

**SLIVAK V LURGI AUSTRALIA PTY LTD [1999] SASC 254**

Full Court of the Supreme Court of SA – 18 June 1999

**FACTS**

BHP engaged Lurgi under a design and construct contract to build a fume extraction and dust disposal facility. Lurgi designed the works and then engaged Lucon to work on the construction stage.

Slivak, an employee of Lucon was injured while positioning steel plates. The trial judge found that Lucon had not followed Lurgi's design and was responsible for the accident.

**ISSUES**

Did Lurgi owe a duty of care to Slivak to design the steel plates to ensure the plate could not be constructed without supports?

Was Lurgi an occupier of the building site and therefore owed a duty of care to Slivak?

Did Lurgi as a project manager owing a duty of care to ensure a safety working system?

**FINDING**

Lurgi owed a duty of care to ensure that the steel plates were designed to the standard expected of a competent engineer. There was no evidence to suggest that Lurgi failed to meet this standard of care. Lurgi was not an occupier as Lucon was the occupier of the premises when the accident occurred.

A Project Manager may owe a duty of care to a worker if it was involved in or controlled the construction work. There was no evidence that Lurgi had any role in the procedure for constructing or installing the steel plates.

**QUOTE**

Doyle CJ Said:

*“Putting the matter a little differently, the appellant needed a finding that a competent engineer would not have designed the support structures and cell plates as Lurgi did, because a competent engineer would realise that there was a real risk of the design tolerances being exceeded, in the process of construction and erection resulting in the overlap of the cell plate over the supporting structures being so slight that there was an unacceptable risk of something happening that could give rise to a loss of support on two adjacent sides. The appellant needed a finding that the prudent to such an extent that this would result.” - paragraph 28 of [1999] SASC 254*

*“In my opinion that case would support a finding of liability in the present case only if there was evidence that Lurgi had, in some way, involved itself in establishing the procedures to be followed in the erection and positioning of the cell floor plate. There was no such evidence.” – paragraph 49 of [1999] SASC 254*

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## **IMPACT**

In some States the Workers Compensation laws now provide that the employee not sue their employer for negligence. Instead the employee must rely on the compulsory workers compensation insurance scheme.

There is a common perception that the employee could recover higher damages if they could sue someone for negligence. In this case the employee decided to sue the Project Manager instead of the employer.

The court acknowledged that a Project Manager can owe a duty of care to contractor's employees. Therefore, Project Managers, Superintendents, and Contract Managers should follow their contractual responsibilities but also refrain from directing contractors when they have no duty or obligation to direct the contractor.

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