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M&M Sport

Occupiers - A Liability

By Jason Walsh

With an increasing number of personal injury claims entering our court rooms, it is appropriate to look at the Court's current stance on Occupier's Liability and how it relates to the area of sport. As an occupier of a sporting venue, those who host, promote, control or organise a sporting activity owe a duty of care to those who participate in activities to ensure the safety of participants. Reasonable steps must be taken by occupiers to avoid the risk of injury to those using their facilities.

Lanyon v Noosa District Rugby League Football Club Inc.

Lanyon, an unpaid accredited Level One football coach, fell whilst coaching a Rugby League football team, rupturing his left achilles tendon. The Appellant brought an action against the Noosa District Rugby League football Incorporation alleging that the organisation had been negligent as a depression in the playing surface of the field had caused the appellant to fall and injure himself.

On appeal, the court held that the club was under an obligation to the Appellant to take reasonable care to ensure that the ground was safe for use. In reaching the decision that the Respondent had not breached its duty of care, the Queensland Court of Appeal determined it would be quite unreasonable to expect the Respondent to have a football ground free from all unevenness, with the depression that caused the Appellant's mishap being nothing more than might ordinarily be expected on a football ground of the kind occupied by the Respondent.

Furthermore, the Court of Appeal held that the Respondent was entitled to rely on the requirement of inspecting the ground by the coaches, who also have a duty to ensure the surface area is safe before allowing the players to take the field.

Canterbury Municipal Council v Taylor and Ors

The Appellant (the Council), owned and operated a velodrome, the inner field being used to play touch football. Taylor was training on the velodrome when a touch football player stepped back onto the track causing Taylor to collide with the player. The touch football player was killed by the collision, whilst the Respondent was left with both physical and psychological injuries and was successful in his action of negligence against the Council.

The New South Wales Court of Appeal held that the Appellant operated the velodrome as a sporting business, encouraging the public to use the facility, and should have known that if it failed to exercise control over the use of the velodrome, there would be risk of harm to the users of the premises.

As occupier of the velodrome, the Council had an obligation to avoid the risk of injury to patrons and, by failing to implement a number of simple and inexpensive measures to ensure the two activities were not carried out simultaneously, breached its duty of care to the users of the velodrome.

Woods v Multi-Sport Holdings Pty Ltd

Woods, having sustained an eye injury whilst playing indoor cricket, appealed to the High Court of Australia after his claim in negligence was dismissed by the Western Australian Full Court. The High Court determined the Respondent owed the Appellant a duty of care as occupier of the indoor cricket centre and had an obligation to take reasonable steps to avoid the risk of injury to players arising out of the dangers of indoor cricket.

The particulars of negligence relied upon by the Appellant claimed that Multi-sport Holdings Pty Ltd had failed to:

1. install warning signs to warn the plaintiff of the dangers of the game; and
2. provide the Appellant with proper eye protection whilst playing the game.

Where a risk is obvious to a person, the court held the notion that an occupier must warn about such risks is neither reasonable nor just. Given that it was so obvious that a player may be struck in the face by a cricket ball whilst playing indoor cricket alleviated the need on the Respondent to warn of such risks.

It was not reasonable to expect the respondent to provide players with protective headgear in this instance as none had been designed for the game, nor was it the norm for players to wear such protection. The Respondent, by failing to provide such protection in the circumstances, had not breached its duty of care as occupier of the premises.

The courts have indicated that Occupiers who host, organise or control sporting activities owe a duty of care to those persons who elect to participate in those events. Occupiers have an obligation to ensure the safety of those using their facilities and must take reasonable steps to avoid the risk of injury to its users. These cases illustrate what is reasonable in the circumstances to avoid the risk of injury, and serve as a reminder to all occupiers that they must stay up to date with the current status of the law.

SPORTS SHORTS

Coaches Be Aware!

By Kate Williams

In the wake of the public liability crisis, coaches are now warned that a failure to prevent dangerous situations occurring in training sessions may be negligent following the decision of *Foscolos v Footscray Youth Club Division*. In that case, the Plaintiff, a 23 year old wrestler, was rendered a quadriplegic after an opponent executed a well known dangerous manoeuvre. The Court held the wrestler's coach liable in negligence for failing to adequately supervise the wrestling contest. The coach was in effective control of the bout and owed a duty of care to the wrestler to take action if he detected any danger. The Supreme Court of Victoria awarded the wrestler more than $5.5 million dollars.

Major Sports Facilities Authority Appointment

By Melissa Wingfield

Kevin Yearbury, Director General, Department of Innovation and Information Economy, Sport and Recreation Queensland has been appointed as the new CEO of the Major Sports Facilities Authority (MSFA). He will be responsible for establishing business systems, administrative offices and organisational structure for the MSFA and getting the organisation 'up and operating'.

The MSFA was established in December 2001 for the purpose of managing the Gabba, the redeveloped Suncorp Metway Stadium, as well as ANZ Stadium, the Sleeman Sports Centre and the Boondall Entertainment Centre when they are transferred from Brisbane City Council on 30 June 2002.

Managing these facilities under a single arrangement bring a number of immediate challenges. These include managing the transfer of the Brisbane City Council venues and the operating staff, preparing the new Suncorp Metway Stadium for the State of Origin Series and for the World Rugby Cup in 2002 and transferring the Queensland Academy of Sport from South Bank to ANZ Stadium.

Liability Extending to our Beaches?

By Kate Williams

Councils responsible for beaches across Australia will be re-evaluating their surf awareness strategies to the public after a New South Wales Supreme Court awarded $3.7 million dollars in damages to a swimmer. The swimmer was rendered a quadriplegic after diving into a sandbar whilst swimming between the flags at Bondi Beach.

The Court heard that Waverley Council did in fact owe a duty of care to specifically warn the swimmer about the existence of a channel and a sandbar. The swimmer had correctly complied with safety warnings to swim between the flags and the Council's failure to warn of the dangers was negligent.

This decision has wide ramifications for both Local Government and Surf Life Saving organisations as public liability insurance premiums soar, leaving many organisations unable to meet the increase.

Are Governing Bodi

By Joe Carey

The recent public liability insurance crisis in Australia has highlighted the importance of knowing the exact boundaries of ones duty of care. This is particularly important to those who organise and administer voluntary sporting organisations who must work to eliminate any reasonably foreseeable risk of damage. However, those who suffer injuries as a result of negligence, should be careful to clarify exactly who breached the duty of care in their particular case. If an incorrect defendant is legally pursued, the injured player may fail in their claim and be obligated to pay the defendant's legal costs. This situation has been examined in two recent Australian decisions. Both cases involved severe spinal cord injuries suffered by rugby union players, who consequently pursued actions against their respective Rugby Boards. However, the courts were reluctant to find that Boards who control the laws of a sport have a duty of care to every individual who plays that sport.

In the decision of *Agar v Hyde; Agar v Worsley*, two rugby union players suffered severe injuries. As a result of these injuries, they attempted to pursue legal action against the individual members of the International Rugby Football Board ('IRFB'). They had previously taken actions against their local rugby union organisations.The IRFB has

The Great Divide

By Michael Simpson

One of the most passionate rivalries in sport, certainly in the southern hemisphere, is the trans-Tasman rivalry between the Australian Wallabies and the New Zealand All Blacks. This rivalry was inflamed recently over disputes concerning the right to host the Rugby World Cup 2003 tournament (RWC 2003).

Previously, the bid for the RWC 2003 was submitted as the 'Adventure Downunder' bid, whereby both Australia and New Zealand would host a series of matches, with the finals to be played in Australia. Subsequently, the New Zealand Rugby Football Union (NZRFU) declined the invitation to be a sub-host, as it would not commit on the same terms as the ARU committed to host the RWC 2003. Following its withdrawal, the NZRFU allegedly made a number of unfounded attacks on the ARU, which the ARU claims have been based on misinformation, conjecture or a limited and distorted understanding of the bid and hosting process.

The ARU issued a statement purporting to give a true account of the events surrounding the bid for the RWC 2003. Prior to the bid, the NZRFU accepted an invitation from the ARU to stage matches in New Zealand. Each country was to host two pools of ten teams each, two-quarter finals and a semi-final. Australia would host the final and New Zealand would host the playoff for third and fourth. The ARU noted that the bid was envisaged as one tournament, not two separate tournaments where obligations and standards differ between the two countries.

Financial arrangements were also agreed prior to the bid. Subsequently, the NZRFU proposed a fundamental alteration to those arrangements, that the ARU would substantially subsidise the New Zealand part of the tournament, turning a projected loss for NZRFU into a surplus. This offer was rejected, and the other counter offers were made. The NZRFU alleged that the ARU sought to strip the NZRFU of the

es Ultimately Liable?

a role in construing how the 'Laws of the Game of Rugby Football' are to be applied internationally. As a result, the injured players argued the IRFB's rules in relation to scrums, jeopardised the safety of players due to the inherent risk of neck injuries in scrum formations. Consequently, the IRFB had a duty to rugby players to ensure that these unsafe rules were altered or removed so as not to expose players to injury.

However, the High Court did not agree with the injured players. The Court noted that rugby was a dangerous game by nature, and one which the injured players took part in of their own free will. While the rules of rugby did provide for actions such as rucking, mauling and scrummaging which could lead to injury, the IRFB was not in a position to control how these rules were applied in a particular game of rugby. The reasoning behind this was that, while the IRFB 'influenced' the manner in which rugby was played, the actual control of a particular match was managed by the rules of local rugby associations and referees. Consequently, the Court determined:

'There were too many intervening levels of decision-making between the promulgation by the IRFB of laws of the game and the conduct of the individual matches in which the respondents were injured'.

Therefore, although the IRFB was in a position to determine and alter the rules of rugby, this position did not lend itself to a duty of care to each and every rugby player.

The issue of whether New South Wales Rugby Union ('NSWRU') was also exonerated from this duty was recently tested in the New South Wales Supreme Court. In the case of *Peter Joseph Haylen v New South Wales Rugby Union Ltd*, a player was rendered quadriplegic and sued the NSWRU. The injured player argued that as the NSWRU controlled the game of rugby in the State of New South Wales, there was a duty to ensure that players of the game were not subjected to unnecessary risk of injury. However, the Court determined the NSWRU did not have a legal obligation to ensure the player's safety as he took part in the game of his own free will, and was aware of rugby's 'dangerous' nature. Additionally, the NSWRU, like the IRFB in Agar, did not have actual control of the particular match during which the player suffered his injuries. As a result, the Court decided the NSWRU did not owe an individual duty of care to all 30,000 rugby union players in New South Wales by virtue of their position as 'controllers' of the game.

These cases indicate that Courts will be reluctant to find regulatory Boards such as the IRFB negligent for sporting injuries. Consequently, players who suffer injuries as a result of negligent actions, should be careful to identify the correct defendant to pursue for compensation. Otherwise, players may find themselves liable for the costs of the parties against which their action has failed. These decisions have also increased the level of responsibility placed upon local sporting bodies to ensure the risk of foreseeable injury is minimised. Although players voluntarily commit to playing a particular sport, organising bodies should be wary of possible negligence claims, and take all steps to avoid the risk of unnecessary harm to players.

tournament. The ARU stated that that allegation was without any foundation. The ARU stated that the NZRFU repeatedly tried to change terms of a Host Union Agreement (HUA) executed by the ARU and NZRFU and organisers RWCL (Rugby World Cup Limited), by demanding that the NZRFU be free to stage the national provincial competition during the tournament. A Sub-Host Union Agreement was entered into between the ARU and NZRFU, but this was declined by RWCL as a result of conditions imposed by the NZRFU. A new SHUA was submitted. However, the NZRFU declined to sign it on an unconditional basis. The result was that the ARU accepted an invitation and made a presentation for the ARU to stage the whole tournament in Australia on terms and conditions which complied with the HUA.

Comments were made by the New Zealand Sports Minister that Australia was unable to provide clean venues, but this was immediately refuted by the ARU, which provided adequate evidence to the RWCL that clean venues would be utilised. The ARU concluded by saying that it was never its aim to host the tournament on its own. The ARU confirmed that it had a contractual commitment to RWCL to stage the tournament, whether it is as joint or sole host. When the NZRFU indicated it could not comply with RWCL's terms and conditions, the ARU was presented with an opportunity to become the sole host of the tournament, which they pursued and succeeded. With Australia likely to meet New Zealand in the semi-finals of the tournament, provided that each team reaches that round, the stage is set for a passionate and physical encounter to decide who reaches the finals of the World Cup.

We thank the ARU for allowing us to use extracts of their press release for the writing of this article.

Broadcasting & Sport - a Delicate Balancing Act

By Michael Highfield

The profile of sport has undoubtedly been boosted by the advent of television broadcasting and sponsorship. As a direct consequence, the wealth and resources of sporting organisations and players has greatly increased.

However, recent signs are emerging where broadcasting is doing more harm to sport, players and fans, than good. Recently, ITV Digital, which had the rights to broadcast the three English soccer divisions below the Premier League, collapsed while still owing clubs A$78.3 million. Many clubs had entered into financial deals with players and suppliers based on future cash flow from the TV deal.

Several clubs have already gone into administration and others are being forced to carefully scrutinise their budgets. Soccer officials have warned about 30 clubs in England, which has 92 clubs, could go out of business due to the collapse.

As a result of the collapse, England's Football League has commenced legal action against television broadcasters, Carlton and Granada, for the broadcasters failed pay-TV venture ITV. The League said it had taken back all media rights under the contract and would seek over A$220 million in damages once ITV goes into liquidation.

Granada and Carlton said they are not liable for any payments due to the League from ITV, because the contract between the League and ITV had no shareholder guarantee.

Hot on the heals of the ITV's collapse, the British government announced its intention to introduce new media ownership laws. The new laws propose no limit to foreign control and the lifting of the ban on major newspaper groups, such as News Limited, owning commercial TV stations. The proposal will also allow for single ownership of ITV, paving the way for Granada and Carlton to merge.

One of many players caught up in the collapse of ITV is Australian Socceroo captain, Paul Okon. Okon was released from his contract at English first division soccer club Watford following the collapse of ITV. The collapse has left Watford millions of dollars out of pocket and the club is delaying signing new players until its financial predicament becomes clear.

ITV had also bought the broadcasting rights to the FIFA World Cup soccer and has dropped the price of its broadcasts to A$7 million in a bid to sell the Soccer World Cup package in time for the commencement of the competition.

German company, KirchMedia, who hold the distribution rights to the FIFA World Cup have filed for insolvency. The German Government is expected to provide financial support to German soccer clubs facing a financial shortfall as a result of the company's insolvency.

Pregnancy - Your Risk Management Program

By Alexandria Meyers

The National Sport and Pregnancy Forum was held in Sydney on 1 August 2001 attended by representatives from national and state sporting organisations, government departments, academies of sport, women's organisations, equal opportunity and anti-discrimination agencies, medical practitioners, sports lawyers and media.

Issues raised at the Forum were from medical, social and legal view points. From a legal view point, the outcomes from the Forum centred around the development of clear steps to be taken by sports organisations to counteract any claim in respect of discrimination, negligence or liability made by a pregnant competitor affiliated to the organisation.

To fulfil their duty of care, it was suggested sports organisations may implement the following;

1 Registration forms or some other such documentation highlighting the potential risks involved in participating in the particular sport of the organisation;

2 Incorporate a release and indemnity from the pregnant competitor on her registration form extending to include any claim for injury which may subsequently be made by the child when born;

3 Display a clear statement in relation to the risks and safety concerns when competing in a prominent place where pregnant competitors are likely to observe it; and

4 Ensure the organisation holds an adequate insurance policy to meet any legal claim which may be brought against them by either the pregnant competitor or the child when born.

A sports organisation should be careful not to implement regulations imposing a 'cut off point' for pregnant competitors to cease competing. The organisation cannot legally assume a responsibility. The law is removed from a pregnant competitor's ability to make appropriate decisions concerning the welfare of herself and her unborn child. Similarly, the sports organisation should not assume the role of medical practitioner by advising pregnant competitors of health risks when competing during pregnancy. A sports organisation may become liable if the advice is inaccurate.

A sports organisation may request all competitors to provide personal information concerning their health, including pregnancy, that may be of any significance to a treating medical practitioner should an incident occur while the pregnant competitor is competing. Nonetheless, in accordance with the Federal Privacy Act 1988, participants are not obliged to provide such personal information.

A player in the South Australian League is presently seeking compensation from Netball Australia for unspecified damages in the Federal Magistrate's Court after being banned from playing in the Commonwealth Bank Trophy last season. If a sports organisation incorporates the above suggested four provisions into their administrative framework, referred to by attendees at the Forum as an 'overall risk management programme', the organisation's risk of exposure to claims such as this may be reduced.

Sports organisations should obtain legal advice regarding the drafting of documents forming part of the organisation's risk management programme.

Editorial

by John Mullins

On the 20 and 21 June 2002, Mullins & Mullins sponsored the second Annual Leaders in Australian Sport Conference held at the Sheraton Hotel. This conference was attended by Sports Administrators from all over Australia.

It struck me during the seminars as to how well served we are in Australia by Sporting Administrators at a government level, by full-time paid employees and by volunteer administrators. It is not surprising that Australia holds the place that it does internationally in so many sports when you see the degree of dedication and commitment of the administrators.

Administrators are often maligned, but from what I could see last week, the calibre of professional sporting administrators and their understanding of their sport and the social landscape is considerable.

The emphasis of the seminar was on maximising participation in sport, and this was looked at in many ways, from risk management and protection of members, to using databases, websites and email, corporate governance to statistical analysis of participants broken down into various stages of life.

Another thing that struck me was that whilst all of the sports are conscious of their need for a flagship commercial product from which to leverage sponsorship and television rights, there is still incredible focus on juniors and grass root participation and having people play sport for enjoyment and exercise.

In this edition, we cannot escape allocating considerable space to the issue of Duty of Care, Liability and Risk Management. The cases we highlight show the difficulty to accurately predict the outcome of proceedings for personal injury, particularly where they involve sport. Whilst the principles of the law are clear, each case turns so finely on the individual facts that in press reports (and even our case notes) it is difficult to give sufficient accurate detail of the facts to illustrate the difference between the cases.

We find room for a couple of other stories about why the Rugby World Cup came to Australia alone, some of the problems experienced overseas with broadcasting rights, and a short piece on the new Major Sports Facilities Authority.

As always, we welcome your feedback and look forward to receiving any comments you have about our M&M Sport.

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