



## HIGH COURT OF AUSTRALIA

Public Information Officer

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### NOMINAL DEFENDANT v GLG AUSTRALIA PTY LTD, SALIM FAHD TLEYJI AND READY WORKFORCE PTY LIMITED

The High Court of Australia today ordered GLG Australia to reimburse the Nominal Defendant for its contribution to a payout to an injured worker.

In August 1999, Mr Tleyji was injured when vibration from a forklift caused a stack of boxes to fall on him. He was employed by Ready Workforce, a labour hire company, which had hired him out to GLG. He worked on unloading containers of goods at GLG's Sydney warehouse. Workers placed boxes from a container on to a pallet on a landing in front of the container. A forklift would go up a ramp to the landing, pick up a pallet and reverse down the ramp. As the forklift went up the ramp its vibration could be felt through the ramp, the landing and the container. Mr Tleyji was injured when boxes dislodged by the vibration fell on him as he stood inside the container. He sued both Ready Workforce and GLG for breaching their respective duties of care to him.

The forklift was insured by CIC Insurance Ltd, which had gone into liquidation by the time of the District Court trial. Its liabilities were being dealt with by the Nominal Defendant. The policy insured against liability for injury caused by the fault of a vehicle's owner or driver, but the Nominal Defendant argued that the insurer had no obligation under the policy to indemnify GLG because Mr Tleyji's injury did not fall within the definition of injury in the NSW *Motor Accidents Act*. The Act defined injury as one caused by the fault of the owner or driver in the use or operation of the vehicle if, and only if, the injury resulted from the driving of the vehicle, a collision or action to avoid collision, the vehicle's running out of control, or a vehicle defect.

In the NSW District Court in April 2003, Judge Norman Delaney found both Ready Workforce and GLG liable and held that Mr Tleyji's injuries were not caused by negligent driving of the forklift but by GLG's system of work. Judge Delaney ordered GLG and Ready Workforce to pay damages, with the final judgment amounts being \$264,740.69 against GLG and \$72,541.98 against Ready Workforce. He held that the Nominal Defendant was not obliged to indemnify GLG because the injury was not one within the *Motor Accidents Act* for which CIC Insurance would have been liable. GLG successfully appealed to the NSW Court of Appeal which held that the injury was caused by the fault of the owner in the use or operation of the vehicle caused during the driving of the vehicle, thereby meeting the definition of injury under the *Motor Accidents Act*. The finding that the Act was applicable reduced Mr Tleyji's damages by a further \$51,409.77. The Court of Appeal ordered the Nominal Defendant to indemnify GLG for the award of damages payable to Mr Tleyji. The Nominal Defendant appealed to the High Court.

The Court, by a 4-1 majority, allowed the appeal. It upheld Judge Delaney's finding that GLG was at fault, not in relation to the driving of the forklift, but for failing to devise a safe system of unloading containers. It also upheld his finding that the Nominal Defendant was not obliged to indemnify GLG. The Court ordered GLG to repay the \$132,370.34 that it had already received, plus interest, to the Nominal Defendant, with this order suspended for seven days to allow for further written submissions.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*