



SITE SAFETY

RESPONDING TO UNSAFE
ACTIVITIES OF OTHERS

Tom Barham, SCS-Hugh A. Walker SCS





















Does a professional engineer engaged to provide “normal site services” have any responsibility for harm to people or property?

- Law requires a duty before liability attaches
- Does a duty exist?
- Can a duty be created? How?

Consider: Kreiger v. Greiner
Plan-Tec v. Wiggins,
Carvalho v. Toll Bros & Developers

Krieger v. Greiner

FACTS:

- Construction worker killed when steel column collapsed
- Estate of plaintiff/deceased asserts work performed under “supervision” of engineer
- Engineer engaged to provide design services and make periodic visits to assess progress of the work
- Contract silent on whether engineer had duty to “supervise” the work
- Plaintiff alleged:
 - (1) Engineer stopped work on other occasions – assuming responsibility for safety
 - (2) Engineer responsible under its contract for supervision of means and methods
 - (3) Engineer responsible under contract for site safety

Issue

Did engineer assume responsibility for site safety?

Kreiger v. Greiner (Cont:)

Holding

- No language in contract making Engineer responsible to supervise contractor for contractors means & methods
- No language in contract making engineer responsible for site safety
- Allegations of engineer having stopped work when performed in a negligent manner might give rise to basis for recovery
 - Pleading insufficient to support this allegation.

Plan - Tec v. Wiggins

FACTS:

- Wiggins employed by subcontractor on site
- Wiggins injured when scaffolding failed
- Plan–Tec was construction manager in charge of project coordination
- Plan–Tec did not have duty of site safety in its contract
- Plan–Tec coordinated weekly safety meetings and directed safety precautions
- Plan–Tec’s manager on site inspected scaffolding each morning

ISSUE

Does Plan–Tec have a duty to provide a safe work site for Wiggins?

Plan - Tec v. Wiggins (Cont:)

HOLDING:

Plan–Tec liable – Assumed a duty to provide a safe work site by its actions

RATIONALE:

Because Plan–Tec initiated weekly safety meetings and regularly inspected scaffolding, Plan–Tec assumed a duty to provide a safe work site to Wiggins.

Carvalho v. Toll Bros. & Developer (N.J. 1995)

FACTS:

- Worker killed in trench collapse
- Trench not shored – Trench box not used
- Trench had collapsed several times before
- Engineer had noted trench unstable with water pooling in bottom
- Engineer had no contractual responsibility for site safety. Contract says not responsible.

ISSUE

- Does Engineer have a duty to do something when it is aware of unsafe practice?

Carvalho (cont:)

HOLDING

Engineer owes duty to on-site workers when aware of unsafe conditions, despite absence of contractual duty.

RATIONALE

Fairness and public policy requires the imposition of a duty on engineer who has actual knowledge of unsafe practices to do something to prevent injury to implied workers.

Case Study – A New York Landfill

- Engineer providing CQA services on landfill cap construction project as sub to another engineer who has contract with NYDOS.
- Engineer's contract scope of work includes "construction management."
- Employee of liner subcontractor allegedly slips and falls in open trench and claims incapacitating injury.
- Injured liner employee sues, involved others.

Case Study – A New York Landfill

- Who do you think was sued?
- Who is liable for injury? Is anybody liable?
- What has this cost the people involved?
- What could have been done to avoid this problem?

Don't be afraid to take action

- Notify offending party of the unsafe activity
 - For example: “You can't have a man in a trench that deep. It's unsafe.”
- Don't tell them how to correct the problem.
- If no action taken to fix the problem, then notify the site manager (the owner).
- If still no action taken, tell them you are going to call OSHA.
- If still no action taken, call OSHA.
- If someone is in imminent danger of serious injury, tell that person of the unsafe condition.

Final Comment

- An ounce of prevention is worth a pound of cure.