



Prosecutions

Corporate Manslaughter Case: Geotechnical Holdings Fined £385,000

The first company to stand trial under the Corporate Manslaughter and Corporate Homicide Act 2007 has been fined £385,000 after being found guilty by the jury at Winchester Crown Court.

In handing down the sentence,, the judge confirmed the company could pay the fine over a 10-year period, with £38,500 due every year of that period. The company does not have to pay any costs.

Peter Eaton, the Director, had originally been charged with manslaughter by gross negligence, as well as a health and safety offence, in his own capacity but these charges were dropped after a successful application by his defence team last October on the grounds of his poor health.

The company also originally faced a separate health and safety offence, but this was dropped by the prosecution in January this year after the judge raised the issue of whether the two different burdens of proof for the two remaining charges might confuse a jury.

Detective Inspector Giulia Marogna, of Gloucestershire Constabulary, who investigated the case with the support of the HSE, described Cotswold Geotechnical Holdings' approach to health and safety as "cavalier", and the way it taught and supervised its junior engineers as "inherently dangerous".

She added: "Every year people are killed and seriously injured following the collapse of an excavation. This case should serve as a reminder to the construction industry that vertical sides of excavations can never be relied upon to stay up without support, no matter how stable the ground may appear to be."

Kevin Bridges, partner at Pinsent Masons, which represented Cotswold Geotechnical Holdings, said: "The company will, over the coming days, consider all of its options, including any potential grounds of appeal. It remains to be seen whether this case has provided any general assistance in the interpretation of what is the most serious offence that a company can commit, and whether it will give rise to wider problems for the CPS in prosecuting this new and controversial legislation in the future."

On behalf of the company and Peter Eaton, Bridges said they had held Alex Wright "in the highest regard and deeply regret the tragic incident which resulted in the loss of this talented young man".

Paul Verrico, a solicitor-advocate with Eversheds, said the case is unlikely to be a landmark in terms of a test of the new law, but believes the conviction "will doubtless be hailed by both the CPS and the HSE as a success".



Care Home Fined after Resident Drank Chemical

A Sheffield care home operator has admitted breaching safety laws after an elderly resident died after inadvertently drinking toilet cleaner.

Retired accountant, Derek Johnson, 80, died on the same day he was found to have drunk the dangerous chemical. The liquid had been left unattended for several hours in his room at Newfield Care Home, Cat Lane, Sheffield. He had been living at the home for just over a month before his death in July 2009. He was frail, registered blind and had symptoms of dementia.

The Health and Safety Executive (HSE) prosecuted the care home operator, Palms Row Healthcare Ltd because they put vulnerable people, including Mr Johnson, at risk by failing to properly manage the use of cleaning fluids.

Sheffield Magistrates' Court heard that Mr Johnson began vomiting blue liquid and was taken to Northern General Hospital where he died just hours later. The liquid was later found to be toilet cleaner which had been noticed in his room earlier that day but not removed.

The HSE investigation found the company had an inadequate system to control such chemicals and to prevent access to areas of risk by vulnerable people. Inspectors discovered that trolleys carrying hazardous substances were often left unattended, sometimes for considerable periods, and there were no proper procedures in place for cleaners to check trolley contents were intact.

The investigation also showed it was too easy for vulnerable residents to get into areas such as the laundry and kitchen, which should have had controlled access.

Following the incident, the HSE served Palms Row Healthcare with three Improvement Notices as well as bringing the prosecution.

HSE Inspector Carol Downes said:

"Mr Johnson's death was a terribly tragic one, particularly as it could have been easily avoided by simply locking away the chemicals.

"There was no excuse for Palms Row Healthcare's failure to protect the vulnerable people in its care. It is imperative that care home owners consider the risks to people they are looking after and manage those risks to prevent incidents like this."

Palms Row Healthcare Ltd., of Westbourne Road, Sheffield, admitted breaching Section 3(1) of the Health & Safety at Work etc. Act 1974. The company was fined £15,000 and ordered to pay costs of £14,472.02.



Man Suffers Horrific Burns to Legs

A construction company has been fined £20,000 after a teenager suffered horrific burns to his legs at its depot in Sevenoaks, Kent.

The court heard that on 26 October 2009, an 18-year-old man, who asked not to be named, was in a shed at the site, spray painting a lighting tower. The employee used thinners in the process and inadvertently spilled some on his trousers.

When he walked across the shed to go to his locker and find a change of clothes, he walked near a gas burner which was being used to heat the workshop. His clothes caught fire and he ran outside where he was helped by colleagues who hosed him down and put out the flames.

The worker suffered burns to both legs, his left arm and his hand. He was in hospital for 16 days, six of which were spent in intensive care. Since then the employee has undergone skin grafts and has been unable to work for six months.

An investigation by the Health and Safety Executive (HSE) found the spray shed had several health and safety failings. Paint containers should have had their lids on and been stored in fire-resistant boxes. The company should also have been aware that the mixing of paint and thinners in the shed would lead to a potentially explosive atmosphere, so a gas burner with an open flame should not have been used in the same space.

O'Keefe Construction Ltd had executed a risk assessment, but had not implemented the measures identified. A further management action plan, dated three years after the original assessment, re-iterated these measures, but they had still not been put in place at the time of the incident.

Caroline Penwill, HSE Inspector, said:

"The process of risk management involves assessing the risks that arise in the workplace and putting sensible health and safety measures in place to control them. In this case, the company had assessed the risks from paint spraying and had identified measures to control the risks, but had not put them in place. It is important that the findings of a risk assessment are acted upon. Had the company done so, then this terrible incident could have been prevented."

O'Keefe Construction (Greenwich) Ltd, of St Andrews House, Dreadnought Street, Greenwich, London, pleaded guilty to breaching section 2(1) of the Health and Safety at Work etc. Act 1974 at Sevenoaks Magistrates' Court on 15 February and was fined £20,000. It was ordered to pay costs of £6,329.



HEALTH & SAFETY NEWS

Issue	1
Date:	21/02/11
Page:	4 of 9

Prosecution Despite Prohibition Notices

A manufacturing firm has been prosecuted after health and safety failures at its Northumberland premises.

Hendry Hydraulics Ltd was prosecuted after Health and Safety Executive (HSE) inspectors visited Hendry Eurohoist Cylinders in Ashington and served two Prohibition Notices.

South Northumberland Magistrates' Court heard the notices were served because the locking mechanism on the doors to two CNC (computer numerically controlled) lathes, designed to prevent workers coming into contact with dangerous moving parts, had been deliberately bypassed.

On 11 March 2010, two HSE Inspectors saw a machine being set up with a spare key inserted into the locking mechanism of the interlock safety device. This meant the machine was capable of operating at full speed with the doors open.

This was observed just four months after an HSE Inspector had stopped work on the same two lathes because safety interlocks had been defeated.

Further investigations revealed the company had provided workers with a spare interlock key to bypass the safety devices.

Hendry Hydraulics Ltd, of Pinefield Industrial Estate, Elgin, Morayshire, pleaded guilty to two breaches of Regulation 11(1) of the Provision and Use of Work Equipment Regulations 1998 and was fined a total of £20,000 (£10,000 for each offence). The company was also ordered to pay costs of £6,621.



Issue	1
Date:	21/02/11
Page:	5 of 9

News

Construction Industry Under Scrutiny

Over the next month, construction sites across the country will be visited by the HSE as part of an intensive inspection initiative aimed at reducing death and injury in one of Britain's most dangerous industries.

During 2009/10, 42 workers died while working in construction, nationally, and nearly three quarters of these occurred during refurbishment, repair and maintenance activities.

On the unannounced visits – which began on 14 February – the inspectors will ensure that sites are managing work at height safely and that they are in good order, as well as checking that the risk of exposure to asbestos is being properly managed.

Last year inspectors visited 2,014 sites and 2,414 contractors. They were forced to issue more than 350 prohibition notices to stop dangerous work – much of it relating to working from height.

Philip White, HSE's Chief Inspector of Construction, said:

"This will be the fifth year that we have run the inspection initiative across Britain and we anticipate that there will be examples of both good and bad practice - those where employers are taking all the measures they can to protect their workers and those where safety is way down the list of priorities.

"A lax attitude to health and safety in one of the more dangerous industries is not acceptable, especially when many of the incidents are completely avoidable by taking commonsense actions and precautions. As we've demonstrated in previous years, we will not hesitate to take action if we find poor practice that is putting the lives of workers at risk.

"This year, as part of ensuring risks from asbestos are properly managed, we will also be checking that, where appropriate, asbestos surveys have been carried out prior to any refurbishment work. Many workers believe that, because asbestos has been banned as a building material, it's no longer a threat to them. But that simply isn't true. Any premises built or refurbished before 2000 could contain asbestos."



Employers Reminded to Check Lifting Equipment

The LEEA (Lifting Equipment Engineers Association) is warning employers that they could pay a high price for neglecting their lifting equipment. The move follows two recent court cases in which fines of £18,000 were handed out to employers that failed to subject their lifting equipment to regular examination, as required by the Lifting Operations and Lifting Equipment Regulations (LOLER).

On 8 January, the former owner of a pub in West Bromwich was found guilty of failing to make the necessary checks on cellar lifting gear. Nine days later, a Liverpool nursing home was fined for the same offence, following the failure of a sling used to lift an 81 year old woman out of bed. She suffered a broken shoulder and injuries to her back and elbow in the fall, and died the following day in hospital.

Geoff Holden, chief executive of the LEEA, said: "These cases emphasise the potential consequences if employers do not respect their legal obligations when it comes to lifting equipment. Under LOLER, even simple items such as manual hoists and slings must be subject to regular checks."

Introduced in 1998, LOLER requires that all lifting equipment is subject to periodic thorough examination. These thorough examinations are typically required every six or twelve months, depending on the type of equipment involved.

Geoff Holden added: "In the case of relatively straightforward items such as the equipment which was involved in these two cases, thorough examination is unlikely to be a particularly time consuming or expensive operation. However, it must be done by a genuinely independent and competent person, and a written report of the thorough examination kept on file by the employer."

To help employers identify staff that have the appropriate skills and experience, the LEEA recently began issuing 'TEAM' (Test, Examine And Maintain) identity cards to engineers that have passed its industry-recognised Diploma examination. The Association is urging employers to ask for it to be shown before allowing anyone to test, examine or maintain lifting equipment.

Geoff Holden said: "As the accident in the nursing home demonstrates all too clearly, overhead lifting unfortunately remains a significant cause of death and serious injury in the UK. Carrying out regular checks on equipment is vital if the risks involved are to be kept to a minimum."

Reports

Preventing Catastrophic Events in Construction

The Health and Safety Executive (HSE) has published research on how best to prevent catastrophic events in the construction industry, namely those involving multiple deaths and/or significant damage to property and infrastructure. This research concentrates on investigating 'low probability but high-consequence' safety hazards. It evaluates the different types of actual and potential catastrophic incidents related to construction activities and considers the reasons for their occurrence, suggested control measures to prevent such events happening and how the construction industry can improve its safety record on this issue.

Methodology

The researchers undertook a literature review and in order to gauge the opinions of the industry, they conducted an on-line survey and consulted focus groups. They reviewed a number of 'case study' events which were either, or could have been, catastrophic. The report cites 53 examples of catastrophic events that have occurred in the UK since the year 2000. These include the Cutty Sark fire in 2007 and Weston-super-mare's pier fire in 2008 – both events resulted in serious consequences.

Key findings

The report identifies a number of critical factors that contribute to a lack of catastrophic event prevention and preparedness. It also makes recommendations for addressing the identified deficiencies. Key findings are:

- people working in the industry tend to underestimate the potential severity of the impacts of catastrophic incidents
- more industry attention should be given to the issue of catastrophic incidents with all necessary preventative measures being considered and implemented
- corporate risk management systems should be improved and organisational risk management should properly consider how well catastrophic event risks are managed. It is suggested that industry-relevant indicators could usefully be developed to assist in this respect
- the industry's knowledge, skills and experience of safety risk management needs to be improved. This could be achieved by raising the level of education of those joining the industry, the provision of continuing professional development (CPD) and on-the-job training for those already in post, plus the design and development of more effective safety risk management systems
- effective communication about hazards was found to be lacking and must be improved. Similarly, the effective management of risks at interfaces between and within organisations is seen as critical
- competence is vital, with specific reference to the calibre of the Principal Contractor on site. Following consultation, industry measures should be adopted to ensure inappropriate people cannot have responsibility for sites where the risks are such that catastrophic events could occur
- the management of temporary works should be improved
- a system of independent reviews should be used to monitor what is happening on site and also as a means of addressing the concern that effective site supervision has been reduced in recent years
- it is recognised by the industry that catastrophic events have major consequences but, over time, their impacts are forgotten despite promises of lessons being learned. The industry must learn from experience and ensure such learning is shared rapidly and information is easy to obtain.



The work of the Standing Committee on Structural Safety (SCOSS) and the Confidential Reporting on Structural Safety (CROSS) initiative are singled out for commendation on the basis that both they and the various industry bodies and groupings, have been particularly effective in providing support and direction to the construction industry.

Conclusion

Catastrophic incidents in the construction industry are a significant risk and can have a wide range of adverse impacts – these include loss of reputation, financial loss, project delay or failure, environmental damage and deleterious effects on human health, even death. The likelihood of them occurring can be significantly reduced if the industry focuses its attention on improving the prevention and management of catastrophic event risk.

Health and Safety in the New Energy Economy: Meeting the Challenge of Major Change

The Health and Safety Executive's (HSE) Emerging Energy Technologies Programme has produced a report for the HSE Board which evaluates the potential health and safety hazards generated by the planned adoption of emerging energy technologies in the UK over the coming decade, as part of the country's move to a new energy economy. This assessment considers the risks to both workers and the general public and identifies a framework to manage and control these risks, so as to help facilitate the introduction of new energy technologies and thereby improve energy security and support the development of a sustainable economy. The report excludes consideration of nuclear energy options.

Main hazards

For each new or emerging energy technology the HSE's research identifies potential major hazards, occupational hazards and risks to the public. It lists these hazards as:

1. Major hazards

- fire and explosion
- spontaneous combustion
- release of toxic and flammable substances
- catastrophic failure of gasifiers/pressure vessels
- collapse of offshore working platforms.

2. Occupational hazards

- biological and chemical - exposure to the micro-organisms found in biomass and toxic chemicals and metals (eg cadmium used in solar panel manufacture)
- confined spaces - possible asphyxiation in anaerobic digesters
- construction-related (arising from lifting and excavation activities)
- drilling activities
- electricity-related - burns and electrocution from new power sources
- fire, explosion and explosive atmospheres
- machinery - entanglement risks
- mechanical and structural failures
- pressure system failures
- working at height – falls whilst installing and maintaining renewables installations.

3. Potential hazards to the public



HEALTH & SAFETY NEWS

Issue	1
Date:	21/02/11
Page:	9 of 9

- fire, explosion etc during small-scale production of biodiesel
- burns from boilers and other equipment installed as part of local or district biomass heating schemes
- falls or electrocution arising from householders connecting roof-mounted micro wind turbines or solar panels to their homes, in response to the call for widespread public contribution to onshore renewables
- electrical risks from Hydrogen fuel cells (eg those used to power vehicles) during energy generation, distribution, storage and use
- blade throw or turbine collapse where wind turbines are sited near centres of population
- electrical risks from poorly installed meters in domestic premises as part of 'Smart' metering programmes.

HSE proposals

The HSE is of the opinion that the Health and Safety at Work etc. Act 1974 will continue to provide a good foundation for the effective control of workplace risks. It undertakes to introduce regulations to deal with any insufficiency, only if needed, so as to avoid unnecessarily adding to the regulatory burden on business. Emphasis will continue to be placed on the need for sensible, proportionate management and control of hazards and risks, with new technologies being expected to meet comparable standards to those operating in the existing energy sector. The HSE promises to co-operate and collaborate effectively with duty holders, industry/trade bodies, trade unions and government departments.

Conclusion

The HSE recognises that the deployment of new energy technologies will pose health and safety risks but it is confident that they can be properly controlled. It emphasises that concerns about such risks should not be permitted to derail the implementation of new technologies which have the potential to deliver a secure, safe, low-carbon and affordable energy system for the UK in the future.