

C/M/S/ Cameron McKenna

# Health & Safety

Newsletter

May 2009



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# News

## First charges brought under the Corporate Manslaughter and Corporate Homicide Act 2007

The Crown Prosecution Service (CPS) are bringing the first ever charge of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007 (the 2007 Act).

Geotechnical Holdings Limited is being prosecuted in relation to the death of one of their employees. Mr Alexander Wright died on 5 September 2008 whilst taking soil samples from inside a pit which had been excavated as part of a site survey. The sides of the pit collapsed, crushing him to death. Mr Peter Eaton, a director of the company, has been also charged with the common law offence of gross negligence manslaughter, and with a breach of Section 37 of the Health and Safety at Work Act 1974 (HSWA). The Company has also been charged with a failure to discharge its duties under the HSWA. Mr Eaton will appear at Stroud Magistrates Court on 17 June 2009, where he will face charges both as an individual and on behalf of the company.

The 2007 Act created a new statutory offence of corporate manslaughter (known as corporate homicide in Scotland), where a fatality is caused by the 'gross breach' of a duty of care of an organisation, and where the actions of the company's senior management played a 'substantial' part in the breach. A 'gross breach' will occur where there has been a failure to comply with existing health and safety legislation and where an organisation's conduct falls far below that which can reasonably be expected. The CPS believe there is sufficient evidence for a realistic prospect of conviction under the 2007 Act. A conviction for corporate manslaughter can attract an unlimited fine, as well as the granting of Publicity and Remedial Orders. Indeed, the reputational damage associated with a conviction for corporate manslaughter may be the greatest deterrent. A conviction for gross negligence manslaughter can also attract a maximum sentence of life imprisonment for an individual.

It is not surprising that the CPS have opted to bring a range of charges against both the company and Mr Eaton, rather than risk restricting the case to a single charge of corporate manslaughter. The Crown would want to raise as many charges as possible to increase the chances of successful prosecution. It is also important to note the fact that charges have been brought against Mr Eaton. The 2007 Act received some criticism from those who felt it should also impose liability upon individuals, however, although the common law offence of gross negligence manslaughter was explicitly abolished by the 2007 Act in relation to companies it was not in relation to individuals. This case confirms the Crown's intention to continue to prosecute individuals for breaches of the common law offence, in conjunction with prosecution of the corporation for the corporate offence where appropriate. Moreover, as of 16 January 2009, under the Health & Safety (Offences) Act 2008 (discussed in detail in previous editions of this Newsletter), imprisonment of up to 2 years can be imposed on individuals where there has been a statutory breach under s.37 of the 1974 Health and Safety at Work Act.

It is worth noting that the company being prosecuted in this instance is a small, family company where the directors are closely involved with the day-to-day running of the Company. It is therefore doubtful that this case will provide much in the way of significant insight or understanding on how the 2007 Act will be applied to larger corporations.

## Focus On: Pleural Plaques

### **Pleural plaques sufferers still eligible for compensation**

The Damages (Asbestos-related Conditions) (Scotland) Act (the Act) was passed in Scotland on 17 April 2009. The Act will ensure that people diagnosed with asbestos-related pleural plaques will still be eligible for compensation in Scotland. Pleural plaques are a scarring of the membrane around the lung; whilst generally painless, they often signify exposure to asbestos which can lead to other conditions, including mesothelioma.

In November 2007 the Scottish Parliament chose to legislate on the matter, after the House of Lords ruled that pleural plaques would not merit compensation in English Tort Law in the case of *Johnston v International Combustion Ltd* in October 2007. Whilst not binding in Scotland, House of Lords judgments are highly persuasive, and *Johnston* had already been cited in a Court of Session case. This prompted the Scottish Government to take steps to ensure the decision would not have effect in Scotland.

The Act determines categorically that people with asbestos-related pleural plaques can continue to raise an action for damages. The position is also clarified in relation to asbestos-related pleural thickening and asbestosis - although there is no authoritative decision that these conditions are *not* actionable, section 2 of the Act ensures that these conditions will also constitute material damage for the purposes of raising an action. Moreover, the provisions apply retrospectively (taking effect from the date of the House of Lords judgement (17 October 2007), but will not apply to any action which has been settled or any legal proceedings which have been determined before the provisions come into force.

To view the Scottish Act please go to:

[www.opsi.gov.uk/legislation/scotland/acts2009/pdf/asp\\_20090004\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/acts2009/pdf/asp_20090004_en.pdf)

The UK Government introduced a similar bill - the Damages (Asbestos-Related Conditions) Bill (the Bill) - in January 2009. The Bill as introduced would overrule the aforementioned decision of the House of Lords in relation to England and Wales, and would put the right of those diagnosed with pleural plaques to claim for damages on a statutory footing similar to that in Scotland.

The Bill received its Second Reading in Parliament on 24 April 2009 where it was committed to a Public Bill Committee.

To view the UK Bill as introduced please go to:

[www.publications.parliament.uk/pa/cm200809/cmbills/033/200809.pdf](http://www.publications.parliament.uk/pa/cm200809/cmbills/033/200809.pdf)

### **Insurers contest pleural plaques legislation**

On 21 April 2009 some of the UK's largest insurers lodged an application for judicial review of the Damages (Asbestos-related Conditions) (Scotland) Act 2009 (the Act) in the Court of Session. Together the Insurers represent half of the employers' liability insurance market. They oppose the Act on the grounds that it ignores medical

evidence, that it fails to assess the full financial impact on Scottish firms and taxpayers, it overturns a UK legal principle that compensation is only payable where physical harm has been suffered through negligent exposure, and it could lead to a rise in claims from people exposed to a risk but having no symptoms. In other words, their fear is that the Act will allow the “worried well” to claim for damages. The Insurers also argue that the Act violates Article 6 of the European Convention on Human Rights, which entitles everyone to a fair trial and precludes any interference by a legislative body with the administration of justice where the object is to influence or determine the judicial resolution of a dispute. Finally it is argued that the law contravenes insurers’ economic rights under Article 1 of the convention.

The judicial review could result in the further delay on the part of Westminster in making a decision on the UK Bill. The results of a Ministry of Justice consultation exercise, which suggested a no-fault compensation scheme as one option, are expected to be published shortly.

## Offshore Helicopter Landing Areas: CAA Guidance Issued

The Health and Safety Executive (HSE) has issued an Operations Notice to the offshore industry, advising duty holders that the Civil Aviation Authority (CAA) has published the sixth edition of its CAP 437.

CAP 437 was introduced in 1981 to give guidance on the criteria applied by the CAA in assessing the standard of offshore helicopter landing areas for helicopters registered in the UK. The sixth edition has been revised to incorporate the results of research projects conducted into improving helideck lighting, and also incorporates information gathered from projects relating to offshore helideck environmental issues. For the first time, the sixth edition includes design requirements for winching areas located on wind turbine platforms.

The sixth edition has also been amended to include new International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs) relating to offshore helidecks and shipboard heliports, which will generally become applicable from November 2009.

The Operations Notice issued by the HSE includes a table prepared by the CAA summarising the main changes between the fifth and sixth editions. The table indicates how the CAA would expect to see the changes implemented in both new and existing build installations and vessels.

To view the table prepared by the CAA please go to:  
[www.hse.gov.uk/offshore/notices/on-78ann1.htm](http://www.hse.gov.uk/offshore/notices/on-78ann1.htm)

To view the Operations Notice please go to: [www.hse.gov.uk/offshore/notices/on-78.htm](http://www.hse.gov.uk/offshore/notices/on-78.htm)

To view our original Law Now please go to: [www.law-now.com/law-now/2009/caaguidanceissuedfeb1109.htm](http://www.law-now.com/law-now/2009/caaguidanceissuedfeb1109.htm)

## HSE launches new work-related stress website

The Health and Safety Executive (HSE) definition of work-related stress is “the process that arises where work demands of various types and combinations exceed the person’s capacity and capability to cope”. Work-related stress is a major cause of occupational ill health in the UK. Recent statistics show that 44% of employees feel under excessive pressure at work at least once a week. In fact, anxiety and mental health problems at work are likely to reach their highest levels yet, as stress is exacerbated by the recession and threat of redundancy. According to the Confederation of British Industry, the annual cost of stress and stress-related illnesses is estimated to be around £12 billion.

At the start of this year, the HSE launched a new website aiming to assist businesses in preventing and dealing with work-related stress. The website includes updated advice and guidance, a self-assessment questionnaire, case studies, and some good practical examples. The main focus of the website is, however, the ‘Management Standards’ for work-related stress. These are not new, and are already used as a yardstick for many organisations. The Management Standards are a set of six conditions which, if present in the workplace, reflect the optimum standard of health, wellbeing and organisational execution. In each of the Standards, systems should be in place to respond to any individual concerns.

The six Management Standards are :

- **Demands** – Employees should be able to cope with the achievable demands of their job, including issues such as workload, work patterns and work environment, and work should be within an employee’s capabilities.
- **Control** – Employees should have a say in how they do their work. Where possible, they should have control over the pace of their work, should be consulted in their work patterns, and should be encouraged in their work.
- **Support** – employees should receive adequate information and support, in the form of encouragement, sponsorship and resources provided by the organisation, line management and colleagues.
- **Relationships** – employees should be able (and encouraged) to report unacceptable behaviour, such as bullying, and policies and procedures should be in place to allow managers to deal with unacceptable behaviour.
- **Role** – people should understand their role and responsibilities within the organisation, and it should be ensured that the different requirements placed upon an employee are compatible.

- **Change** – Employees should be provided with timely information to enable them to understand the reasons for proposed organisational changes, they should be adequately consulted on change and aware of the probable impact of any changes to their jobs.

In all of these Standards, systems should be in place to respond to any individual concerns. The Management Standards are detailed in full on the website and can be viewed by going to: [www.hse.gov.uk/stress/index.htm](http://www.hse.gov.uk/stress/index.htm)

To view our original Law Now please go to: [www.law-now.com/law-now/2009/hselaunchesnewwebsitemarch09.htm](http://www.law-now.com/law-now/2009/hselaunchesnewwebsitemarch09.htm)

## Health & Safety Guidelines for Directors receives lowest interest from hotels

*“Health and Safety is integral to success. Board members who do not show leadership in this area are failing in their duty as directors, and their moral duty, and are damaging their organisation”*

A quotation from “Leading Health and Safety at Work” - guidelines written ‘by directors, for directors’, launched in October 2007 by the Health and Safety Executive (HSE) and the Institute of Directors (IoD).

Although the guidance was issued to all 52,000 IoD members, recent findings have shown that relatively few directors have actually utilised the guidelines, and indeed the lowest readership was found to be amongst those in the hotel and catering industry. The guidelines attempt to draw to the attention of directors the importance of good health and safety practices and procedures in the workplace. The short (eight-page) publication provides a summary of legal liabilities, a checklist of key questions for leaders, and a list of resources and references for implementing the guidance in practice. It takes a common sense approach, offering straightforward practical advice in relation to health and safety.

On 22 December 2008, the HSE issued a press release urging business leaders to take advantage of the guidance, as research conducted by Databuild on behalf of the HSE indicated that only a quarter of business leaders surveyed knew about the publication. In March this year, Databuild published their full report which detailed the specific results of the survey. The findings indicated that of the 25% of organisations who were aware of the guidance, only 13% had actually read it, and awareness of the guidance was found to be lowest amongst hotels and catering organisations. Whilst 54% of directors were aware of the guidance in the NHS sector, this figure was just 19% in hotels and catering. There was also found to be a great degree of variation between sectors when considering whether the guidance was actually put to use – only 7% of those in hotels and catering had taken steps to use the guidance. A correlation was also shown between awareness of the guidance and awareness of

recent health and safety legislation – awareness of the guidance was over two times higher amongst those who were also aware of recent legislation. Yet once again, awareness of legislation was lowest in the hotels and catering sector.

The majority of those surveyed had positive views about the guidance, and nearly half of those who had read the guidance had subsequently taken action. A large proportion felt the guidance had improved their understanding of their responsibilities for health and safety in the organisation.

The guidelines are available in full at: [www.hse.gov.uk/pubns/indg417.pdf](http://www.hse.gov.uk/pubns/indg417.pdf)

To view the Databuild report please go to: [news.hse.gov.uk/2009/03/05/evaluation-of-guidance-for-directors-and-board-members/](http://news.hse.gov.uk/2009/03/05/evaluation-of-guidance-for-directors-and-board-members/)

To view our original Law Now please go to: [www.law-now.com/law-now/2009/healthandsafetyguidelinesmarch09.htm](http://www.law-now.com/law-now/2009/healthandsafetyguidelinesmarch09.htm)

## Danish government pays compensation for breast cancer following night shifts

The Danish government has begun paying compensation to women who developed breast cancer after working night shifts.

The payments follow a finding by a United Nations agency that working nights increases the risk of cancer. In terms of a person's risk to cancer, the International Agency for Research on Cancer (IARC) placed shift work in the same category as anabolic steroids, ultraviolet radiation and diesel engine exhaust fumes. Dr Vincent Coglianò of the IARC said the evidence has shown that alterations in sleep patterns caused by working nights could lower the body's production of melatonin, which has beneficial effects in preventing some of the steps leading to cancer, however "the level of evidence is really no higher than it might be for an industrial chemical".

The payments by the Danish government were made to 40 women, but not all applications were successful. Those with a family history of breast cancer had their claims rejected. These are the first payments to be made to women who have developed cancer after long spells of working nights.

It is estimated that around 20% of the UK's workforce is currently engaged in night work. Union leaders say the UK government should be doing more to protect workers from the dangers of night work. The Health & Safety Executive has commissioned its own research as a result of the findings. Those industries which regularly expect staff to carry out shift work, such as the health sector, emergency services, hotel & catering and offshore oil & gas, may be particularly keen to read the results.



Companies may wish to investigate methods of mitigating the effects of working night-shift, possibly by the introduction of special lamps or bulbs in the workplace which simulate natural light.

To view our original Law Now please go to: [www.law-now.com/law-now/2009/danishgovernmentnightshiftmarch09.htm](http://www.law-now.com/law-now/2009/danishgovernmentnightshiftmarch09.htm)

## Scottish compensation law reform

The Scottish Government has been urged to back an attempt to reform the law covering compensation for wrongful deaths. The Damages (Scotland) Act 1976 (the 1976 Act) currently governs the law of damages in respect of death from personal injury. On 13 April 2009, Labour MSP Bill Butler announced his intention to bring forward a member's bill to update the legislation.

Mr Butler's bill will be based on a number of recommendations from the Scottish Law Commission, who published their "Report on Damages for Wrongful Death" on 30 September 2008. The report concluded that reform of the law was advisable, and that there are in fact some areas of the current law which no longer reflect the economic realities of modern family life. It also felt reform was necessary due to the fact the 1976 Act had become over-complex, and contains a number of inaccuracies as a consequence of the amendments which have been made to it.

The proposal for the bill was lodged in the Scottish Parliament on 29 April 2009. To view the proposal please go to: [www.scottish.parliament.uk/s3/bills/MembersBills/documents/20090429StatementofReasonsv.02.pdf](http://www.scottish.parliament.uk/s3/bills/MembersBills/documents/20090429StatementofReasonsv.02.pdf)

To view the Scottish Law Commission Report please go to: [www.scotlawcom.gov.uk/downloads/rep213.pdf](http://www.scotlawcom.gov.uk/downloads/rep213.pdf)

## Legislation Update

The following legislation came into force on 6 April 2009:

### **The Health and Safety Information for Employees (Amendment) Regulations 2009**

These Regulations make certain amendments to the Health and Safety Information for Employees Regulations 1989 (the 1989 Regulations), which require employers to provide certain health and safety information to employees. This information is conveyed to employees by displaying the approved poster in the workplace or by giving each employee the approved leaflet. The 2009 Regulations amend Regulation 5(1) and 5(3) of the 1989 Regulations to enable employers to alternatively provide the information as to how employees may obtain the name and address of the enforcing authority and address of the Employment Medical Advisory Service (EMAS).

As from 6 April 2009, the HSE is publishing new versions of its approved health and safety poster and leaflet. The new versions set out in simple terms what employers and workers must do and what to do if there is a problem. Employers can, if they wish, continue to use the existing poster and leaflet until 5 April 2014, as long as they are readable and the addresses of the enforcing authority and the EMAS are up-to-date.

For further information and to purchase the new Health & Safety Poster, please go to: [www.hse.gov.uk/pubns/books/lawposter.htm](http://www.hse.gov.uk/pubns/books/lawposter.htm)

To view the 2009 Regulations in full please go to: [www.opsi.gov.uk/si/si2009/uksi\\_20090606\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090606_en_1)

#### **Chemical (Hazard Information and Packaging for Supply) Regulations 2009 (CHIP 4)**

As a result of the Regulation on the classification, labelling and packaging of substances and mixtures (Regulation (EC) no. 1272/2008) (the CLP Regulation) coming into force on 20 January 2009, the Chemical (Hazard Information and Packaging for Supply) Regulations 2002 (CHIP 2002) required to be amended. CHIP 4 consolidates, revokes and re-enacts with amendments, CHIP 2002. Aside from providing for enforcement of the CLP Regulation, CHIP 4 also implements parts of REACH (discussed below), Council Directive 1992/32/EEC (the Substances Directive), and Council Directive 1999/45/EC (the Preparations Directive). Suppliers must now comply with the provisions of the CLP Regulation rather than CHIP 2002.

The main purpose of the CLP Regulation is to adopt within the European Community the UN's Globally Harmonised System of Classification and labelling of Chemicals (GHS). This sets out internationally accepted definitions and criteria identifying the hazards of certain chemicals. The GHS is a voluntary agreement and countries may continue to have in place their national requirements, providing those requirements do not contradict the GHS.

To view CHIP 4 in full please go to: [www.opsi.gov.uk/si/si2009/uksi\\_20090716\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090716_en_1)

#### **Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009 (the 2009 Regulations)**

Consultation on these regulations ended on 1 February 2008. The Regulations, with amendments resulting from the consultation exercise, were previously expected to come into force on 1 October 2008. These regulations actually came into force on 6 April 2009.

The 2009 Regulations are intended to correct issues that have arisen since new regulations on the manufacture and storage of explosives came into force in April 2005. They aim to reduce the administrative burden resulting from explosives legislation by extending the maximum periods of validity of explosives certificates and storage licences. The maximum period of validity of an explosives certificate under the Control of Explosives Regulations 1991 is now extended to five years. The

amendments abolish the distinction between periods of validity for explosives certificates relating to the acquisition and keeping of explosives, and those for acquisition only. Periods of validity for the former were up to three years but are now up to five, and the latter were up to one year but are now also up to five.

The 2009 Regulations also revoke redundant and outdated local mining regulations and correct an omission in the Control of Noise at Work Regulations.

For further information please go to: [www.hse.gov.uk/mining/legislat.htm](http://www.hse.gov.uk/mining/legislat.htm)

To view the Regulations in full please go to:  
[www.opsi.gov.uk/si/si2009/uksi\\_20090693\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090693_en_1)

#### **Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009 (the 2009 Regulations)**

These Regulations abolish the 'Premises Notification' and the 'General Register', which were considered to be unnecessary form-filling requirements that applied to most businesses operating from a factory, office or shop in the UK. The 2009 Regulations amend the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963, by removing the requirement for notification of occupation of a factory and the employment persons working in offices, shops and railway premises under the respective Acts.

For further information please go to: [www.hse.gov.uk/consult/condocs/cd219.htm](http://www.hse.gov.uk/consult/condocs/cd219.htm)

To view the Regulations in full please go to:  
[www.opsi.gov.uk/si/si2009/uksi\\_20090605\\_en\\_1](http://www.opsi.gov.uk/si/si2009/uksi_20090605_en_1)

#### **The Civil Procedure (Amendment No.3) Rules 2008**

This statutory instrument amends the Civil Procedure Rules (CPR), which govern practice and procedure in the civil division of the Court of Appeal, the High Court and the county courts in England & Wales.

It amends a number of provisions of the CPR, including: the allowing of claims to be issued through Money Claim Online and the Claim Production Centre where the particulars of claim are to be served separately; increasing the limit of fast track procedures from £15,000 to £25,000; and permitting applications for, and variation of, costs capping orders, in order to limit the amount of future costs which a party may recover.

To view the Civil Procedure (Amendment No.3) Rules 2008 in full please go to:  
[www.opsi.gov.uk/si/si2008/pdf/uksi\\_20083327\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20083327_en.pdf)

For further information on the legislation that came into force on 6 April please go to:  
[www.hse.gov.uk/press/2009/e09029.htm](http://www.hse.gov.uk/press/2009/e09029.htm)

### **HSE Campaigns and Initiatives**

The following Health and Safety Executive campaigns and initiatives, which aim to highlight particular risks and dangers in the workplace, are currently ongoing:

#### **Asbestos - the hidden killer**

The HSE continues to run its national campaign, targeting tradesmen who are at risk from exposure to asbestos. The primary aim of the campaign is to raise awareness amongst tradesmen that they are more at risk than they think from asbestos. The campaign also aims to encourage tradesmen to find out more about asbestos and the precautions they should be taking.

To view the campaign website please go to:

[www.hse.gov.uk/asbestos/hiddenkiller/index.htm](http://www.hse.gov.uk/asbestos/hiddenkiller/index.htm)

#### **Agriculture: Come Home Safe**

Since January 2009, the HSE has been asking farmers around the country to “promise to come home safe”. Figures published by the HSE in its annual report, “Fatal injuries in farming, forestry and horticulture 2007/08” show that 42 people were killed as a result of farming and other agriculture-related activities in 2007/08.

For further information and a copy of the HSE publication, “How lives are lost on British farms” please go to: [www.hse.gov.uk/agriculture/makethepromise/index.htm](http://www.hse.gov.uk/agriculture/makethepromise/index.htm)

#### **European Campaign on Risk Assessment**

This is a two-year campaign aimed at employers, workers, safety representatives and other stakeholders. The campaign seeks to “demystify the risk assessment process” to show that risk assessment is not necessarily complicated, bureaucratic or a task only for experts. The campaign also aims to raise awareness, provide information and practical advice, encourage activities that have a positive impact in the workplace, and identify and recognise good practice. The focus of the second year of the campaign is promoting good practice in risk assessment. European week will take place this year from 19 - 25 October 2009.

To read more on the European Campaign on Risk Assessment please go to:

[www.hse.gov.uk/campaigns/euroweek/index.htm](http://www.hse.gov.uk/campaigns/euroweek/index.htm)

For information on previous and upcoming campaigns please go to:

[www.hse.gov.uk/campaigns/index.htm](http://www.hse.gov.uk/campaigns/index.htm)

## Case Law

### Health & Safety fine raised following Crown appeal

A recent appeal case in Scotland's High Court, *HM Advocate v Munro & Sons (Highland) Ltd*, has examined the factors to be taken into account when determining the appropriate sentence for health and safety offences.

Munro & Sons (Highland) Ltd (Munro), a haulage and disposal contractor, was involved in transporting a heavy wheeled loader on a low loaded trailer. The loader was secured by use of a parking brake and two securing chains. It later transpired that the parking brake had a serious defect and that the two securing chains were of insufficient strength. As the road began to incline, the chains broke, releasing the loader. The loader then rolled backwards and crushed the car behind, injuring one of its occupants and killing the other. On first instance, the sentencing judge fixed a starting point fine of £5,000, discounted by 25 per cent to £3,750 to reflect the early plea of guilty. HM Advocate (the Crown) then appealed on the basis that the sentence was unduly lenient, and on 28 January 2009, the appeal court found in their favour.

The initial sentence was held to be far too low, taking inadequate account of the nature of the offence and the need for appropriate punishment in the public interest. There was found to be a clear – foreseeable – risk to public safety if the loader rolled off the trailer, so by allowing there to be a defective handbrake and inadequate securing chains, Munro had failed to comply with its statutory duties to members of the public under the Health and Safety at Work Act 1974.

The appeal court found that an appropriate starting point would actually have been £40,000, discounted by 25 per cent, and a fine of £30,000 was substituted. This is the first Scottish case to set out succinctly the factors to be considered by the court in determining sentence for health and safety breaches.

To read a full summary of the case please see our Law Now: [www.law-now.com/law-now/2009/healthandsafetymarch09.htm](http://www.law-now.com/law-now/2009/healthandsafetymarch09.htm)

To view the consultation paper on sentencing for corporate manslaughter please go to: [www.sentencing-guidelines.gov.uk/docs/SAP \(07\)K3 - Corporate manslaughter 2007-10-31-v 3.10.AR.pdf](http://www.sentencing-guidelines.gov.uk/docs/SAP%20(07)K3%20-%20Corporate%20manslaughter%202007-10-31-v%203.10.AR.pdf)

For further discussion of the Sentencing Guidelines please see the Autumn 2008 edition of our Health & Safety Newsletter: [www.law-now.com/law-now/2008/281008healthand+safetynewsletter08.htm?&MSHiC=65001&L=10&W=newsletter](http://www.law-now.com/law-now/2008/281008healthand+safetynewsletter08.htm?&MSHiC=65001&L=10&W=newsletter)

### Focus On: Individual Liability

#### Director jailed after worker killed in roof plunge

Earlier this year, Colin Cooper, owner and director of IC Roofing Ltd, was imprisoned for a year following conviction for manslaughter after an accident in which a worker, Darren Hoofe, died whilst working on the roof of an industrial unit. Mr Cooper was also banned from acting as a director of a company for 3 years.

Mr Cooper was convicted under section 37(1) of the Health and Safety at Work Act 1974 (HSWA). The company was also convicted, under section 2(1) of HSWA. The company was fined £10,000 and ordered to pay £20,000 in costs.

Mr Hoofe was working alongside two other men when he fell 20ft through a fragile roof onto the factory floor below. The judge found that the accident had been “wholly avoidable and preventable”, and that Mr Cooper had been guilty of a number of serious safety lapses. In particular, it was established that Mr Hoofe had not been adequately trained. Although safety harnesses had been provided for the men, these had not been used. The HSE stated that had safety netting been attached underneath the roof, this would have caught Mr Hoofe when he fell.

#### Manager fined £16,000 after worker injured in fall

On 26 January 2009, Arthur Fletcher, the principal contractor and manager of a construction site, was fined £10,000 and ordered to pay £6,257.40 in costs at Swansea Magistrates Court. Mr Fletcher pled guilty to a breach of section 3(2) of the Health and Safety at Work Act 1974. The case concerned a worker falling from a height of 2.5 metres, suffering serious leg injuries. The Court found there to be a number of serious failings leading to the incident, including a failure to identify or address the risks of working at height, and failure to provide workers with fall protection.

Falls from height are the single most common cause of injuries in the construction industry. Earlier this year the Health and Safety Executive launched a Shattered Lives campaign, which aims to target those most at risk from slips, trips and falls, and those best placed to take action to prevent them – employers.

For further information on the Shattered Lives campaign please go to:

[www.hse.gov.uk/shatteredlives/](http://www.hse.gov.uk/shatteredlives/)

### Dangers of unsecured vehicle loads

On 4 February 2009, Coastal Container Line Limited was prosecuted and pled guilty to charges under sections 2 and 3 of the Health and Safety at Work Act 1974 following the death of a driver engaged in transporting steel. As the driver slowed the vehicle on approach to a roundabout, a sheet of steel slid forwards, puncturing the cab and pinning the driver between the sheet and the steering wheel. The Company was fined £150,000 and ordered to pay £26,732 in costs.

It was found that the incident had resulted from a number of failings, including a lack of planning and inadequate training for drivers. The most crucial factor was that the practice of transporting sheet steel from the steel terminal to the quayside relied on

the weight of the steel itself to hold the load in place rather than making it secure. It was found that this practice had been continuing for a period of at least 8 months. The HSE inspector who investigated the incident stated that employers must ensure that there is suitable and sufficient planning for transport operations and must ensure that loads are adequately restrained, no matter how short a distance is being travelled.

#### **Workplace transport prosecution**

In April 2007, Mr Kristopher Dixon was working in the tipping area of a waste depot in Shipley when he was killed by a reversing lorry. Mr Dixon was standing with his back to a lorry, which clipped him and knocked him down as it was reversing. Without realising what had happened, the driver of the lorry then ran over Mr Dixon.

Investigations revealed that the reversing alarm on the lorry had been removed, for unexplained reasons, and there was no banksman to guide the lorry as it reversed. Investigations also revealed that the risks of waste sorting had not been properly addressed and that there was inadequate segregation between pedestrians and traffic at the site.

At Bradford Crown Court, Associated Waste Management (the Company) pled guilty to a breach of Section 2(1) of the Health and Safety at Work Act 1974. The Company was fined £75,000 and ordered to pay £10,000 in costs. The Company has since spent £1.75 million on a safety review, and CCTV and alarms have now been fitted to all of the Company's vehicles.

Workplace transport is an area of particular concern for the HSE, as 50 deaths and 1,449 major accidents were caused by vehicles at work in 2006/07.

#### **Chemical company fined £40,000 for toxic leak**

On 3 April 2009, Millennium Inorganic Chemicals Ltd was fined £40,000 and ordered to pay £25,000 in costs after pleading guilty to a breach of Section 2(1) of the Health and Safety at Work Act 1974.

The prosecution was brought following an incident on 29 October 2006 in which approximately 82 litres of titanium tetrachloride was released into the atmosphere during the draining of a vessel. When the chemical was released and exposed to moisture in the air, it resulted in a toxic and corrosive vapour cloud. The incident was prevented from escalating further by an operator who quickly closed the valve to reduce the flow of liquid.

The HSE Inspector who led the investigation into the incident, commented that, "this was a serious incident which had the potential to endanger the health of members of the public some distance from the site. Only the swift intervention of the operator prevented this incident from escalating. Our investigation uncovered a catalogue of errors and omissions by the company, including design issues, failure to adequately assess the risk...and inadequate supervision."

### **Death of a factory worker resulted from “serious and deliberate deficiencies”**

On 12 March 2009 at the Central Criminal Court in London, Naturediet Pet Foods Ltd (the Company) was fined £157,500 after pleading guilty to a breach of section 2(1) of the Health and Safety at Work Act 1974.

The conviction followed an incident on 1 February 2006 when an employee, Marcus Snow, was working on a machine used to transfer finished cartons of dog food onto a conveyor belt in the packing department of the company. When the machine became jammed, Mr Snow crawled into the front entrance of the machine to attempt to clear the jam. The pneumatic pick-up unit then came down suddenly and pinned Mr Snow to the stack of trays, causing continued pressure on his chest. This led to Mr Snow's death by asphyxiation.

A joint investigation by the Health and Safety Executive and the Surrey Police highlighted serious and deliberate deficiencies in the safeguarding of the machinery, mainly that the photoelectric light curtains which were supposed to guard the entrance and exits of the machine had been wired in such a way as to allow whole body access to the unit, and the interlock on the hinged access gate to the machine enclosure had been bypassed allowing the machine to run with the guard door open. Other machines at the site were also found to have bypassed safeguards. In light of this a number of prohibition notices were served on the Company at the time of the investigation.

### **Rare slip and trip prosecution for company**

Sunlight Services Group (the Company) has been fined after a driver fell on a slippery floor, leaving him with a broken ankle. The accident happened in November 2007 when the driver fell on slippery decking as he prepared to refuel his vehicle. When the paramedics attended the incident, they found the surface too slippery to cross and had to remove some of the decking in order to get the man into the ambulance.

The Company pled guilty to a breach of Regulation 12(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 and was fined £2,400. The Company also pled guilty to breaching Regulation 3(1) of the Management of Health and Safety at Work Regulations 1999 and was fined £3,200 in that regard. A further £8,951 required to be paid by the Company in costs.

It was alleged that a fuel pump with a minor drip leak caused the slippery surface. The area was gritted every morning but rain often washed it away. Following investigations it came to light that this was not the first time a driver had slipped in the area, but that no injuries had previously been reported. The area has since been concreted and induction training is being given to new drivers.

In response to the vast numbers of slips, trips and falls in the UK each year, the HSE introduced its “Shattered Lives” campaign in early 2009. For further information on the campaign please go to: <http://www.hse.gov.uk/shatteredlives>



# Health and Safety - what we do

We have extensive experience in health and safety – particularly in the Energy sector reflecting the challenging nature of this highly regulated industry. However, our client base spans a number of industry sectors, including:

- Aviation
- Transport
- Energy
- Renewables
- Leisure
- Manufacturing
- Construction
- Communications

Regrettably incidents can be serious, even involving fatalities, and our clients have appreciated the high level of attention and support we are able to offer at what can be a very difficult time for any organisation. We are able to provide assistance in every aspect of responding to an incident, whether that is incident investigation, dealing with witnesses, defending a prosecution or advising senior management on liaising with the Health and Safety Executive. Our dedicated, specialist team is always on hand to provide assistance, 24 hours a day through our on call system if required. In addition, we provide advice on corporate governance issues, assist in transactional due diligence on health and safety and assist with general updates, information and training to clients. Our team are qualified to practice in both England & Wales and Scotland, and regularly provide advice to clients in relation to international working patterns.

## Our clients come to us for advice on:

- health and safety prosecutions
- accident inquiries
- formal interviews and investigations undertaken by inspectors
- corporate manslaughter investigations
- inquests and Fatal Accident Inquiries
- appeals against Improvement and Prohibition Notices
- compliance with UK and European regulatory requirements
- drafting corporate safety policies and contract documentation
- safety aspects of projects and property management
- due diligence in acquisitions
- directors' and officers' personal liabilities
- management training courses

- personal injury defence
- risk management and training.

CMS Cameron McKenna has a reputation as the leading firm in the area of health and safety, providing specialist advice on regulatory requirements, risk management and corporate governance, as well as representing organisations facing enforcement action and claims for compensation.

## Recent experience

- Defending solemn prosecutions of client companies, arising out of serious incidents.
- Appealing other types of enforcement action taken against companies (e.g. prohibition notices).
- Conducting numerous Fatal Accident Inquiries - including some of the most high profile, lengthy and extensive inquiries to have taken place in relation to Offshore matters.
- Conducting Coroners' Inquests.
- Obtaining first ever award against the Crown in favour of a client company following an Inquiry.
- Taking appeals to the High Court of Justiciary.
- Taking appeals on human rights issues to the Privy Council.
- Defending Judicial Reviews.
- Advising clients on forthcoming health and safety legislation.
- Assisting clients in consultation with the regulatory body (HSE).
- Advising clients in relation to Safety Cases and on Corporate Governance issues and Directors' responsibilities.
- Undertaking transactional due diligence in relation to health and safety matters.
- Advising clients on carrying out incident investigation and on dealing with HSE inspectors following an incident, including the powers of HSE inspectors.
- Preparing and drafting incident investigation reports.
- Advising clients on media and reputational issues following incidents.

**For further information, please contact:**



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