

# Bright lights, big city emergency

Michael Adie and Viv Braithwaite | November 2017 | Insurance & Financial Services

## Summary

In October 2017, the NSW Court of Appeal upheld a District Court ruling for the defendant in respect of liability arising out of a motor vehicle collision involving an ambulance that had entered an intersection on a red light when responding to an emergency.

In both the primary and appeal decisions, the ambulance driver was held to have acted as a reasonable person would in the circumstances, weighing up competing priorities such as social utility and the risk of harm pursuant to section 5B of the *Civil Liability Act 2002* (NSW).

## Facts

In June 2011, Mrs Logar was injured when her car and an ambulance driven by Ms Riches collided at an intersection in Penrith, NSW.

The collision occurred when Ms Riches entered the intersection against a red traffic light while responding to an emergency. Mrs Logar, who had a green traffic light, failed to stop to allow the ambulance through the intersection.

Mrs Logar contended that although Ms Riches was entitled to proceed through a red light when responding to an emergency and with lights or sirens activated pursuant to the Road Rules 2008 (NSW), Ms Riches also

had a statutory obligation to take reasonable care when doing so. Mrs Logar argued that Ms Riches had failed to take care in having:

- a. travelled through the red light at the intersection at an excessive speed;
- b. failed to stop and observe whether it was safe to enter the lane Mrs Logar was travelling in;
- c. failed to take an alternative, safer route through the intersection which may have improved her line of vision.

## Judgment at first instance

### Negligence

District Court Judge Philip Taylor did not accept Mrs Logar's allegation that the ambulance lights and sirens were not activated, preferring instead the versions of events provided by Ms Riches and 2 independent witnesses who did not see the collision, but who had heard and seen the sirens prior to the collision.

In applying section 5B(1)(c) of the *Civil Liability Act 2002* (NSW), his Honour undertook an assessment of whether a reasonable person in Ms Riches' position would have taken other or additional precautions to those she took. Noting section 5B(2) provides a list of considerations, including the probability and likely seriousness of harm, his Honour found that while the risk of harm was present, Ms Riches took steps to minimise it by slowing down, moving only a minimal distance into Mrs Logar's lane, travelling with lights and sirens activated and attempting to check the lanes as best she could. Further, his Honour found that Ms Riches' delay would burden the injured or ill person to whom the ambulance was travelling to assist and that the social utility of a speedy response by ambulances was readily apparent.

In determining liability, his Honour stated that the real question to be determined was whether Ms Riches should have avoided the risk of harm and remained stationary until it was clear that the vehicles in Mrs Logar's lane had stopped or Ms Riches' light had changed to green.

In taking all of the above into consideration, his Honour concluded that Ms Riches took a reasonable course of action in an emergency situation.

### **Contributory Negligence**

To address the prospect of his decision being overturned on appeal, his Honour assessed Mrs Logar's contributory negligence at 60% for failing to observe the ambulance's lights and siren and the surrounding stationary vehicles.

### **Basis for Appeal**

The appeal was ultimately dismissed, with Schmidt J and Emmett AJA of the Court of Appeal agreeing with the findings of Judge Taylor and Macfarlan JA dissenting.

The Court of Appeal:

- 1 (a) held that Judge Taylor did not err in failing to make a finding as to the actual speed of the ambulance and;  
  
(b) held that Judge Taylor did not err in finding that the ambulance was driven slowly and carefully through the intersection;
2. held that there was no error in Judge Taylor's finding that Ms Riches did not breach her duty of care to Mrs Logar;
3. was not required to determine contributory negligence, however in dissenting to (2), Justice MacFarlan also found contributory negligence of 50% on the part of Mrs Logar.

### **Findings on Appeal**

The decision of the Court of Appeal and the primary decision of Judge Taylor provide some guidance about:

1. determining the scope of the duty of care an emergency services driver owes to other road users when responding to an emergency situation;

2. how a reasonable person in the position of an emergency services driver ought proceed;
3. balancing competing priorities, including risk of harm and social utility pursuant to section 5B of the *Civil Liability Act 2002*; and
4. the scope of the duty of care owed by an ordinary road user to emergency services in an emergency situation.

In this case, the social utility of the ambulance responding to an emergency of some significance outweighed the risk of entering the intersection against a red light and colliding with another vehicle. In this respect, it was identified that the key duty of Ms Riches was not to avoid any risk of collision at any cost, but rather to take reasonable care in the circumstances and the discharge of this duty was to be judged prospectively, not retrospectively.

### **For more information, please contact:**



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