

Coverforce PALLADIUM

Construction Industry Claims Examples

Formwork Failures
Sections 8(1) and 8(2) of the NSW <i>Occupational Health and Safety Act 2000</i>
<p>A sub-contractor on a shopping centre construction site was engaged in the process of dismantling formwork when a piece of formply board and a piece of timber five metres in length fell from the site and struck a car that was stopped below. A passenger in the car suffered minor injuries.</p> <p>The sub-contractor was charged with breaching sections 8(1) and 8(2) of the Act by failing to ensure a safe system of work or provide adequate supervision.</p> <p>The principal contractor was also charged with breaching section 8(2) of the Act for allowing work to be undertaken before overhead protective structures had been completed.</p>
<p>A \$75,000 penalty was imposed on the sub-contractor A \$95,000 penalty imposed on principal contractor Each was ordered to pay the Prosecutor's legal costs</p>

Concrete Planks
Section 8(2) of the NSW <i>Occupational Health and Safety Act 2000</i>
<p>During construction of a residential development at Rhodes, the last of a series of concrete floor planks was lifted into their final position by a cradle of steel chains. It was found to be too wide for its allotted opening and was temporarily placed on an adjacent plank causing it and three other planks to collapse. A supervisor employed by a subcontractor, who was working underneath at the time, was killed.</p> <p>The principal contractor was charged with breaching of sections 8(1) and 8(2) of the NSW <i>Occupational Health and Safety Act 2000</i> by failing to undertake adequate calculations to determine the load-bearing capacity of all parts of the structure; allowing work to be carried out underneath the installation of the concrete planks and failing to ensure that people working at heights wore harnesses or where otherwise protected by some other appropriate system of falls arrest such as the use of safety net scaffolding.</p>
<p>A \$160,000 penalty was imposed on the contractor who was also ordered to pay the Prosecutor's costs</p>

Unsecured plywood
Section 8(1) of the <i>Occupational Health and Safety Act 2000</i> (NSW)
<p>A labourer was working at a bridge construction site on the Princes Highway, Bodalla, NSW. There was a piece of plywood covering a penetration in the bridge left from work completed on the preceding Saturday that had not been secured down with nails.</p> <p>The labourer stepped down from a plank onto the piece of plywood which gave way causing him to fall through the penetration in the formwork deck, one of his legs going through the penetration and the other remaining outside, resting on the plywood. He sustained injuries to his back.</p>
<p>A \$82,500 penalty was imposed on the construction company. Its appeal from the severity of the of the penalty was dismissed by the Full Bench of the Industrial Court of NSW It was ordered to pay the Prosecutor's costs of the hearing and the appeal.</p>

14th Floor Fall

Sections 8(1) and 8(2) of the NSW *Occupational Health and Safety Act 2000*

A boy who trespassed onto a construction site fell some 2.5 metres to a tiled floor from the 14th floor of an apartment building that was under construction. He sustained serious injuries including tendon damage, fractures and loss of four teeth.

The boy, entered the site from the southern boundary through a wooden fence which has fallen over or been pushed down on the day of the accident. He made his way to the 14th floor of the building using the lift that was left operational for subcontractors to use.

The boy fell through a hole in the floor of a balcony, whose cover had been removed to allow work to be performed, and had not been replaced.

The site management company was prosecuted for failing to develop and implement safety systems to address such obvious and foreseeable risks. The directors of the company were also penalised as it was heard that it was their responsibility to develop and implement such safety systems and also to manage the day-to-day operations of the construction site. They were both aware that the perimeter fence was incomplete and the hole on the top of the floor of the building was not secure.

A \$82,500 penalty was imposed on the site management company.
Penalties of \$8,250 and \$6,600 were imposed on the directors.
Each was ordered to pay the Prosecutor's legal costs.

Prohibition Notice

Section 21(1) of the 1985 OHS Act (Vic)

A site manager directed a plasterer, with no scaffolding to erect some scaffolding beneath the roof of a four storey school building. A Worksafe inspector declared the scaffolding to be unsafe. The next day the manager directed the plasterer and the builder's labourer to remove the scaffolding, during which some iron sheeting was removed, creating a hole in the roof.

The workers continued to work around the hole, with the labourer subsequently falling through it. He fell through existing insulation, creating a further hole, before falling three metres onto the concrete floor below and suffering injuries that kept him off work for a week.

The next morning the site manager asked the plasterer to finish off the job, without first putting in place any further safety instructions or measures. He did this until two union officials arrived at the site and stopped work on the roof due to the safety concerns. A WorkSafe inspector later issued a prohibition notice, stopping work on the site at heights where a person could fall two metres or more.

A penalty was imposed on the construction company in the sum of \$35,000
Its appeal from the severity of the of the penalty was dismissed by the Appeal Bench of the Victorian County Court and commented that the penalty could have been higher.
It was ordered to pay the Prosecutor's costs of the hearing and the appeal.

Power lines

Sections 8(2) of the NSW *Occupational Health and Safety Act 2000*

A construction company and its project manager were each prosecuted following the electrocution of the employee of a concrete pumping sub-contractor.

The concrete pumping contractor set up a boom on the driveway of the property. The rear of the equipment was under overhead power lines. The positioning of the equipment was determined by the pump operator. The pump operator had previously refused directions by the project manager to position the boom on another surface (remote from the power lines) due to the stability of the ground in that area.

The project manager had deferred to the pump operator in accepting that the position of the equipment provided adequate clearance beneath the power lines to allow safe operation of the boom.

The Industrial Court of NSW, found against the company and the individual project manager on the basis that it was not a defence to the non-delegable duty under the Act to show that the breach was due to the act or default of another person. The project manager had failed to require the pump operator to provide him with a copy of its safe working methods statement and had failed to conduct his own risk assessment.

The construction company was fined \$75,000
 The individual project manager was fined \$15,000
 Each was ordered to pay the Prosecutor's legal costs

Dead Ducks

Section 120(1) Protection of the Environment Operations Act 1997 (NSW)

A development company was engaged by the owner of a property to carry out demolition of buildings and removal of debris. The property was known to contain a number of underground storage tanks including one located beneath a workshop building which had, until shortly prior to the company taking control of the site, been used in connection with a vehicle repair business.

The development company retained a demolition contractor and an environmental contractor. The environmental contractor prepared a remediation action plan for removal of the underground storage tanks.

Approximately three months after the development company had taken possession of the site, it received extremely heavy rainfall. As a result of a faulty box gutter, a large amount of rainfall was directed into the workshop building. The rainwater entered the underground storage tank which still contained a volume of oil. The tank overflowed causing the mixture of oil and water to flow to a nearby wetlands area. A number of ducks were killed and other wildlife injured.

The court noted that the construction company ought to have inspected the tank within a short time of taking possession of the site and ensured that the tank was emptied or at least properly capped. In deciding the penalty, the court accepted that the risk of the tank being inundated by water in the manner which occurred was at a low level of foreseeability.

The construction company was fined \$40,000.

Run Off

Section 120(1) Protection of the Environment Operations Act 1997 (NSW)

An earthworks contractor was responsible for site preparation works in connection with the staged construction of 300 residential units as part of a retirement village development.

Development was slowed, in its early stages by a period of greater than average rainfall. As a result, strain was placed upon two water control ponds which had been partially constructed, but not completed, on the lower perimeter of the sloping development site. The ponds failed discharging a large quantity of sediment-laden water into the wetlands area adjacent to the site.

The contractor had failed to take all available precautions to avoid the pollution event including: timely completion of the water control ponds as per design, installation of sufficient silt control fences; and seeding of large areas of bare earth.

The contractor was found guilty of an offence falling within the 'moderately serious' part of the spectrum of overall gravity of offences under section 120 of the Act. A 40% discount was applied to the fine imposed to reflect mitigating factors including the contractor's good record over many years.

The contractor was fined \$30,000 and ordered to pay the Council's costs of \$40,000.