

CPA MODEL CONDITIONS

Court of Appeal decides hirer not liable to indemnify owner for consequences of owner's negligence - *Jose v MacSalvors Plant Hire Ltd & Brush Transformers Ltd* [15.12.09]

Those familiar with the CPA Model Conditions (the provisions under which cranes are usually hired out in the UK) will need little introduction to clauses 8 and 13. Clause 8 provides, in effect, that where an operator competent in operating the plant is supplied with it, they will be regarded as the employee/agent of the hirer, who will be responsible for claims arising from their negligence. Clause 8 was considered by the House of Lords in *Arthur White (Contractors) Ltd v Tarmac Civil Engineering Ltd* [1967], and held to achieve just that.

Clause 13 provides, essentially, that the hirer is to indemnify the owner in respect of all claims "... by any person whatsoever for injury to person or property caused by ... use of the plant".

In this case, MacSalvors hired an 80 tonne crane and operator to Brush. The operator had set up the crane and was completing some adjustments when he stepped backwards, believing he had left the crane slewed in line with the chassis so the deck would be below him. It was not, and he fell to the ground and was injured.

The operator pursued a claim for damages for negligence and breach of statutory duty under reg. 6 of the Construction (Health, Safety and Welfare) Regulations 1996, which was settled by MacSalvors for £50,000. MacSalvors then sued Brush for an indemnity under clauses 8 and 13.

Decision

The claim based on clause 8 was dealt with swiftly by the Court of Appeal: it was clear from *Arthur White* that it applied only to cases concerning which of the hirer and owner was to be vicariously liable to third parties for the operator's negligence. This was a claim by the operator, not a third party, so it did not apply.

As for clause 13, the court began by dealing with MacSalvors' assertion it was not an indemnity clause, which would require strict construction, but an allocation of risk clause, which would not. Interesting aspects of this debate included rejection of the views expressed in *Hewden Tower Cranes Ltd v Yarm Road Ltd* [2003], on which MacSalvors' assertion was based, and the Court of Appeal regarding itself as bound by its unreported decision in *E Scott (Plant Hire) Ltd v British Waterways Board*, where it was held:

1. Clause 13 was an indemnity clause.
2. On a strict construction, it did not oblige the hirer to indemnify the owner in

respect of liabilities arising from the negligence of the owner's employees.

Accordingly, MacSalvors' appeal was dismissed.

Comment

This is a commonsense decision based on sound legal principle and one which further defines the scope of the provisions of the CPA Model Conditions. Such definition can only help the efficient handling of cases involving hired plant.

For further information contact Geoff Lord, Kennedys, 0207 667 9185.

This article first appeared in Kennedys' *Insurance Brief* of January 2010.

London
25 Fenchurch
Avenue
London
EC3M 5AD
Tel: 0207 667
9667

Kennedys worldwide (including associated offices):

Auckland, Belfast, Birmingham, Cambridge, Chelmsford, Dubai, Dublin,
Hong Kong, Karachi, Lisbon, London, Madrid, Maidstone, Manchester,
Mumbai, New Delhi, Paris, Santiago, Singapore, Sydney, Taunton and
Warsaw.

www.kennedys-law.com

[Privacy statement](#)

[Disclaimer](#)

[Copyright](#)