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Between the Lines

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Mine Site accident – no duty, no breach

The Claim

Thompson Cooper Lawyers took over the defence for a plant hire firm facing a significant claim from an injured vehicle operator. The plaintiff claimed that he suffered a disabling back injury in 2008 while driving a 40-tonne unregistered dump truck (used on mine sites and major construction projects) due to failure of the air suspension seat. In an unreported judgment[1] handed down in the NSW District Court on 24 March 2015, our client obtained judgment against the plaintiff.

Our client's investigation into the reported failure suggested that the seat failed because someone (most likely the plaintiff) placed wheel chocks under the seat, which broke the wires controlling the air suspension system. Wheel chocks were used to prevent vehicles rolling away if the brakes failed while the vehicle was parked. Our client "dry hired" the plant to the head contractor who was controlling expansion works at the coal mine. The plaintiff claimed that the dump truck supplied by our client was faulty. However the plaintiff's primary attack related to the alleged failure of our client to regularly inspect the vehicle.

Duty and Breach

After we obtained and served evidence to establish a comprehensive maintenance regime for the vehicle the plaintiff "changed tack" to focus on the instruction/supervision claim.

The Court noted that the defendant was required to have exercised "reasonable care" in order to have discharged its duty to the plaintiff,

Photograph of the 40 tonne dump truck the subject of the plaintiff's claim

referring to *RTA v Dederer*[2]. The Court emphasised the importance of having regard to "*ordinary knowledge and experience*" and avoiding "*the wisdom of hindsight*"[3] in determining whether reasonable care has been taken, and by extension whether a reasonable person in the defendant's position should have taken further precautions.

Noting the head contractor's control of the site, the Court doubted that our client owed a duty to direct operators to safely store the wheel chocks. Where an appropriate storage container for the chocks was provided, the Court found that the risk of the accident happening in the manner alleged was not foreseeable[4] from the defendant's perspective and that no reasonable steps could have prevented it.

Conclusions

By focusing on duty our client was able to win the case.

Despite difficulty in locating site documents for the 2008 project we obtained evidence to demonstrate to the Court that our client was only asked to provide vehicles; it was not required to supervise operation of the plant. By establishing that context the Court was able to find that our client's duty of care was extremely limited in scope.

Claims professionals defending matters involving multiple parties should carefully consider the contractual responsibilities of their client relative to those of other parties. This is to determine "*using ordinary knowledge and experience*" the scope of the duty owed within the relevant context.

For more information contact:

Patrick Thompson
Principal
pthompson@tclawyers.com.au
D: +612 8289 5920

Patrick Riordan
Senior Associate
priordan@tclawyers.com.au
D: +612 8289 5921

1 *Brooks v Antqip Pty Limited*
2 [2007] HCA 42
3 As per *Roads & Traffic Authority v Refrigerated Roadways Pty Limited* [2009] NSWCA 263
4 As required by s 5B of the *Civil Liability Act*