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## PCBUs and officer fined \$223k, cheap controls overlooked

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An employer has been convicted and fined \$135,000 after a worker was seriously injured in an incident that could have been avoided by consulting a readily available Safe Work Australia guide. Meanwhile, a company officer has been fined for failing to exercise due diligence to ensure his company complied with its safety duty.

In the first case, Universal Property Group Pty Ltd pleaded guilty to breaching sections 19(1) and 32 of the NSW *Work Health and Safety Act 2011*, in failing to comply with its safety duties on a Doonside site that it owned and was constructing an apartment complex on.

In February 2015, two SDG Personnel Solutions Pty Ltd surveyors were surveying a formwork deck at the site when one of them moved an unmarked sheet of plywood, which was covering a penetration he wasn't aware of.

He fell four meters through the void, and was impaled through his right buttock on upright concrete reinforcing bars. He sustained fractures in his pelvis and spine and significant blood loss.

District Court Judge Andrew Scotting heard the site supervisor didn't tell the surveyors there were penetrations in the deck, was off site for lunch when the incident occurred and hadn't inducted the surveyors.

He heard the unmarked plywood had been placed there by workers from a formwork subcontractor and looked the same as the material used for the deck.

He noted that Safe Work Australia's [Guide to Formwork](#) warned that using plywood covers alone wasn't a satisfactory measure for preventing falls through penetrations because they could be indistinguishable from other plywood.

The guide recommended that plywood covers be structurally graded, painted a bright colour, marked with a warning, firmly secured and designed to hold potential loads like workers and plant.

Universal Property Group failed to properly supervise the formwork subcontractors, while the subcontractor's safe work method statement referred to the Guide to Formwork in "oblique terms" and didn't set out the required procedures, the Judge found.

After the incident, Universal Property Group formalised and trained its workers on procedures for covering penetrations. It employed additional safety officers and introduced the process of embedding mesh into concrete slabs to guard against the risk posed by penetrations.

Inadequate edge or penetration protection was a "notorious and serious risk" on building sites, and proper protective measures were well known in the industry, simple and readily available, Judge Scotting said.

"The use of the plywood of the same appearance as the deck created an appearance to [the surveyor] that the cover was a spare piece of plywood and did not alert him to the serious danger that was present."

Judge Scotting found an appropriate fine was \$180,000, but reduced this to \$135,000 after a 25 per cent discount for the employer's early plea, and ordered it to pay costs.

[Safe Work NSW v Universal Property Group Pty Ltd \[2018\] NSWDC 19 \(20 February 2018\)](#)

## Worker injured unloading A-frame on cambered road

In the second case, also before Judge Scotting, Modern Touch Marble and Granite Pty Ltd and its sole director were convicted and fined a total of \$87,500 after a factory offside was crushed by 23 sheets of quartz, weighing a total of nearly 6.5 tonnes.

In October 2015, the worker was helping director Johnne Khouri unpack a container of quartz sheets on an A-frame when the sheets fell on him while he was standing in the "fall shadow".

The worker was pinned against the container wall and sustained serious crush injuries to his chest.

Judge Scotting heard the container was on the road outside Modern Touch's premises, with the camber of the road rendering the A-frame's angle nugatory, and allowing the sheets to fall forward.

He heard Modern Touch didn't conduct a risk assessment of removing the sheets from the container or implement any control measures or safe work method statements for the task. A "slab rack" could have been used to stop the sheets falling, he heard.

Further, at the time of the incident, Khouri was operating a forklift without a valid licence and the vehicle was not registered to operate on a public road, the Judge heard.

"The measures required to eliminate or minimise the [relevant] risk were simple and readily available at no cost. It would have been sufficient to instruct [the worker] not to work in the fall shadow of the sheets and to ensure that he did not do so, by supervising his work," Judge Scotting said.

The employer pleaded guilty breaching sections 19(1) and 32 of the WHS Act, and the director pleaded guilty to breaching sections 32 and 27(1) in failing to comply with his duties as an officer.

Judge Scotting fined Modern Touch \$75,000, after discounts for its early guilty plea and limited capacity to pay a fine. Khouri was fined \$12,500 after similar deductions. The two parties were ordered to pay SafeWork's costs.

**[Safe Work NSW v Modern Touch Marble and Granite Pty Ltd; Safe Work NSW v Johnne Khouri \[2018\] NSWDC 20 \(20 February 2018\)](#)**

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