

Wilkins Safety Group

Weekly Update Newsletter



Welcome to this issue - Friday 25th February 2011 - of our Update Newsletter

Please feel free to forward this newsletter to colleagues and friends.

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Corporate Manslaughter - Corporate Homicide Act - The first effects of it.



Corporate Manslaughter - Corporate Homicide

We have written about the Corporate Manslaughter Act on previous occasions - just 12 months ago we reported on the first case to come to court under this Act.

In this case the company on trial - ***Cotswold Geotechnical Holdings*** - is relatively small with just eight employees, one of whom was a young geologist by the name of Alexander Wright.

Nature of the Accident

An accident occurred in September 2008 when Mr Wright was working in a 12.5 foot deep trench taking soil samples. Contrary to well recognised industry guidance, the trench was not supported by timbers and the sides collapsed, burying Mr Wright.

The owners of the plot where the work was being carried out happened to be present at the time and were alerted to the collapse. While one called for the emergency services, the other attempted to rescue Mr Wright but the walls of the pit collapsed a second time resulting in the death of Mr Wright from traumatic asphyxiation.

The director of the company, Peter Eaton, was charged with an offence under the Health and Safety at Work Act and with gross negligence manslaughter. At the same time, the company itself became the first to be charged under the Corporate Manslaughter and Corporate Homicide Act 2007. Due to

the director's severe ill health, it was decided not to pursue the personal charges. However the company was convicted of Corporate Manslaughter in February this year.



Significance of the Case

This case has attracted a great deal of media attention simply because it is the first prosecution under the Corporate Manslaughter Act. However, because it is a small company, it provides little if any indication as to how effective the Act will be against large corporations for which the Act was originally designed.

The [Hazards Campaign](#) is unimpressed. In regard to the operation of the Act they stated:

'A fundamental flaw with the new corporate manslaughter legislation is that it holds the company responsible, not the individual directors who make the decisions which lead to these disasters, and therefore no-one can be jailed, which is the appropriate sentence for taking a life by gross negligence. Currently, individual company directors can escape legal accountability and the only way to make them take protecting workers' safety and health seriously is to implement a law making them legally responsible for the health and safety of their organisations.'

In the event, the company was fined £385,000, payable in ten equal annual instalments. This needs to be viewed against the sentencing guidelines that were published in February 2010, which state that fines should rarely be less than £500,000. The fact that this first case is one of the rare exceptions is a reflection of the company's very poor financial situation and that it will probably go into liquidation as a consequence of the case.

In April 2008 when the Act came into force, it was suggested that there might be an average of 12 cases a year. In practice, this is the only case that has come to court so far, although the [Crown Prosecution Service](#) state that they are "considering a number of other files of evidence in relation to further possible prosecutions for the offence".

Increasing Fines

A point of potentially greater significance to businesses is that the sentencing guidelines don't just apply to Corporate Manslaughter cases. They also apply to other Health and Safety offences that result in someone losing their life. The sentencing guidelines may be viewed on the [Sentencing Council's website](#)

In practice, since the introduction of the sentencing guidelines the level of fines imposed for health and safety failures that result in death have risen significantly. In addition, now that courts have definitive guidelines, there is greater consistency of fines across the country.

Dangerous Construction Sites

This was a particularly tragic case that resulted from poor standards of health and safety on a construction site. According to the judge, "This approach to trial pitting was extremely irresponsible. Peter Eaton thought he knew better. In this he was gravely and culpably mistaken".

The Health and Safety Executive also take the general standard of health and safety in the construction industry very seriously. For the past few years they have been visiting thousands of sites across Britain and in many cases have issued orders to stop work until safety issues have been properly addressed.



This year, they are targeting refurbishment and maintenance activities, which will involve many of our readers at one time or another. It is worth remembering that if the Health and Safety Executive find that a principal contractor is not taking adequate measures to safeguard workers, the HSE will also require the client to demonstrate that they have taken adequate steps to hire a **'competent'** contractor.

The role of **'Competent'** person can be by way of utilising the services of an external consultancy like ourselves.

MANAGEMENT TRAINING

Training /CPD Certificate issued

This one day course addresses the requirements under the 'Health & Safety at Work act 1974' and the 'Management of Health & Safety at Work Regulations 1999' to ensure all organisations are complying with legislation. The course will address the legal requirement of the Employer and the responsibilities necessary to ensure your compliance in the workplace and on site

Course Outline

- Legal framework and legislation (Criminal and civil liabilities)
- Roles and responsibilities of Directors and the senior management team
- Health and safety management (Inc. HS G 65)
- Introduction to risk management
- Accident / incident prevention and investigation
- Enforcement and insurance companies
- Active and reactive monitoring at board level



Benefits of Attending

- At the end of the seminar participants should have a clearer understanding of their responsibilities. Delegates will receive a certificate of attendance
- Delegates will receive a Health & Safety Directors Guide, HSG65, and a copy of the Management Regulations 1999

Course Duration:

1 day

Location:

COURSE REF

SME 1101

DATE(s)

Thursday 10th March 2011

LOCATION

Cleve Hotel, Wellington,
Somerset TA21 8SN

Fee:

£150 to include Course notes, mid-morning & afternoon refreshments, a 2 course lunch and a Certificate of Training

(Fees subject to VAT)

Space is limited with a maximum of twelve attendees, so please book your place now by emailing **Jon Wilkins** on jon@jonwilkins.co.uk

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CITB SMSTS Training

SMSTS Training - 5-Day CITB Site Management Safety Training Scheme

The CITB Site Safety Plus Site Management Safety Training Scheme (SMSTS) health and safety course is one of the most highly regarded training courses within the construction industry available for site managers and supervisors, taken by more than 10,000 people each year.

The SMSTS training course helps site managers (and anyone wanting to become a site manager) to develop a better understanding of the legal, moral and social responsibilities of their role, and to manage health and safety on site in accordance with current legal provisions.

The course lasts five days. During the SMSTS training course, candidates must pass core exercises. At the end of the training course, candidates sit an examination in order to qualify for the CITB certificate.

The industry recognised SMSTS training course is ideal for companies that need to meet the ever increasing demand for evidence of health and safety compliance.

Course Content

The SMSTS training course covers The Health & Safety at Work Act and the regulations relevant to the Construction Industry (and other workplaces), including;

- Site Set Up
- CDM
- Risk Assessment
- Method Statements
- Scaffolding
- Electricity
- Excavations
- Demolition
- Confined Spaces

Who will benefit from attending the course?

The SMSTS training course is intended for project managers, site managers and site supervisors as well as proprietors of small to medium sized companies. Client-based personnel would also benefit from attending the SMSTS training course. Possession of the CITB SMSTS qualification is listed in the Approved Code of Practice for the construction (Design and Management) (CDM) Regulations as a demonstration of competence in the role of site manager.

Course Duration:

5-days

Location:

COURSE REF	DATE(s)	LOCATION
SMSTS 1101	9th, 10th, 11th, 17th and 18th March 2011	Unit 8, Mendip Business Park, Rooksbridge, Somerset, BS26 2UG

Fee:

£645 all inclusive of registration and books (Fees subject to VAT)

N.B It must be stressed to all course attendees the need to attend ALL sessions since without full attendance the examining body will not award the CITB SMSTS Construction Site Managers Safety Certificate.

Space is limited with a maximum of twelve attendees, so please book your place now by emailing **Jon Wilkins** on jon@jonwilkins.co.uk

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If you would like to discuss any of the issues highlighted in this newsletter, then drop an email to Jon on jon@jonwilkins.co.uk or call the office **01458 253682**



Your Business is Safer
Your Business is Safer in Our Hands