Did You Know Companies Can Be Sued for Damages under OHS Laws?



Safety professionals know that their companies can be prosecuted for violations of the OHS laws or hit with administrative monetary penalties for certain violations. But did you know that a company may be able to be sued in civil court under the OHS law for damages'

That's what a contractor in Ontario did. A city hired the contractor to replace flooring in an office building. After completing most of the work, the contractor discovered asbestos in the flooring. It stopped work for about a week until the city removed the asbestos and cleaned up the relevant areas.

The contractor finished the work and then sued the city under Sec. 30 of the *OHS Act*, which requires an owner to determine whether any designated substances'such as asbestos'are present at the project site before beginning work and to prepare a list of all designated substances that are present.

Sec. 30(5) also says, 'An owner who fails to comply with this section is liable to the constructor and every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that the owner ought reasonably to have known of but that was not on the list prepared under subsection.'

The contractor claimed that the city violated its duty to inform it of the presence of asbestos in the office building and, as a result of this violation, it failed to take the appropriate precautions when performing its work and so its president and some workers were exposed to asbestos.

The contractor alleged that it suffered damages arising out of the city's failure, specifically the time its president spent on administrative tasks related to the incident and the legal costs it incurred in dealing with the incident.

The court dismissed the lawsuit and the appeals court agreed. The grounds for the dismissal were that the contractor had failed to adequately prove its damages.

Nonetheless, the courts *did* confirm the contractor's right to sue the city. So although the lawsuit ultimately failed, it does confirm that Sec. 30(5) creates a civil cause of action in certain circumstances [*Curoc Construction Ltd. v. Ottawa (City)*, [2015] ONCA 693 (CanLII), Oct. 15, 2015].

Bottom line: The threat of civil lawsuits is just another reason to ensure that your company complies with the requirements in the OHS laws. (Note that companies may also be subject to civil liability under the environmental laws, too.

Learn more about the hazards posed by asbestos. And take these four steps to protect them from this hazardous substance.