

First Conviction Under Corporate Manslaughter Act

On 15th February 2011 Cotswold Geotechnical (Holdings) Limited 'Cotswold', a geotechnical survey company based in Gloucestershire became the first company to be convicted of an offence under The Corporate Manslaughter Act 2007 (which came into force in April 2008). On 17th February the company was fined £385,000 which represents 115% of the company's turnover in the year of the accident. The conviction and sentence continues the trend of harsher penalties being imposed for serious offences and Health and Safety continues to be a topic that should feature high on the agenda of all businesses.

Cotswold was charged with the criminal offence of corporate manslaughter following the death of a 27 year old employee, a junior geologist Alexander Wright, who was killed in September 2008 when the sides of the trench in which he had been collecting soil samples collapsed and crushed him. Peter Eaton, the director of Cotswold, was also personally charged with gross negligence manslaughter and other health and safety offences but was too ill to stand trial. Cotswold was a small company that employed eight people in 2008 and Mr Eaton was in overall control of the way the company managed its affairs.

The CPS told the court that Mr Wright was left working alone in the 3.5 metre-deep trench to 'finish-up' when the company director left for the day. The two people who owned the development plot decided to stay at the site as they knew Mr Wright was working alone in the trench. About 15 minutes later they heard a muffled noise and then a shout for help despite the plot owners best efforts Mr Wright died of traumatic asphyxiation.

The CPS case was that Mr Wright was left to work in a dangerous trench some 3.5 metres deep because the company's systems had failed to take all reasonably practicable steps to protect him from working in that way. In convicting the company, the jury found that their system of work in digging trial pits was wholly and unnecessarily dangerous. The company ignored well-recognised industry guidance that prohibited entry into unsupported excavations more than 1.2 metres deep.

There was no person in the dock at Winchester Crown Court during the three-week trial as it is the company, rather than an individual, which is charged with corporate manslaughter. The case was investigated by Gloucestershire Constabulary and supported by the Health and Safety Executive and the company denied corporate manslaughter. The CPS is currently considering a number of other files of evidence in relation to further possible prosecutions for the offence.

The size of the fine was less than the starting point of £500,00 recommended by the Sentencing Guidelines Council only because of the small size of the business (now with 4 employees) and because of its fragile financial position it was given 10 years to pay the fine.

All businesses should take notice not only of the conviction but also the court's powers in setting the fine, which can be based upon the level of the company's turnover.

It is likely that many more prosecutions will be made in the future. Businesses should take this opportunity to review their internal procedures to avoid suffering the same consequences as Cotswold. This is particularly important for those organisations that are in sectors such as construction and engineering which are at a higher risk of experiencing accidents and deaths.

Under the Act individuals, including Directors or Managers cannot be prosecuted and therefore there are no prison sentences prescribed. However, if there is evidence that a fatality has been caused by gross negligence of individuals they can still be prosecuted and jailed for manslaughter under common law. In recent years there have been many instances of employers and directors having had sentences passed of between 1 year to 14 years imprisonment.

For further information and advice on how to best protect your business from investigations and successful prosecutions by the HSE and other prosecuting authorities please contact **Alan Davies** who specialises in the defence of Health & Safety Prosecutions and Investigations, employer's liability claims and product liability claims on behalf of insurers and business clients.

Alan Davies

Director - Defendant Insurance Department

adavies@pitmans.com

+44 (0) 118 957 0300

Reading Offices:
47 Castle Street, Reading
Berkshire, RG1 7SR
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

The Anchorage
34 Bridge Street, Reading
Berkshire, RG1 2LU
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

London Office:
1 Crown Court
66 Cheapside
London, EC2V 6LR
T: +44 (0) 20 7634 4620
F: +44 (0) 20 7634 4621
DX 133108 Cheapside 2

www.pitmans.com

REGULATED BY THE SOLICITORS REGULATION AUTHORITY UNDER NO 57601
A LIST OF PARTNERS IS OPEN TO INSPECTION AT 47 CASTLE STREET, READING
THE FIRM IS A MEMBER OF INTERACT EUROPE (A EUROPEAN NETWORK OF INDEPENDENT LEGAL PRACTICES)
VAT REGISTRATION NO GB199496974