

## **Star Wars - Key issues arising.**

### **Background:**

On the 12th June 2014 during the making of the film Star Wars, Episode VII: The Force Awakens, Harrison Ford was injured as a result of being hit by a hydraulically powered door (entrance to the Millennium Falcon star ship), which was an integral part of a the filming sequence.

During the action sequence, Ford entered the set via the prop door, which had a hydraulically operated closing device. As Ford went through the door he hit a prop door button which was the cue for the SFX team to operate the hydraulic door. Ford did not continue to move into the set as expected and for some reason turned back towards the door. The door struck Ford and caused him serious injury which required hospitalization and surgery. There were no other injured parties.

The HSE investigated and subsequently prosecuted the production company Foodles UK Ltd (SPV which is owned by Lucas Films which in turn is owned by Disney).

Foodles were prosecuted under 4 counts that is breach of:

1. Section 2 of HASAW duty to employees
2. Section 3 of HASAW duty to non-employees
3. Reg 3 (1) of management Regs, suitable and sufficient risk assessment
4. Reg 11 (1) of PUWER Prevention of access to dangerous machinery.

At the Magistrates hearing Foodles pleaded guilty. Prosecution dropped 3 & 4, but subsumed the requirements under 1 and 2, so company only effectively answering two charges. This was purely a technical legal point as Foodles still required to address omissions under 3 and 4 in their defence.

### **In Crown Court – Brief Summary**

#### **Prosecution:**

The prosecution focussed on the failure to ensure the safety of those working in close proximity to the door and to provide suitable protection from the hydraulic door. Their contention was that the prop door was a machine and so the mandatory requirements of the Supply of Machinery (Safety) Regulations should have been met to ensure it was safe before being placed into service. The HSE view was that the door did not meet these requirements because it did not include guards or protective devices to reduce or prevent the risk of contact, impact or crushing to persons from the door leaf.

The HSE stated that the door did not meet EC standards re door and gate safety standards. They also considered that the doors design was dangerous with foreseeable, residual risk of impact and or crushing damage to the persons by the closing door leaf.

They also considered that the risk assessment was not suitable nor sufficient.

Note: The hydraulic door was a substantive solid structure operated at very high speed and high pressure. The HSE in court likened it to a guillotine with similar risks, but emphasised that a guillotine was operated by gravity whilst this had considerable hydraulic force.

### Defence:

Foodles pleaded guilty but in mitigation argued that good safety standards, risk assessment, systems of work were in place but accepted that on the day they were not fully implemented. The Defence sought to convince the court that they had the essential safety management arrangements in place, focussing on risk assessment, competence, responsibilities, equipment, safe systems of work (drawing on and reference to relevant HSE guidance e.g. ETIS 17 for hazardous action sequences), communication (recognising that a main causal factor was breakdown in communication as Harrison Ford had not been properly briefed about the door closing sequence and was not aware that it was going to be operated and his positioning etc). The risk assessment was reasonably comprehensive and covered all the key issues.

However, the judge was very damning in the failure of the production to implement the controls identified in the risk assessment and in particular the “lamentable communication” which meant Harrison Ford was not aware of the door closing sequence or the safety arrangements. He said something like “the risk assessment was ok but what is the point of a risk assessment if you don’t implement it”.

The judge was also scathing about the design of the door. He agreed with the prosecution that the prop door was a “machine” and so should have had the mandatory safety requirements as prescribed under the Supply of Machinery (Safety) Regulations and PUWER and not simply rely on a safe system of work relying solely on exclusion zones and emergency stop buttons.

### Sentencing:

This took quite a long time on court as the sentencing guidelines are still new for the courts. See: <https://www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web.pdf>

*Sentencing Guidelines Summary: The guidelines are designed to ensure fines for these offences are fair and proportionate, reflecting the seriousness of the offence and the means of the offender.*

*The courts take into account several components when imposing a fine including:*

- *the culpability of the offender and whether they deliberately broke the law;*
- *whether a high risk or, high risk of serious injury was created;*
- *company turnover and profit;*
- *the potential impact on employees; and*
- *the potential impact on the organisation’s ability to improve conditions or make restitution to victims.*

Culpability: The prosecution put the case as high culpability category in that, in their view, Foodles fell far short of the appropriate standards by failing to put in place measures that are recognised industry standards. The HSE acknowledged that there are no recognised standards for film sets but they should have complied with other recognised standards. The judge made the point that although it is a film set it is still a place of work and people at work should expect to go home at the end of their working day in one piece.

Harm: The prosecution put this case into harm category 1 on the following basis:

- Seriousness of harm is level “A” in that being struck by the door edge at the incident speed could have caused death.
- The likelihood of harm was high in that the incident occurred after a short space of time after the machine was put into use and had only been operated a limited number of times.

There was considerable discussion between the defence and the judge on the level of culpability and harm rating, with lots of reference to the new sentencing guidelines tables. Despite considerable argument from the defence the judge agreed with the prosecution regarding the level of culpability and harm rating.

In determining the level of fine the judge referred to the sentencing guidelines, which are mandatory and must be followed by the courts. The judge said that the sentence should have the right balance of punishment and deterrence and take into account the economic impact on shareholders and others.

In deciding the level of fine the judge takes into account the turnover of the company. He did deliberate in whether he should take into account the turnover of the linked companies (i.e. parent companies of Lucas Films and then Disney). He did though conclude that he would on this occasion only take into account the turnover of Foodles.

The judge also took into account a number of factors including:

- Foodles made an early plea of guilty
- Foodles have been very cooperative with the HSE and the court
- There were no other aggravating features
- There was no suggestion that Foodles cut corners to save money
- The Foodles safety arrangements and record is good
- They quickly made every endeavour to learn the lessons and have improved their safety management arrangements

(The above factors resulted in a reduction of the fine by over 1/3<sup>rd</sup> )

Taking into account the above, the court awarded a fine of £1.6m, to be paid within 28 days.

#### **Key lessons:**

- Any set, props which are effectively machines must comply with the relevant industry standards and be risk assessed
- Any hazardous action sequences must be fully tested, rehearsed and communicated to all involved.
- Good policy systems and arrangements are factors which will influence level of fine, as will cutting corners to save money.
- The new sentencing guidelines, which are mandatory for courts, have a huge impact on the scale of fines being awarded to big companies.