays in advance, then you get into complicated, finger-pointing dispute litigation processes. These claims can linger for a very long time if it's not spelled out precisely ahead of time."

If a contractor is financially sound and prepared for catastrophes, they should be able to restart even a large project like the Hilton in downtown San Diego and possibly complete the project on schedule.

"If their contract has incentives to get the work finished on time, they'll have access to materials, access to demolition crews and they may be working extra shifts so that a project like this might get completed on time," Berger said.

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