

Review

Environmental, Safety & Health



Can Employers rely on Contractors risk assessments?

In a recent judgment, the Court of Appeal has said that if a contractor has conducted a thorough risk assessment an employer's own risk assessment can be much less detailed.

Uren v Corporate Leisure (UK) Limited [2011] EWCA Civ 66 was an appeal by Robert Uren after his claim for damages in respect of severe personal injuries suffered during a Health and Fun Day at RAF High Wycombe was dismissed. Mr Uren was a senior aircraftman in the RAF and was taking part in a series of 'It's a Knock Out' style games. One of the games was a relay race during which participants had to retrieve objects from within an inflatable pool filled with water to a depth of 18 inches. The pool was supplied by Corporate Leisure (UK) Limited, an events company that also gave instructions and supervised the games. Mr Uren took part in the second heat in the relay race and entered the pool head first. He struck his head on the base of the pool and broke his neck.

Mr Uren claimed that Corporate Leisure and the Ministry of Defence (MOD) (his employer) had failed to conduct a proper risk assessment and if they had it would have forbidden participants to enter the pool head first. The Judge at first instance held that the risk assessments were inadequate and the MOD could not delegate the risk assessment to Corporate Leisure but that the game was reasonably safe even when the pool was entered head first, and so there was no breach of a duty of care and Uren's claim for damages was dismissed. The Court recognised the need to balance the risks associated with sporting activities against the public interest in allowing sport to be fun, and left it to participants to manage that level of risk. Both Uren and the MOD appealed.

On appeal, Lady Justice Smith, said that although the MOD could not delegate the duty to undertake a risk assessment to Corporate Leisure, if a contractor is used for an activity and the employer is satisfied that they (the contractor), have carried out a thorough risk assessment, it may lead to the conclusion that the employer's risk assessment could be suitable and sufficient even if it was not as detailed as would otherwise be the case. In this case, Corporate Leisure's risk assessment was not sufficient and so the MOD could not properly rely on it.

The case makes it clear that employers must conduct a risk assessment; it is not permitted for employers to simply leave this risk assessment to the contractor. Employers can however rely on contractor's risk assessments, meaning that the employer's risk assessment can be less detailed, if they have been assessed by a competent person as being suitable and sufficient. This can create issues in relation to tasks about which the employer has little knowledge or understanding as employer's may find it difficult to assess the risk assessment of a contractor that has been brought in because of its competence to perform the activities in question.

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