

The two cases
carvaho v. tool
brothers developer
and herczeng v.
haptom township ...



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9th May Fine Points In Jobsite Safety Cases The aim of this study: To appreciate how legal cases of almost similar nature in this case jobsite safety can call for totally different and unexpected verdicts. This essay will try to highlight what key differences have produced the different outcomes. Case No: 1. Cidalina O. Carvalho, etc. v. Toll Brothers and Developers, et al. (A-35-95) The Accident: The West Windsor Township had contracted with Toll Brothers and Developers for the construction of sewer service to Assunpink Basin with Bergman Hatton Engineering Associates as engineers. Francisco Carvalho, an employee of the subcontractor Jude Enterprises who was doing the excavation work, died when an unshored portion of the trench he was working in collapsed. [Handler] Argument The prosecution charged that Bergman's site inspector hired to observe the work performed and who was present when the accident happened to monitor the progress of the work had a duty to supervise safety procedures of the construction and that the inspector had knowledge of the unsafe condition. Responding to the suit by the widow, Mrs. Carvalho, Bergman said maintained that the engineer's contract disclaimed responsibility for jobsite safety [which the court allowed]. The methods, the interpretation, and the enforcement of hold harmless agreements should be governed by the intention of the parties in providing for insurance and the division of risk. [Handler]. The site inspector's duty was limited to inspect only the material being used and the amount of work being done. The rationale behind this defense was obviously the trust of the defense in the " hold harmless clause" in the defendant's contract. He also noted because of an error he was not insured. The Pennsylvania Supreme Court instead did a " multi-dimensional" analysis and held an engineer has a legal duty to exercise reasonable care for the safety of workers on a <https://assignbuster.com/the-two-cases-carvaho-v-toll-brothers-developer-and-herczeng-v-haptom-township-municipal/>

construction site when the engineer has a contractual responsibility for the progress of the work, but not for safety conditions, yet can foresee danger. The following grounds were discovered. Direct Supervision and approval of daily work progress was the contractual obligation of the engineer. As there was a cave-in only 200 yards from the accident location, a week before and since trench boxes were in use the previous three days, the engineer knew of the unstable condition, yet took no action to forestall danger. [Camilleri]. Therefore, the financial arrangements and understanding do not overcome the public policy that imposes a duty of care and ascribes liability to the engineer in these circumstances. [Handler p. 7] . This case set a precedent for professional liability for engineers. Case 2: Herczeg v. Hampton Township Municipal Authority and Bankson Engineers, Inc. (2010) In February of 1995, Hampton Township? Municipal Authority engaged Bankson Engineers for a project with Allison Park Inc as Contractors. On March 20, 1995, Stephen M. Wagner , an employee was working in an unshored trench approximately seven feet deep laying pipe when a cave-in occurred fatally injuring him. He succumbed to death two months later [Findlaw]. Bankson had a professional as site inspector and lack of shoring was in violation to Bankson's own regulations. The prosecution charged that Bankson's representative had actual knowledge that the employee working in a dangerously unsafe trench and serious injury or death was reasonably foreseeable and Bankson is thus responsible for death of Mr. Wagner. Bankson replied that it had no knowledge of an unsafe condition, no duty regarding the allegations and that none of its services were involved in the cause of the accident. Bankson alleged that it had no direct control the contractor's work or any

responsibility for job site safety. [Pro-Form] KEY DIFFERENCE: The judge
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allowing Bankson's argument noted that unlike in Carvalho, Bankson did not have stop-work authority, did not have daily supervision of the jobsite making them accountable, or any previous knowledge of trench collapse to foresee the danger.[Crow] Works Cited Camilleri- Camilleri & Clarke Associates - Civil Engineer Pays the Price for Inaction. Jobsite Safety, Part 1 A/E Risk Review, www. camillericlarke. com. Camilleri & Clarke Associates. Web. 9 May 2011. URL: www. camillericlarke. com/newsletters/... files/68-aeJobsiteSafety1. pdf Crow –Crow Friedman Group. Jobsite Safety. Part I: Liabilities Get Muddy. Volume 3 Issue 3 ww. crowfriedman. com . Crow Friedman Group. July 2008 Web 9 May 2011 URL: www. crowfriedman. com/pdf/newsletter_0708. pdf Handler – Handler. J. Carvalho v. Toll Bros. and Developers 5/6/1996. www. napil. com. National Association of the Personal injury Lawyers, Pages 1-7. 5 May 1996. Web. 9 May 2011 http://www. napil. com/PersonalInjuryCaseLawDetail30357. htm Pro-Form – Pro-form Insurance. Jobsite Safety. Part 1: Liabilities Get Muddy. Page 1. www. proforminsurance. ca. Pro-Form Insurance Services. 10 Sept 2008. Web. 9 May 2011. www. proforminsurance. ca/docs/sept08newsletterpt1. pdf - Findlaw- Findlaw . Herczeg V. Hampton Township Municipal Authority. Para 2. Web. 9 May 2011. http://caselaw. findlaw. com/pa-superior-court/1218333. html