

# PRINCIPALS OWE CONTRACTORS A DUTY OF CARE!

OCTOBER 8, 2019 | EMPLOYER'S LIABILITY

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A principal, occupier and employer were all found to have breached their duty of care to a truck driver who injured his back whilst unloading large tyres.

## In Issue

The Court was asked to consider the duty of care owed by a principal to its contractors and the apportionment of responsibility between the principal, occupier and an employer.

## Background

Mr Damon was employed by Kokoszko Nominees Pty Ltd (Kokoszko). Asixa Logical Outcomes Pty Ltd (Asixa) contracted with Kokoszko to take freight from its warehouse to the occupier, Bronzewing Freighters Pty Ltd (Bronzewing). Mr Damon was injured in the course of his employment when he lifted a tyre at one side in order to slide it off the truck where it would be picked up by a forklift.

## The Decision at Trial

The Court found that Asixa, as principal, owed Mr Damon a duty of care to load the trucks in a way that avoided exposing him to unnecessary risk of injury. It was required to have regard to whether the freight that it loaded was able to be unloaded appropriately by the contractors. Asixa was aware (from worker and Bronzewing complaints) that its actions created a risk of injury where none existed previously and it breached its duty of care by taking no action to address the problem. Asixa was apportioned 35% responsibility.

Mr Damon's employer, Kokoszko, was also found to have breached its duty of care by failing to provide a safe system of work. Its duty included a duty to take reasonable care itself and a duty to ensure that reasonable care was taken by others (including Bronzewing and Asixa). Kokoszko could have discharged its duty by instructing Mr Damon that he was not to provide any manual assistance with unloading such items and by communicating with Asixa and Bronzewing that their systems of loading and unloading were causing workers to manually handle items that should be handled by mechanical means. Even though Kokoszko had no control over the system of loading or unloading, it had a non-delegable duty to provide a safe place to work, safe system of work and safe equipment for performing work. Kokoszko was apportioned 30% responsibility.

The Court also held that Bronzewing, as occupier of the premises, breached its duty of care. In light of the fact that unloading was a contractual matter between Bronzewing and Asixa, a reasonable response from Bronzewing required more intervention than the one phone call it made to Asixa. Absent a response from Asixa, it ought to have turned its mind to an alternative safe method of how mechanical unloading could be achieved that would allow continued delivery. Bronzewing was apportioned 35% responsibility.

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Whilst the employer was found to have breached its duty of care, the larger portion of responsibility fell to the principal and the occupier who both had knowledge that their actions created or maintained a risk of injury to the worker. Their knowledge required a response.

## IMPLICATIONS FOR YOU

Principals, occupiers and employers need to ensure they take reasonable care to protect workers from injury. If a party has knowledge of a problem with how a task is being performed, it has a duty to respond. Inaction will contribute significant causal potency to the injury.

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[VWA v A.C.N. 125 830 015 Pty Ltd \(Previously known as Asixa\) \[2019\] VSC 607](#)