


4-21-2009

DDASaccident592

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DDAS Accident Report 0592

Accident details

Report date: 26/04/2015	Accident number: 592
Accident time: Not recorded	Accident Date: 21/04/2009
Where it occurred: DA-SS-796, Central Equatoria State	Country: Sudan
Primary cause: Other (?)	Secondary cause: Other (?)
Class: Missed-mine accident	Date of main report: 29/01/2011
ID original source: None	Name of source: UNMAO Sudan, press, legal papers
Organisation: [Name removed]	
Mine/device: AP blast (unrecorded)	Ground condition: not recorded
Date record created:	Date last modified: 13/03/2011
No of victims: 1	No of documents: 1

Map details

Alt. coord. system: Not recorded **Coordinates fixed by:**

Accident Notes

inadequate investigation (?)
no independent investigation available (?)
dog missed mine (?)
mine/device found in "cleared" area (?)
inadequate communications (?)
inadequate medical provision (?)

Accident report

In February 2011 a report of this accident was found in a "summary of BoI recommendations". That is reproduced below with a UN press release about the accident appended. In 2015, a legal claim against the demining group that had conducted clearance in the area was found on line. This includes a summary of events leading up to the accident, so is included below. The claim was settled out of court. See Analysis for a discussion of the legal case.

Text in square brackets [] below is editorial. This record may be revised if more information becomes available.

Accident summary:

On the 21st of April 2009 an UNMAO QA Officer from the Juba Sub-Office whilst conducting distance and bearing checks during a completion QA for the handover of a cleared DA-SS-796 in Central Equatoria State suffered serious injuries after stepping on an AP mine resulting

in the traumatic amputation of his right foot. The injured was transferred to UNMIS medical facilities in Juba where he was stabilized and subsequently transferred abroad for further medical treatment. The BOI determined that MDD assets had cleared the specific area of the accident and there were missed mine which resulted in the serious injury of the UNMAO QA Officer. For additional information regarding this BOI and full report see reference J [reference not made available].

Press report (DPKO) Posted: Tuesday, 3 November 2009, New York:

“Mine Action commended in the Fourth Committee of the General Assembly

...Assistant Secretary-General for Rule of Law and Security Institutions in the DPKO, addressed the Fourth Committee of the General Assembly last week on behalf of the Inter-Agency Coordination Group for Mine Action on the issue of assistance in mine action and introduced the report of the Secretary-General on Assistance in Mine Action.

Mr. [Name removed] praised the outstanding contribution and sacrifice of the men and women dealing with the threat of mines and explosive remnants of war in the field.

He shared the story of [the Victim], an Operations Officer for the United Nations Mine Action Office based in Juba, who suffered a lower limb amputation in the course of his duties this year. Not only has [the Victim] rehabilitated since the accident, but he has resumed his duties in Sudan - a stunning example to us all.”

UN press report (2010)

<http://www.un.org/apps/news/story.asp?NewsID=37584&Cr=mine&Cr1=sudan>

“From a distance, the vehicle seemed like a white speck on the horizon, bouncing along – at great speed – the rough, unfinished roads of South Sudan, still about a half-hour south of the compound belonging to the United Nations Mission in Sudan (UNMIS), in the capital, Juba.

“When it hit bumps in the rough road, the 4WD bounced into the air a little, prompting groans of pain from the big man stretched out across the back seats.

That man, [the Victim], had good reason to be groaning – the UN de-miner had just had his right foot and ankle blown off by a land-mine.

Less than an hour before, while going about his work for the Sudan office of the United Nations Mine Action Service (UNMAS) – the UN operation spearheading the response to the problem of landmines and explosive remnants of war – those limbs had been destroyed by an anti-personnel landmine, missed by a mine-clearance team. But despite the shock of what had just happened, [the Victim]’s focus was firmly set on dealing with the life-and-death situation he now found himself in.

While trying hard to keep his right leg elevated in the back of the vehicle, he checked his cell-phone again and was delighted to see that he finally had a connectivity signal – as sometimes happens due to atmospheric conditions in the area, neither the satellite phone nor the dedicated radio in the car had a signal, preventing calls being made from them.



[the Victim] called colleagues at the UN Mine Action Office, part of UNMAS, located in the UNMIS compound in Juba, and calmly relayed a few key points of information.

First, there had been an accident at the mine-clearance site about 65 kilometres south of Juba. Second, he was in a vehicle that would need to be waved past the security gates at the compound without interference or delay. And lastly, [the Victim] said the Bangladeshi military hospital supporting UNMIS, and also located in the compound, needed to know that a landmine accident involving a traumatic amputation of the lower leg was on its way in.

Legal document

Case 1:11-cv-00762-JEB Document 1 Filed 04/20/11

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[The victim], [Address removed], Australia

and

[The Victim's wife], Address removed],Australia

Plaintiffs,

v.

[Demining group], [Address removed] Washington, D.C.

SERVE: [Name and address removed]

COMPLAINT AND JURY TRIAL DEMAND

COMES NOW Plaintiffs [Names removed], by undersigned counsel, and for their Complaint against Defendant [Demining group], states as follows:

NATURE OF THE ACTION

1. The claims for negligence, professional negligence, negligence per se, loss of consortium and respondeat superior arise from an incident that occurred on April 21, 2009 near Juba in Sudan, Africa. Plaintiff [the Victim], while working for the United Nations Mine Action Office ("UNMAO"), stepped on a land mine and suffered severe and permanent injuries to his right leg, including a below the knee amputation. Defendant, [Demining group], an American corporation, had previously conducted mine clearing operations of the exact same area where the incident occurred and certified that this area was clear of all land mines on April 2, 2008.
2. After the incident, the United Nations convened a Board of Inquiry to investigate. In its report, the Board of Inquiry found that [Demining group] failed to locate the mine that exploded on April 21, 2009 as well as three other mines in the area. The Board of Inquiry also concluded that there was no evidence of any re-mining between April 2, 2008 and April 21, 2009 and that [the Victim] was entirely blameless for the incident. As a result of [Demining group]'s negligence, Plaintiff [the Victim] has suffered severe and irreparable injuries and

Plaintiff [the Victim's wife] has been deprived of the continuance of a healthy and happy marriage to Plaintiff [the Victim].

THE PARTIES

3. [The Victim] is an adult citizen of New Zealand and an adult resident of Australia, residing at Brisbane in Queensland.

4. [The Victim's wife] is an adult citizen of New Zealand and an adult resident of Australia, residing at Brisbane in Queensland.

5. [The Demining Group] is a Delaware corporation with its principal place of business and corporate headquarters in Washington D.C. [Demining group] is an international commercial mine clearing agency. For jurisdictional purposes, [Demining group] is a citizen of Delaware and Washington D.C. pursuant to 28 U.S.C. § 1332(c). [Demining group] also trains its personnel and canine assets through programs provided by The Global Training Academy, located 17 miles southeast of San Antonio, Texas. At all relevant times herein, while performing the services described herein, [Demining group]'s agents and/or employees were acting within the scope of their agency and/or employment with [Demining group], thereby rendering [Demining group] vicariously liable under principles of respondeat superior.

JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a) because the parties are completely diverse and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

7. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(a)(1) because [Demining group]'s principal place of business and corporate headquarters is in Washington D.C.

FACTUAL ALLEGATIONS

[Demining group]'s Work for the United Nations in Sudan

8. On information and belief, [Demining group] was retained by the World Food Programme, a division of the United Nations, to conduct land mine clearance operations in the southern region of Sudan in 2008.

9. [Demining group], acting through its agents and/or employees, conducted sub-surface land mine clearance operations at area DA796 from January 24, 2008 to March 7, 2008. Area DA796 includes a road running between Juba and Nimule in Sudan ("the Juba-Nimule road"). [Demining group] agreed to clear a 26 meter wide corridor across the area of the Juba-Nimule road.

10. On April 2, 2008, [Demining group], acting through its agents and/or employees, submitted a Clearance Completion Report and Completion QA Report to the UNMAO. In this report, [Demining group] certified that that the 26 meter corridor across the Juba-Nimule road (13 meters to the east and west of the center of the road) was clear of any sub-surface land mines.

The April 21, 2009 Explosion

11. On April 21, 2009 at approximately 8:15 a.m. local time, [the Victim] was conducting a Completion Quality Assurance of DA796 in his capacity as a QA Officer of the UNMAO. [The Victim] was accompanied by a UNMAO assistant, [Name removed], as well as [two names removed] from [another commercial demining group].

12. At approximately 9:00 a.m. [the Victim] stepped on a sub-surface R2M2 anti-personnel blast mine located nine meters to the west of the center of the Juba-Nimule road. The land mine exploded, instantly amputating [the Victim]'s right foot and part of his right leg.

13. [Name removed] immediately performed first aid and applied a tourniquet to [the Victim]'s right leg. [The Victim] was transported to a military hospital in Juba, arriving at approximately 10:15 a.m. that day. A posterior flap amputation was performed just below [the Victim]'s right knee.

14. This land mine was located nine meters to the west of the center of the Juba-Nimule road within the 26 meter corridor previously certified as cleared by [Demining group].

The United Nations Board of Inquiry Report

15. From April 30, 2009 through May 4, 2009, the United Nations convened a Board of Inquiry ("BOI") to investigate the April 21, 2009 incident. [Name removed], a representative of [Demining group], served as a member of the BOI and participated in the investigation.

16. The BOI reviewed [Demining group]'s Implementation Plan and Clearance Completion Report as well as medical records from [the Victim]'s treatment. The BOI also interviewed [the Victim] and the other three individuals present at the incident as well as other employees of the UNMAO and [Demining group].

17. The BOI found that [Demining group] failed to locate or remove four mines in the area where the incident occurred. The BOI stated that these four mines should have been detected and cleared, which [Demining group] claimed it had done in its 2008 Clearance Completion Report.

18. The BOI concluded that [the Victim] was entirely blameless for the incident. The BOI also concluded that there was no evidence of any re-mining at DA796 between March 7, 2008 and April 21, 2009.

19. The BOI submitted a report to the United Nations Office for Project Services ("UNOPS") on September 29, 2009 summarizing its investigation and recommendations. These findings and recommendations were accepted by the Secretary-General of the UNOPS on December 12, 2009.

COUNT I — NEGLIGENCE

20. Plaintiffs restate and reallege paragraphs 1-19 above.

21. [Demining group], acting through its agents and/or employees, owed a duty of care to [the Victim] to have cleared the 26 meter corridor of the Juba-Nimule road in DA796 of all sub-surface land mines.

22. [Demining group], acting through its agents and/or employees, breached its duty of care to [the Victim] and was guilty of one or more of the following careless and negligent acts and/or omissions:

- a) Failure to remove all of the land mines in the 26 meter corridor along the Juba-Nimule road;
- b) Failure to warn [the Victim] that it had not removed all of the land mines in the 26 meter corridor along the Juba-Nimule road; and
- c) Failure to advise [the Victim] that statements contained in its Clearance Completion Report regarding the removal of all of the land mines in the 26 meter corridor along the Juba-Nimule road were false.

23. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] suffered severe and permanent injuries and damages of a personal and pecuniary nature.

24. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] has suffered and will in the future continue to suffer severe physical pain and disfigurement, as well as emotional pain and suffering.

25. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] has incurred and will in the future incur, substantial medical and other expenses, as well as a past and future loss of earnings and earnings capacity.

26. [Demining group] is vicariously liable for the aforesaid acts and/or omissions of its agents and/or employees, as such acts and/or omissions were committed within the scope of their agency and/or employment, thereby rendering [Demining group] liable under principles of respondeat superior.

WHEREFORE, Plaintiff [the Victim] prays that the Court enter judgment in his favor and against Defendant [Demining group] and award [the Victim] money damages of \$10,000,000.00, exclusive of interest and costs, and grant such other and further relief which the Court deems just and reasonable.

COUNT II — PROFESSIONAL NEGLIGENCE

27. Plaintiffs restate and reallege paragraphs 1-26 above.

28. [Demining group], acting through its agents and/or employees, owed a duty of reasonable care to [the Victim] commensurate with its specialized training and experience to have cleared the 26 meter corridor of the Juba-Nimule road in DA796 of all sub-surface land mines.

29. At all relevant times, [Demining group] held itself out to the public as an expert in mine clearance.

30. At all relevant times herein, [Demining group] held certifications from the International Society of Explosive Engineers, International Mine Action Standards, the American Society for Quality and the International Organization for Standardization.

31. [Demining group], acting through its agents and/or employees, breached its professional duty of care to [the Victim] and did not exercise the reasonable care and skill expected of professional mine clearance companies. [Demining group] was guilty of one or more of the following careless and negligent acts and/or omissions:

- a) Failure to remove all of the land mines in the 26 meter corridor along the Juba-Nimule road;
- b) Failure to warn [the Victim] that it had not removed all of the land mines in the 26 meter corridor along the Juba-Nimule road; and
- c) Failure to advise [the Victim] that statements contained in its Clearance Completion Report regarding the removal of all of the land mines in the 26 meter corridor along the Juba-Nimule road were false.

32. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] suffered severe and permanent injuries and damages of a personal and pecuniary nature.

33. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] has suffered and will in the future continue to suffer severe physical pain and disfigurement, as well as emotional pain and suffering.

34. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] has incurred and will in the future incur, substantial medical and other expenses, as well as a past and future loss of earnings and earnings capacity.

35. [Demining group] is vicariously liable for the aforesaid acts and/or omissions of its agents and/or employees, as such acts and/or omissions were committed within the scope of their agency and/or employment, thereby rendering [Demining group] liable under principles of respondeat superior.

WHEREFORE, Plaintiff [the Victim] prays that the Court enter judgment in his favor and against Defendant [Demining group] and award [the Victim] money damages of \$10,000,000.00, exclusive of interest and costs, and grant such other and further relief which the Court deems just and reasonable.

COUNT III — NEGLIGENCE PER SE

36. Plaintiffs restate and reallege paragraphs 1-35 above.

37. At all relevant times, [Demining group], acting through its agents and/or employees, had a duty to follow the applicable National Technical Standards and Guidelines, as well as any other applicable standards and guidelines, when clearing the 26 meter corridor of the Juba-Nimule road in DA796 of all sub-surface land mines.

38. The National Technical Standards and Guidelines were designed to ensure that sub-surface land mines were appropriately cleared and that all those who walked, drove or otherwise passed through clearance areas were protected from the danger posed by land mines.

39. [Demining group], acting through its agents and/or employees, certified that the 26 meter corridor of the Juba-Nimule road in DA796 was cleared of all sub-surface land mines.

40. [the Victim] passed through the 26 meter corridor of the Juba-Nimule road in DA796 while conducting his official duties.

41. [the Victim] was a member of the class of people the National Technical Standards and Guidelines were created and intended to protect.

42. Upon information and belief, [Demining group], acting through its agents and/or employees, breached its duty by failing to follow those standards, without explanation, leaving numerous land mines undetected in the 26 meter corridor of the Juba-Nimule road in DA796.

43. As a direct and proximate result of [Demining group]'s failure to follow the standards, [the Victim] suffered severe and permanent injuries and damages of a personal and pecuniary nature.

44. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] has suffered and will in the future continue to suffer severe physical pain and disfigurement, as well as emotional pain and suffering.

45. As a direct and proximate result of one or more of these acts and/or omissions, [the Victim] has incurred and will in the future incur, substantial medical and other expenses, as well as a past and future loss of earnings and earnings capacity.

46. [Demining group] is vicariously liable for the aforesaid acts and/or omissions of its agents and/or employees, as such acts and/or omissions were committed within the scope of their agency and/or employment, thereby rendering [Demining group] liable under principles of respondeat superior.

WHEREFORE, Plaintiff [the Victim] prays that the Court enter judgment in his favor and against Defendant [Demining group] and award [the Victim] money damages of \$10,000,000.00, exclusive of interest and costs, and grant such other and further relief which the Court deems just and reasonable.

COUNT IV — LOSS OF CONSORTIUM

47. Plaintiffs restate and reallege paragraphs 1-46 above.

48. Plaintiff [the Victim's wife] is, and at all relevant times has been, the legal spouse of Plaintiff [the Victim]. [the Victim's wife] and [the Victim] were married as of the time of the incident, and are currently married today.

49. As a result of the incident that occurred on April 21, 2009, [the Victim] sustained personal injuries.

50. These personal injuries have had an adverse effect on [the Victim's wife]'s rights to consortium because [the Victim's wife] has been deprived of the continuance of a healthy and happy marriage to [the Victim] and has suffered injury to their conjugal relationship, including, but not limited to love, affection and companionship.

WHEREFORE, Plaintiff [the Victim's wife] prays that the Court enter judgment in her favor and against Defendant [Demining group] and award [the Victim's wife] money damages in the amount of \$5,000,000.00, exclusive of interest and costs, and grant such other and further relief which the Court deems just and reasonable.

JURY TRIAL REQUESTED

Plaintiffs, by counsel, respectfully request a trial by jury on all issues.

Dated: April 20, 2011

Of Counsel for Plaintiffs:

[Names and address removed]

Chicago, IL 60601

Victim Report

Victim number: 776	Name: [Name removed]
Age:	Gender: Male
Status: supervisory	Fit for work: yes
Compensation: More than 10 million US\$	Time to hospital: Not recorded
Protection issued: Not recorded	Protection used: Not recorded

Summary of injuries:

AMPUTATION/LOSS: Leg Below knee

COMMENT: No medical report made available. Victim took charge of his own evacuation. DPKO press release reported that the Victim has returned to work in 2010.

Analysis

The primary and secondary cause of this accident are listed as a “Management control inadequacy” because the Victim was conducting QC far too late and without the reliable means of communication and the medical support that should always be present. The Victim had to arrange his own casevac in an inappropriate vehicle with no means of communicating with his base, both of which are serious UNMAO Management failings.

The commercial company that had previously cleared the area was based in the USA and so subject to US jurisdiction in any claim made against it by the Victim. Claims totalling 15 million \$US for damages were made on behalf of the victim and his wife. These claims were settled without a court hearing and it is anecdotally reported that the claims were met in full.

The commercial company that settled the claims may have done so solely in order to avoid bad publicity and to avoid being prevented from bidding for further UN contracts. Certainly, there were arguments that could have been made in its defence.

First, the area was searched more than a year before the accident occurred under a contract that had included the work being subject to UNMAO QA and QC. No adequate QA was conducted and the QC was delayed by more than a year, so UNMAO was in breach of its requirement to provide oversight – in the contract and in the International Mine Action Standards (which the UN nominally controls).

The time delay means that there can be no guarantee that the mine was not placed after the clearance – an excuse frequently used when mines are found in “cleared” areas. It could have reasonably been argued that it was not possible for anyone to state with full confidence that the mines had not been placed recently. The opinion of the investigators (a competing commercial company employed by the Victim’s employers) that the mines had been in the ground longer than a year was not necessarily objective and disinterested.

When the accident occurred, the Victim was accompanied by members of a second commercial demining company – one that was in competition with the first company. The second commercial company, based in Zimbabwe, had been contracted to work on another Task in the accident area. The mine in the accident is identified in the UNMAO Bol report and legal claim as being an R2M2 anti-personnel mine. Several other R2M2s were later found nearby during a search conducted for UNMAO by the second demining company. The R2M2 is a minimum metal mine that is notoriously difficult to detect with metal detectors. It has an RDX fill rather than a TNT fill, so dogs trained to find TNT may be expected to have missed it. The R2M2 was made in South Africa and used widely throughout Southern African countries, but is NOT recorded as having been used as far North as Sudan.

The R2M2 has a small explosive charge and in other accidents has never caused a traumatic amputation (it has shattered foot bones in a manner that requires later surgical amputation, but is not recorded as having caused the immediate traumatic amputation that occurs with larger AP blast mines).

The R2M2 has not featured in any other recorded accidents in Sudan and is not listed as having been found there. Coincidentally, it is the most common mine in Zimbabwe where the second commercial company has its base. It could have been argued that the competing company may have sought to discredit the first company by placing the mines it later found (or even the mine involved in the accident). While impossible to prove, the possibility should not be simply dismissed (the discrediting of competition by placing mines has been reported before). The competing commercial company was then used by UNMAO to search the accident area and found three more R2M2 mines. What happened to those mines? Is there any photographic evidence showing what batch numbers were on them? The R2M2 has not

been sold since the mid-90s so it might be possible to trace them to batches known to have been used elsewhere.

If working to IMAS (as it surely should) UNMAO will have been responsible for accrediting the demining company that was accused of missing the mine. This will have included accrediting their dog capacity. If the dogs had not been trained to find R2M2 mines with their RDX fills, and the company was later contracted to work in an area where those mines were present without the company being told, the accreditation and contracting processes were inadequate, and the commercial company was not the only party at fault when mines were missed. Indeed, it could be argued that there was no fault at all on the part of the commercial company if they were not told of a need to find RDX.

Many of the questions above might have been avoided if the accident investigation had been conducted by a genuinely independent entity, one that had no interest (commercial or otherwise) in pleasing the Victim's employer as a client. There is reason to have little confidence in the objectivity of an accident investigation paid for by the organisation employing the Victim, especially when there is a convenient third party to shift all blame onto. What is surprising is that the commercial demining group held responsible did not choose to defend itself and spread responsibility to include the Victim's employer.

The compensation deemed appropriate reinforces the commonly held view that compensation levels depend entirely on a person's nationality. In this case it appears that the Victim's wife may have been awarded 500 times what is considered a generous payout for a national's complete disability (complete blindness and or loss of two hands).