

TRENDS & ISSUES

Reducing common law exposure in the mining and construction industries

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- What is a common law claim and why are they relevant to today's forum?
 - The source of claims – case studies.
 - Common law liability – what are the common issues and what evidence makes a difference.
 - What issues/evidence truly impact quantum in the current environment.

CASE 1

- 44 year old operator at open cut mine – neck injury whilst truck being loaded - \$1,900 nett – not R.T.W.

CASE 2

- 57 year old maintenance fitter on construction project – lumbar spine injury manually manoeuvring mobile compressor in muddy ground - \$1,500 net – made redundant at project end and not R.T.W.

CASE 3

- 34 year old rigger – shoulder injury – ‘heavy repetitive duties’ over eighteen months - \$1,750 net – returned to work, different employer, ‘lighter role’ - \$1,250 net.

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- ‘Devise, maintain and enforce a safe system of work’.
 - Emphasis of safety systems in two industries is on prevention of ‘high consequence events’.
 - Common law claims often result from high probability/ ‘low consequence events’.
 - What evidence matters?
 - Worker’s own actions?

CASE STUDIES

- 44 year old operator – loading.
- 57 year old maintenance fitter – moving compressor.
- 34 year old rigger ‘heavy repetitive duties’.

- What are the key liability issues / evidence for each?

- Catastrophic injuries aside, loss of earning capacity/economic loss is the greatest component of most awards.
- Two elements:
 1. Loss of capacity; and
 2. Whether capacity loss is likely to be productive of financial loss.
- Uncontrollable factors – age and pre-accident earnings.
- What can be controlled?

SPECIFIC ISSUES

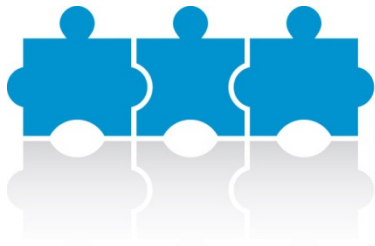
- Medical causation – the asymptomatic pre-existing made symptomatic.
- Are earnings at time representative of long-term capacity?
- The future? Specific projects and general industry decline.
- Return to work in existing role with same employer ‘most favourable’ for common law.

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- Absent the subject injury, what is likely to have been the employment path for this worker, and what is it now?
 - Employer data, role specific and often site specific.
 - Geographic data beyond employer.
 - General industry data and trends.
 - Residual capacity?

Evidence Relevant to Case Studies

- 44 year old operator - \$1,900 – 14 year history as operator and not worked for 2 years.
- 57 year old maintenance fitter – 30 plus years in industry but only 2 on specific project at much higher earnings. Redundant anyway?
- 34 year old rigger – 5 years in injury – lower earnings at another employer.

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1. What are the most common risk factors for your organization – “low consequence”?
 2. How persuasive would your liability evidence be?
 3. Loss of earning capacity “determines” most quantum outcomes
 4. Evidence must compare claimant’s probable earnings path post–injury with notional path absent injury
 5. Questions?



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