

**5.10H STANDARDS OF CONSTRUCTION, CUSTOM AND USAGE
IN INDUSTRY OR TRADE (3/10)**

A. Effect of Proof of Industry Standard¹

Some evidence has been produced in this case as to the standard of construction in the industry. Such evidence may be considered by you in determining whether the defendant's negligence has been established. If you find that the defendant did not comply with that standard, you may find the defendant to have been negligent. However, the general custom of the industry, although evidential as to what is the reasonable standard in such industry, does not conclusively establish the care the defendant was required to exercise in the performance of its operations. Compliance with an industry standard is not necessarily conclusive as to the issue of negligence, and does not, of itself, absolve the defendant from liability. The defendant must still exercise reasonable care under all the circumstances, and if you find that the prevailing practices in the industry do not comply with that standard, the defendant may be found negligent

¹ Where it is alleged that a contractor violated the Occupational Safety & Health Administration (OSHA) regulations, such violation is treated similarly to a violation of an industry standard. See *Costa v. Gaccione*, 408 N.J. Super. 362, 372 (App. Div. 2009) (citing *Alloway v. Bradlees, Inc.*, 157 N.J. 221, 236 (1999) (“violation of OSHA regulations without more does not constitute the basis for an independent or direct tort remedy.”) Thus, as with industry standards, OSHA regulations are pertinent in determining the nature and extent of any duty of care, but compliance with OSHA does not preclude a finding of negligence and, conversely, non-compliance with OSHA does not preclude a finding that there was no negligence. *Id.* at 237.

by you notwithstanding compliance with the custom or standard of the industry.

Cases:

Adams v. Atlantic City Electric Co., 120 N.J.L. 357, 368-370 (E. & A. 1938); *Buccafusco v. Public Service Electric and Gas Co.*, 49 N.J. Super. 385 (App. Div. 1958), *certif. denied*, 27 N.J. 74 (1958); 2 *Harper and James, Law of Torts*, 17.3, pp. 978-979; *Prosser, Torts*, 32, p. 135 (2d ed. 1955); *Annotation*, 55 A.L.R. 2d. (1957).