

## CLASSIC WORKERS COMPENSATION CASES

A classic example of poorly diagnosed causation occurred in the case of a driver weighing 140Kg employed by a bus company. Eight weeks into the job he submitted – and had approved - a claim for deep vein thrombosis.

Or take the case of workers compensation insurer who paid an employee \$507,223.34, plus costs for hurting her back lifting a box of work files out of the boot of her car at home.



### THE AMBER LIGHT

A number of 'amber lights' are associated with this case.

The case is public knowledge having been reported in the 'The Canberra Times'

<http://www.canberratimes.com.au/act-news/worker-awarded-500000-despite-untrue-evidence-20130901-2sz27.html>

Despite the judge finding that the claimant continued to perform a range of lifting tasks, including operating a chain saw, and despite the judge referring to 'her evidence being untrue', nevertheless she was awarded compensation because, *'Both defendants were found to have been negligent in failing to undertake an assessment of the risk of lifting the container and in implementing appropriate precautions to minimise risk.'*



### THE ABSURDITY

In reality, what the judge is saying is, 'Someone has to follow every employee around to make sure they don't do anything to injure themselves while lifting something. This means going to people's homes to make sure that when they lift a box of files out of their car they check the weight of the box and that it is lifted in accordance with WHS guidelines.'

The claimant claimed she hadn't been given instructions in lifting a box out of the boot of her car. The judge saw that as a black mark against her employer. But, surely anyone who has ever collected the groceries or been on a holiday would know how to lift something out of the boot of a car.

What did the box weight? Did it weight more than the chainsaw or the weekly groceries?

What the insurer and the workplace had forgotten to do was measured, managed and monitor the risk of employing this person:

- manual handling course
- work station assessment
- a ten point musculo-skeletal (strength and flexibility) risk screen
- a joint and muscle condition assessment
- if the scores for the musculo-skeletal risk screen and joint and muscle condition highlighted both pre-existing conditions and low workfit capacity the employee could them have been asked to take part in
  - a clinical diagnostic assessment,
  - a pro-active rehab program.

Such a strategy would have saved the insurer and the organisation half a million dollars.

Furthermore, I doubt whether the insurer conducted a strength, fitness and skeletal alignment assessment after the incident. I doubt whether the insurer mandated manual handling courses and work-fit assessments for all the people it insures.

The claimant could soon be preparing for another \$500,000 windfall!

### **THE NEAR MISS**

Then there was the publicly reported near miss. Early in 2015 a woman with a 'fuller figure' was reported as taking her employer and insurer to the Commonwealth Government's Administrative Appeals Tribunal seeking support for the cost of breast reduction surgery, the size of her breasts allegedly being associated with neck and shoulder pain.

News of the case was reported by the 'The Canberra Times' based on details published by the Administrative Appeals Tribunal on its website.

<http://www.canberratimes.com.au/national/public-service/breast-size-and-tummy-tuck-surgery-becomes-public-service-compensation-battleground-20150130-131o68.html>

If the claim had been successful it would have opened the floodgates for all over-weight men and women with sore necks and shoulders to line up for publicly funded weight reduction surgery. Defining the meaning of the word 'large' would be an interesting legal exercise!

### **THE IRONY**



Tia-Clair Toomey, weighing in at 58 Kg, lifts 114Kg above her head and wins a gold medal at the 2018 Commonwealth Games.