

With Christmas just around the corner, we thought we'd take a lighter look at "elf and safety" with our report on liability insurance exposures for Santa Claus. Merry Christmas and safe holidays from the team at VL!

We also include an article we prepared earlier this month about catastrophic events – those incidents that are very unlikely to occur but may kill or injure many people when they do. In addition, we cover a prosecution involving a falling tree which injured four children and suggest some steps businesses could take if they have trees in high occupancy areas. Lastly, we have a brief report on a recent Resource Management Act prosecution that resulted in a record fine.

– Jane Birdsall, Executive Manager, Health & Safety and Statutory Risk Claims & Consulting

Liability insurance cover for Santa Claus reportedly "a high risk"

Vero Liability will neither confirm nor deny rumours that the well-known toy supplier and delivery entrepreneur, Mr Santa Claus, is seeking liability insurance cover from the company.

Industry sources have described Mr Claus' exposures as "almost incredible".

Numerous elf and safety concerns including unrelenting production pressures, freezing temperatures and work conditions described as "inhuman" were raised by the workforce in toy factories run by Mr Claus earlier this year. Finnish authorities are reportedly investigating but have faced difficulties locating the facilities.

The delivery arm of the business is also described as a "high risk" to an insurer. "Landing on 1.5 billion roofs with eight reindeer and a fully laden sleigh will almost certainly result in damage to some houses – and multiple public liability claims," the industry insider said. "Any insurer will need to consider the vexed question of whether this damage was unintended and unforeseeable given the long history of Mr Claus' activities". And as the work occurs at height and within prescribed minimum approach distances to electricity lines, there are ongoing safety concerns for Mr Claus and his staff.

There have also been allegations of employment and human rights issues within the workforce. Bullying and discrimination due to physical differences is said to be rife amongst the sleigh team, according to Mr R. R. N. Reindeer, a long-time employee.

Mr Claus himself is repeatedly exposed to the carcinogens in soot and faces the risk of criminal charges due to his practice of entering homes without seeking the express consent of homeowners.

In addition, there is a potential for claims under the Fair Trading and Consumer Guarantees Acts if the business' toys

do not meet mandatory safety standards or make false representations to the end users.

Rounding out these risks, the SPCA is said to be investigating possible animal cruelty given that approximately two billion packages must be delivered by the reindeer team in the space of 24 hours. "It's hard to see how this can be done without treating these lovely animals unkindly", says an animal rights activist. A legal expert in the field commented that although the practice has been ongoing for almost 1,700 years, this is no defence. "While traditions may be relevant in mitigation at sentencing, the offending will be established on the law as it stands in 2019."

VL's Managing Director, Adrian Tulloch, says that as New Zealand's leading liability insurer, VL will consider all proposals for insurance on their merits. "We have a full range of [liability insurance products](#), and we are confident that we can offer a tailored package if, or when, we are approached by Mr Claus' broker."



Record fine for breaches of the Resource Management Act 1991

A Waikato dairy processing company had a [record fine](#) of \$221,250 imposed under the RMA after it discharged objectionable odour and unlawfully discharged waste water. It was the fifth prosecution for the company or its predecessor.

Massive reparation orders arise from catastrophic events

Two businesses have paid a combined total of over \$1.6 million in reparations in recent sentencing decisions. The size of these orders show why it is important to consider the potential for catastrophic events when deciding on appropriate limits of indemnity for liability insurance cover.

“Catastrophic events” are those with the potential to kill or seriously injure many people in one incident. Thankfully, they occur very rarely.

The first case arose after seven people died in a [helicopter crash](#) on Fox Glacier in November 2015. The owner of the aviation business involved agreed to pay [\\$875,000 in reparations](#) and pleaded guilty to charges that were non-causative of the accident. He was also fined \$64,000 under the old Health and Safety in Employment Act 1992.

More recently, a bus company was ordered to pay \$750,000 to the victims of a [bus crash](#) that occurred on Christmas Eve 2016. Those on board were members and supporters of a Tongan brass band. A teacher and an 11-year old boy died at the scene. Another person died later in hospital. Many of the other 49 passengers on board suffered serious injuries.

A fine of \$210,000 was imposed on the bus company for non-causative failures including not servicing or doing any other mechanical inspection before the bus left the depot. In addition, the company failed to provide the driver with guidance on what to do if a fault developed.

The highest reparations ordered to date arose out of the Pike River Mine tragedy. Following the conviction of Pike River Coal Ltd in July 2013, the company was ordered to pay \$110,000 to each of the families of the 29 men who

died as well as to the two survivors. The total reparations came to \$3.41 million.

The industries most at risk of catastrophic events

WorkSafe’s research predicts that by far the most likely catastrophic event will be a structural collapse. Examples may include the unplanned collapse of a building, bridge or [scaffold](#) during construction, use, alteration or demolition.

Four of the five next most likely catastrophic events involve modes of transport – rail, maritime, road and aviation – with structural fires making up the fifth.

Mining, geothermal/petroleum industries and major hazard facilities feature next along with stampedes and other explosions like those caused by combustible dust.

Although not specifically mentioned by WorkSafe, adventure activities that expose multiple participants to a risk of serious injury and death from one event may also need to be considered. The deaths of six students and a teacher in the canyoning tragedy at the [Mangatepopo Gorge](#) in 2008 serves as a tragic reminder of this as does the devastating eruption at White Island last week.

Finally, some health hazards have a potential for catastrophic impacts. One of the best known examples is [Legionnaires disease](#) which is caused by bacteria that flourish in warm moist environments such as cooling towers and hot tubs and, in New Zealand, in potting mix and compost. Numerous people have been infected from one contamination source including at least 58 victims and two deaths amongst visitors exposed to bacteria in a [Melbourne aquarium](#) in 2000.

Sorting out the wood from the trees – managing the risks of injury to people from trees

On a windy afternoon in November 2016, around 13 children were outside in a play area at a childcare facility in Auckland. At 1.35pm, following a gust of wind, there was a loud cracking noise and a large tree collapsed onto the ground. As a result, four children under four years and an adult were injured. Two children sustained fractures to their skulls along with other serious injuries. There was also a clear potential for a much worse outcome.

Two companies were convicted of offences under the Health and Safety at Work Act – the company that owned the property and the facility operator. They paid a combined total of \$261,200 in fines and over \$76,000 in reparations.

The [Court](#) heard that the tree that collapsed had been in decline since 2013 and was probably dead by 2015 yet no advice was sought about its ongoing safety by either offender. The childcare facility had a daily OSH checklist but trees were not included on the list.

Where there are trees in a high occupancy area, it is likely to be reasonably practicable to seek advice from a competent arborist and conduct a suitable risk assessment. A tree maintenance schedule can then be developed which is proportionate to the risks involved. More information is available on the [UK National Tree Safety Group](#) website.



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