

EMPLOYMENT

STAIRWAY TO COMPENSATION: MINISTER OF DEFENCE AND MILITARY VETERANS V LIESL-LENORE THOMAS

The Constitutional Court has now had the opportunity to decide on the meaning of the word 'State' for purposes of the Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 (COIDA) in the matter of *Minister of Defence and Military Veterans v Liesl-Lenore Thomas* (168/14) [2015] ZACC 26.

In 2009, Liesl-Lenore Thomas (Respondent) was seconded by her employer, the Western Cape Department of Health to the 2 Military Hospital in Wynberg, Cape Town (Hospital). The Hospital was under the control of the Minister of Defence and Military Veterans (Minister) and as such was vicariously liable for the negligence of its employees. While seconded to the Hospital, the Respondent fell down a stairwell and injured herself as a result of the alleged negligence of the Hospital's employees.

As a result of the Respondent's injuries, she lodged a claim for benefits against the Western Cape provincial government (WCPG) under COIDA; her entitlement to these benefits was not contested. However, she also lodged a separate claim for damages against the Minister due to the Hospital employees' alleged negligence.

The Minister defended the claim and relied upon s35(1) of COIDA which indemnifies an employer against a delictual claim was for damages as a result of an occupational injury suffered by an employee. The issue before the Constitutional Court was the following: Who was the employer at the time the Respondent suffered her injuries? This issue brought into question whether the State is a single entity merely operating at three different levels or three individual components, namely national, provincial and local.

The Minister contended that regardless of whether the Respondent was employed by the Minister or the WCPG, she was employed by the State which constituted a single entity.

The Respondent relied on s40(1) of the Constitution which states that "government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated".

After considering the above and the definition of the word 'State' in various other statutes, the Constitutional Court held that there is no legislative or constitutional framework that suggests that the State must be considered as a single employer of all employees working in the different spheres of government. When weighing up the potential risks associated with the interpretation that all spheres of government constitute a single employer, the Constitutional Court said that the Respondent's common law right to bodily integrity and security of person would be unduly restricted.

The Constitutional Court held that the Respondent's employer was the WCPG and not the Minister. As a result, the Minister could not rely on s35(1) of COIDA to limit its vicarious liability for the injuries caused to the Respondent by the negligence of its employees. The Respondent's common law claim for damages was thus preserved and she was entitled to her claim against the Minister as a third-party.

The importance of this case is that, for purposes of COIDA, the State is not considered to be a single entity inclusive of all of its spheres. Furthermore, where the identity of the employer is unclear due to an interpretational uncertainty, the Constitutional Court has favoured the interpretation with the least restrictive effect on the employee.

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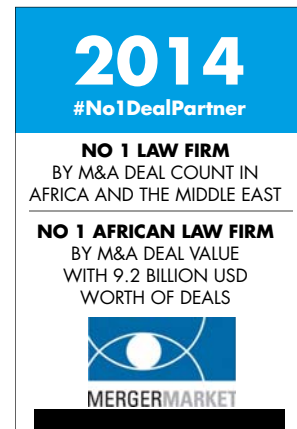


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