Carter Newell
LAWYERS

Injury Liability Gazette

7th edition

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- 2008 Winner Queensland Law Society Employer of Choice
- 2006 Winner BRW Client Choice Award for Best Law Firm in Australia (open to firms with revenue under $50M per year)
- 2005 Winner ALPMA/Locus Innovation Awards for innovative CN|Direct

Contents

From the Partner

We are delighted to publish the 7th edition of the Injury Liability Gazette. As with the previous editions of the Gazette, which were extremely well received by our firm's insurer, broker, professional and corporate clients, this edition considers recent decisions involving a wide range of topics including sport and recreational activities, workplace law and damages.

Our Property & Injury Liability team have compiled this latest edition of the Gazette to provide practical information on recent cases relevant to insurance professionals. The cases reviewed highlight the broad array of litigation risks now facing insurers and insureds alike.

We look at the decisions, amongst others, of *Coles Supermarket v Bright*, where the plaintiff suffered an injury to her left ankle due to a slip and fall which was recorded on CCTV, and *Jacobe v QSR Pty Ltd t/as Kentucky Fried Chicken Lakemba*, where the plaintiff tripped over a concrete wheel stop in a KFC car park and failed in his claim due to a finding of risk.

Carter Newell's Property & Injury Liability Team, led by Rebecca Stevens, Stephen White and myself are pleased to keep you up to date with these developments. As a premier legal service provider with one of the largest insurance practises in Australia, with teams in both Brisbane and Sydney, we are confident this edition of the Injury Liability Gazette will be a useful resource for our readers.

Glenn Biggs

Partner

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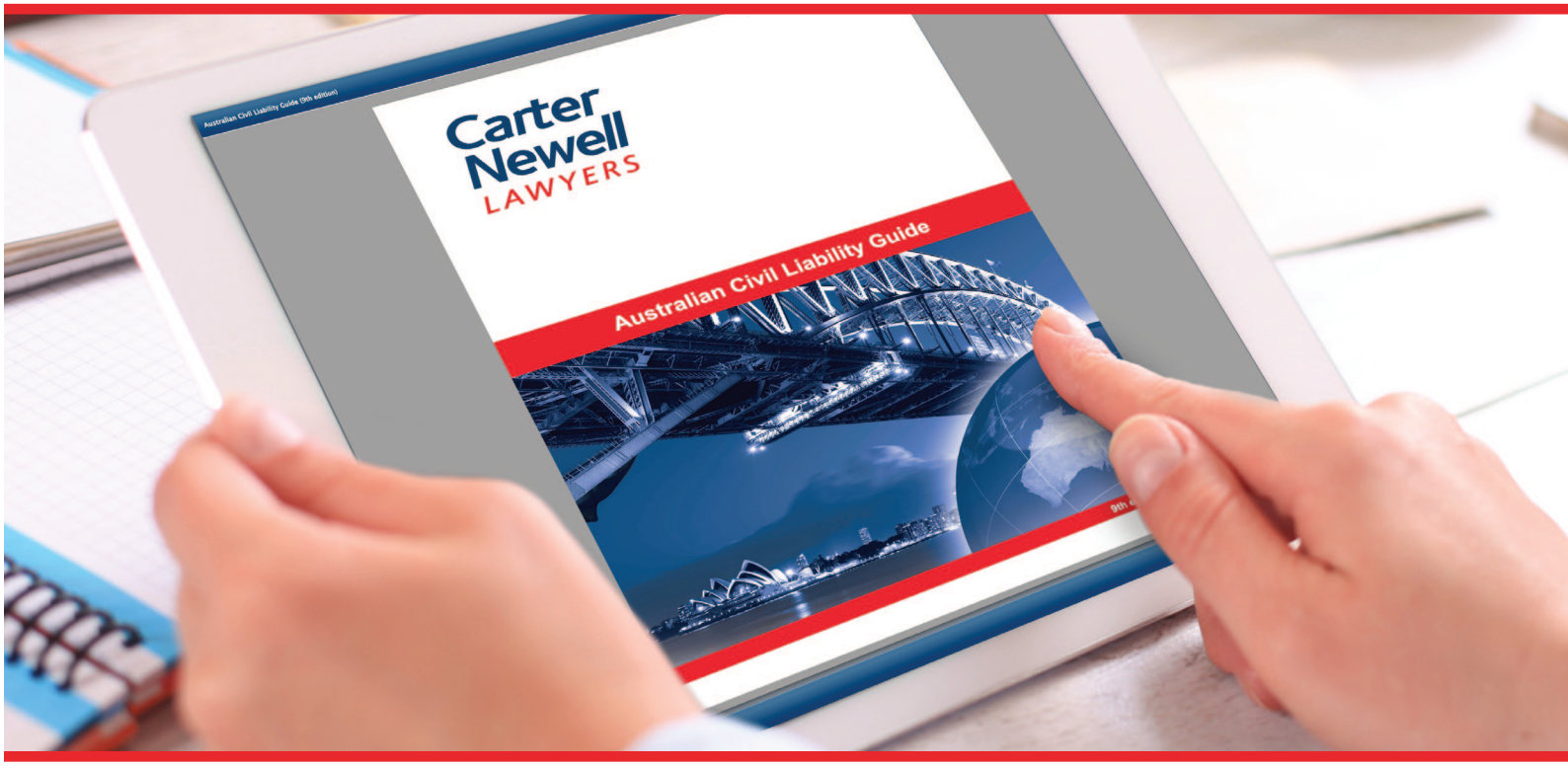

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Case Note

Dailhou v Kelly; State of NSW v Kelly (No 2) [2014] NSWDC 1207

Where a man fell down a flight of stairs in a bookshop but was unable to establish how or why he fell and his credibility was in dispute.

The facts

The plaintiff, Mr Dailhou, commenced proceedings for damages relating to a fall that occurred on 25 June 2007 in Kelly's Bookshop (**bookshop**) in Sydney. Mr Dailhou visited the bookshop during a conference trip paid for by his employer, the New South Wales Department of Education.

The bookshop had a downstairs restricted section. Mr Dailhou's evidence was that he was unaware of the stairs leading down to that area and that he fell down the stairs and landed on the floor of the restricted section, injuring his knee and shoulder. No one witnessed the fall.

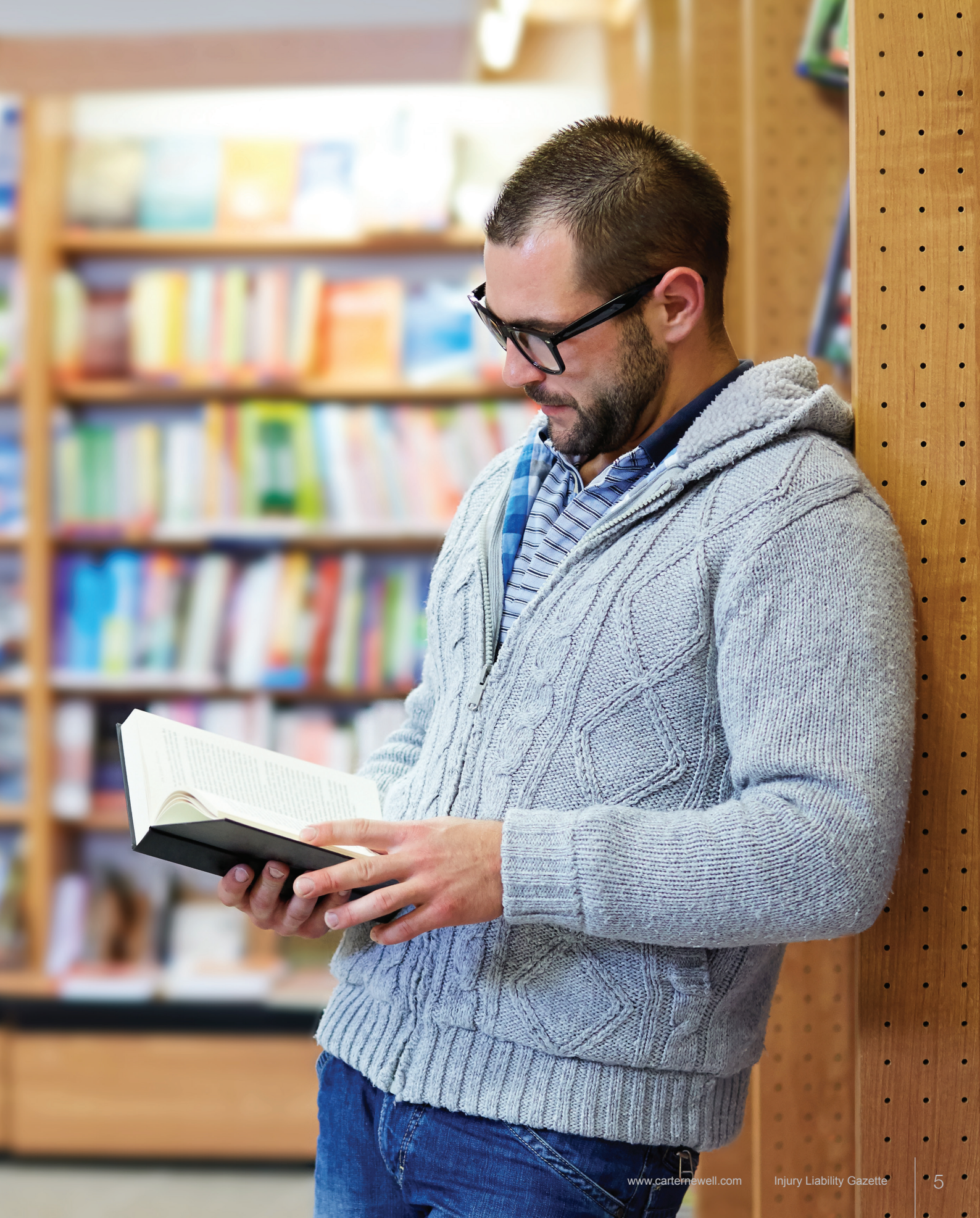
Mr Dailhou was inconsistent in reporting how or why he fell. His first recorded version given to a worker at the bookshop was that he fell *'front way from the top'*. Later, the plaintiff reported at various times that he fell backwards down the stairs and that he may have actually fallen from the lower stairs.

Mr Dailhou claimed that his injuries left him unable to work or travel in the period following the accident and that he could not maintain his pool or garden. However, he admitted in evidence that he had gone on an overseas trip to Japan, London and the United States a few months following the incident.

Mr Dailhou claimed the bookshop was negligent in failing to take reasonable care for his safety. In particular, he submitted the defendants should have roped off the staircase to prevent customers from falling and that, by displaying books and videos in the stair well area, he was lead to believe it was safe to enter.

Damages were claimed in the form of economic loss, non-economic loss including loss of opportunity to become a school principal, loss of income, claims for damages for domestic assistance and out of pocket expenses.

Mr Dailhou already had received workers compensation payments from the State of New South Wales in respect of the injury sustained by the fall. The State of New South Wales also made a claim against the bookshop to recover the compensation paid to Mr Daihou.



Issues

1. Was the bookshop liable for Mr Dailhou's injuries?
2. What damages would be payable if liability was established?
3. Could the State of New South Wales succeed in their recovery claim against the bookshop?

Decision

Liability

Justice Adamson determined that a reasonable person in the bookshop's position was not required to curtail entry to the landing area. The stairwell was an obviously open area and not concealed in any way. The court held that the requirement to take reasonable precautions did not include a requirement to remove the stairwell and the surrounding area of all merchandise. His Honour held that booksellers are not obliged to arrange their shops in case customers were so mesmerised by the merchandise that they would not lift their eyes to observe the obvious layout of the store.

His Honour did not consider Mr Dailhou to be a credible witness and observed statements made which were inconsistent, exaggerated or deliberately false.

The court held that the bookshop was not liable because Mr Dailhou failed to establish why he fell or that there was any relevant act or omission by the bookshop that caused his fall.

Damages

Mr Dailhou sustained an injury to his right shoulder and knee abrasions. Mr Dailhou then suffered a rupture of the left quadriceps muscle when he fell at a McDonald's Restaurant in December 2009. His Honour accepted expert medical evidence that this latter injury was caused by old age rather than any susceptibility from his earlier fall in the bookshop.

The court found that 70% of Mr Dailhou's current shoulder injuries were the result of the fall in 2007. His Honour emphasized the fact that Mr Dailhou was able to travel around the world shortly after the fall and considered that was a powerful indication that its effects were not as bad as Mr Dailhou had reported.

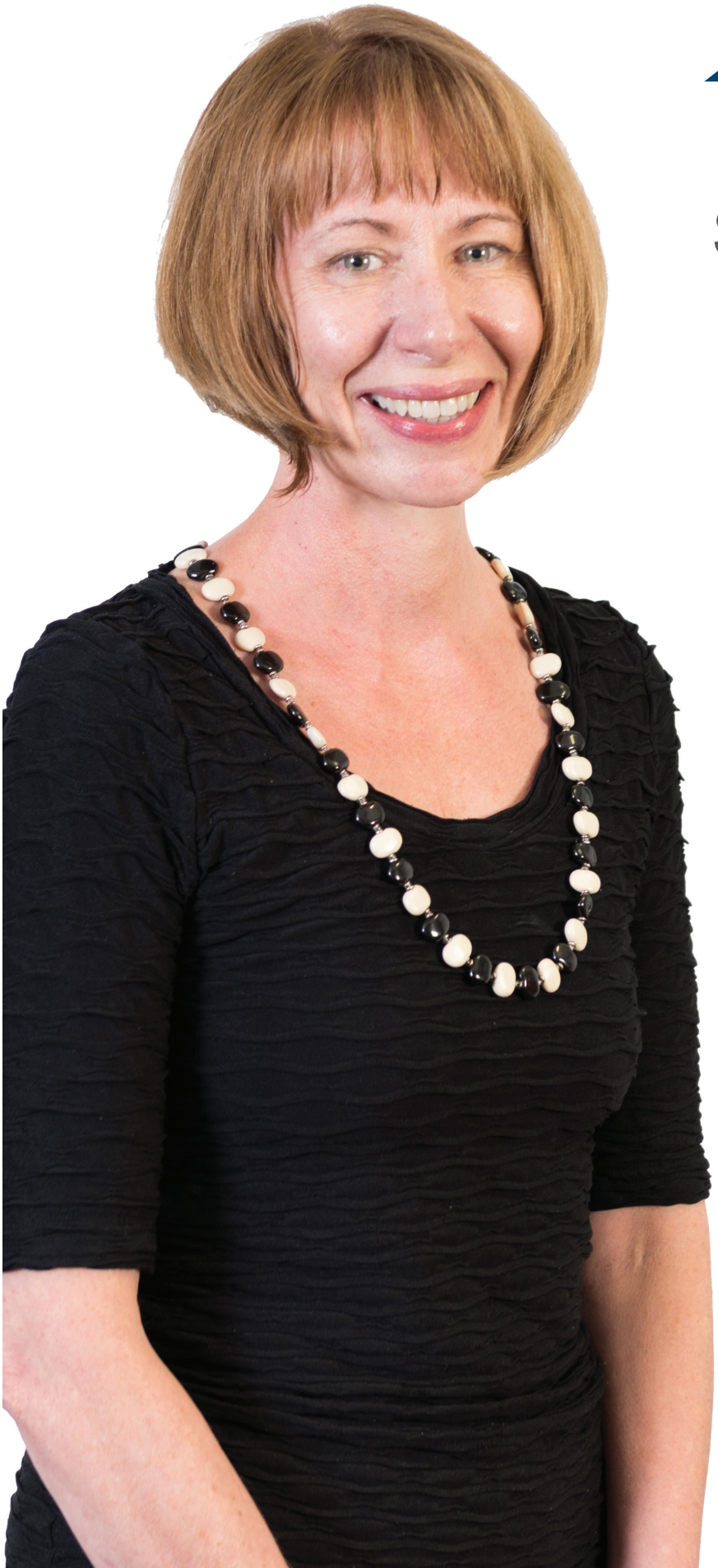
Justice Adamson rejected Mr Dailhou's submission that, but for the fall, he would have become a school principal, or that he had such opportunity. His Honour pointed to Mr Dailhou's admissions that *'many'* complaints had been made against him over the years. Also accepted was the evidence of Mr Pickering, an experienced school principal who indicated Mr Dailhou had neither the temperament nor commitment required to be appointed as principal.

The court was not satisfied that Mr Dailhou's injuries sustained in the fall caused any permanent diminution in his earning capacity other than a short term recovery period following the incident. Mr Dailhou was not entitled to be reimbursed for income referable to days of leave taken due to periods of incapacity from 2007 to 2010.

Mr Dailhou's claim for damages for domestic assistance failed, as the court found Mrs Dailhou did most of the domestic work and he had not paid anyone to provide domestic care. His Honour was not satisfied there was a need for mowing and pool cleaning services created by the fall.

Recovery claim by the State of New South Wales

The State of New South Wales had paid worker's compensation to Mr Dailhou in respect of the injury sustained by the fall. The court found that, had the bookshop been liable to Mr Dailhou, the State would have been entitled to recover the amount of compensation paid from it. Such recovery would have been limited to amounts paid to Mr Dailhou prior to his later fall in 2009 as His Honour found those injuries sustained by Mr Dailhou were not connected with the earlier fall. His Honour decided that payments made to Mr Dailhou after the later fall were not able to be recovered by the earlier injury. However, because the bookshop was not liable, the State of New South Wales was unable to recover the payments made to Mr Dailhou from it.



Susan Wallace

Special Counsel

Susan has extensive experience managing a wide variety of public liability claims for insurers in Queensland and the Australian Capital Territory with a particular interest in catastrophic and dependency claims and defending claims involving recreational and high risk pursuits.

Susan represents clients at conferences and mediations and advises on a range of insurance issues, including policy interpretation and indemnity, liability and quantum issues and takes a pro-active approach to claims management, using her knowledge and experience to deliver strategic resolutions.

Prior to embarking on her legal career, Susan was a registered nurse with considerable experience in both the private and public hospital systems in Queensland. Susan maintains a strong interest in medical issues and, combined with her legal experience, ensures that the best commercial outcome is achieved for her clients.

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Case Note

Coles Supermarkets Australia Pty Ltd v Bright [2015] NSWCA 17

Where the plaintiff suffered an injury to her left ankle due to a slip and fall and the parties disputed whether there was water on the ground prior to the plaintiff's fall.

The facts

The plaintiff suffered an injury to her left ankle on 1 April 2010 when she slipped and fell at Coles Supermarket (**Coles**) at Banora Point, New South Wales. The plaintiff commenced a claim in the District Court against Coles and Lynch Group, the latter being the contractor responsible for stocking a flower display next to where the claimant fell. The District Court entered judgment for the plaintiff. The defendants appealed to the Court of Appeal.

CCTV footage from before the incident showed an employee of Lynch Group arranging a flower display 10 minutes prior to the plaintiff's fall. As the plaintiff walked past the flower display she slipped and fell. As she fell her arm struck and overturned one of the buckets containing flowers on the lower level of the display. The buckets held around five centimetres of water. It was therefore accepted that there was water on the floor immediately following the plaintiff's incident. The parties disputed whether there was water on the ground prior to the plaintiff's fall.

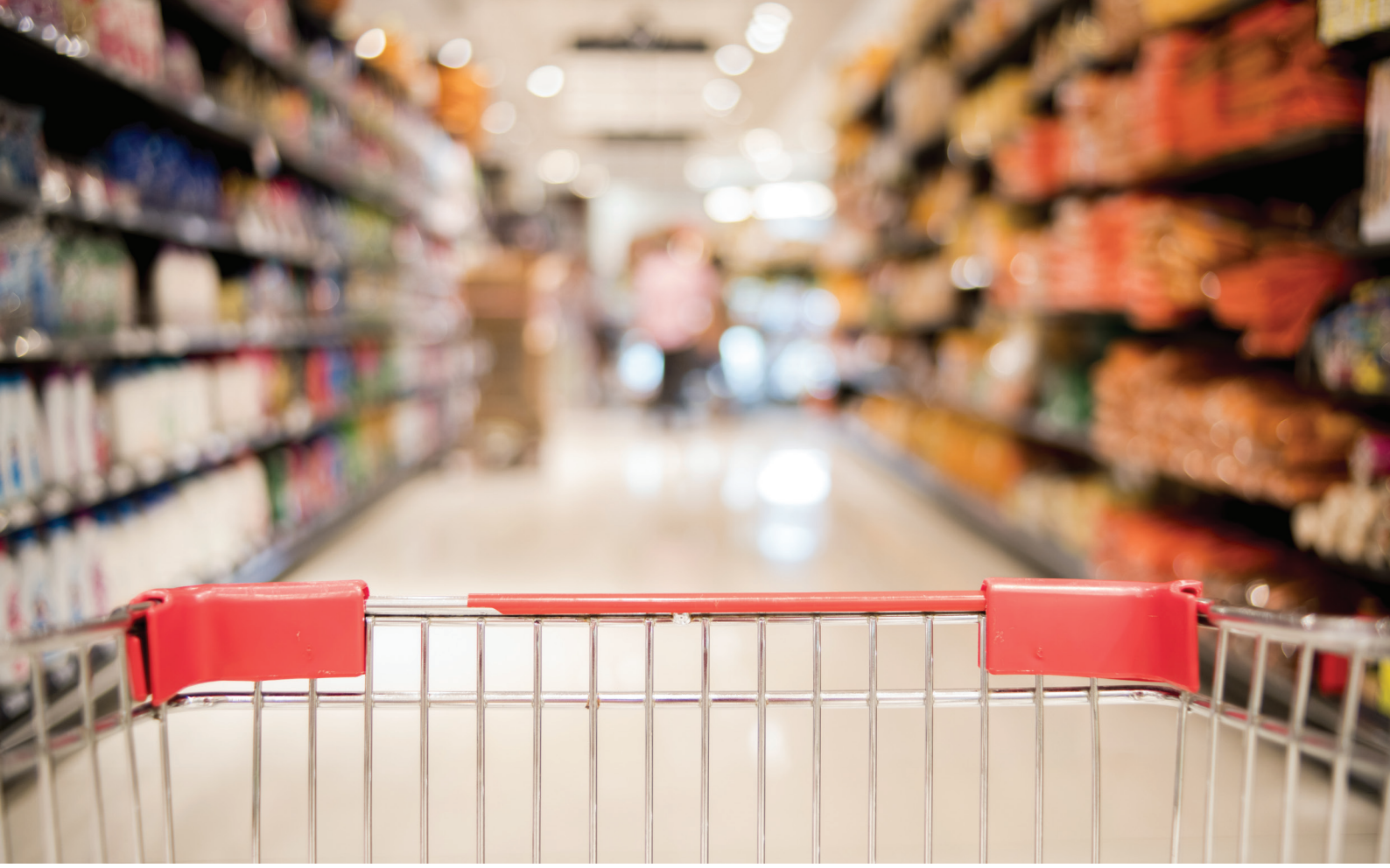
Issues

The trial judge was satisfied on the balance of probabilities that there was water on the floor at the time of the incident which caused the plaintiff's fall. The Court of Appeal was tasked to consider whether the trial judge's finding was correct and furthermore, if there was water on the floor, whether the defendants were negligent in failing to remove it.

Decision

The plaintiff conceded that she did not see any water on the floor prior to her fall. However, she said she immediately glanced behind her after her fall and saw a puddle of water on the floor with a shoe print moving through it. She assumed the footprint was made by her shoe. This was the only evidence the plaintiff led to support her case.

In contrast, the Court of Appeal thought there was significant evidence which contradicted the plaintiff's version of events. Firstly, the CCTV footage leading up to the incident did not show any obvious activity which could have led to water falling on the floor.



Secondly, the footage recorded a significant number of customers, including the plaintiff, walking in front of the flower display during the ten minutes between the time the employee completed the arrangement and the time when the plaintiff fell. There was no indication from the footage that any person noticed any water on the ground.

Thirdly, the footage showed the plaintiff was surrounded by people offering assistance within five seconds of the incident. As such the court was not satisfied that the plaintiff had any real opportunity to inspect the floor after she slipped.

The court thought the plaintiff's recollection that she saw a footprint on the floor after her fall did no more than suggest the possibility that there was water on the floor prior to the incident. As the rest of the evidence pointed to the contrary, the court was not satisfied there was water on the floor before the plaintiff slipped and as such, the defendants' appeal was upheld.

Notwithstanding the court's finding that there was no water on the floor, it went on to consider, had there been, whether the defendants breached their duty of care.

The trial judge heard evidence from the person who arranged the flower display prior to the incident. She said she was conscientious in performing her tasks to make sure the floor was dry and if there was a spillage on the floor she would have seen it and cleaned it up. The manager of the Coles store also gave evidence about the system Coles had in place for identifying and cleaning spillages. The trial judge thought both defendants understood the risk of spillages and were meticulous about identifying and cleaning up spillages. The trial judge also thought Coles' cleaning system was adequate. Nevertheless the trial judge held that because there was water on the floor prior to the incident the defendants were liable. This was essentially a finding of strict liability by the trial judge - water on the floor equals breach of duty.

The Court of Appeal thought that the trial judge's finding that Coles' cleaning system was adequate was incompatible with the conclusion the defendants failed to take reasonable care. However, as the court had already upheld the appeal it did not consider the point further.

Case Note

Jacobe v QSR Pty Ltd t/as Kentucky Fried Chicken Lakemba [2014] NSWDC 150

Where the plaintiff tripped and fell over a concrete wheel stop in a KFC car park and failed in his claim due to a finding of obvious risk.

The facts

At about 8.30pm on Wednesday 9 May 2012, the plaintiff, Joseph Jacobe, tripped over a concrete wheel stop fixed onto the tarmac of the car park within the premises of defendant, QSR Pty Ltd, trading as Kentucky Fried Chicken Lakemba (**KFC**). As a result of that trip, Mr Jacobe fell and sustained personal injury for which he claimed damages.

Mr Jacobe alleged that KFC owed him a duty of care as the occupier of the car park of a fast food outlet. Mr Jacobe argued KFC breached its duty of care because, on the night in question, the external lighting that illuminated the car park had been switched off.

Over a number of years, Mr Jacobe had attended the defendant's premises on many occasions without incident. He knew that the car park tarmac had a number of concrete wheel stops fixed to its surface. However, Mr Jacobe stated that he did not see the concrete wheel stop on the night in question, though he conceded that he was not looking where he was walking.

Mr Jacobe stated that his injuries caused continuous pain (similar to electric shocks) in his left shoulder which, at times, kept him awake at night. He also described ongoing pain in his right knee and right ankle, with frequent cramps in both legs.

Witness evidence – lighting of the premises

On the critical factual issue of whether the car park was lit at the time of the accident, Mr Jacobe's evidence was considered alongside the evidence of three other witnesses: his wife (who was with him at the time of the incident), Ms Frihy (a former employee of KFC) and Mr Rohanna (KFC's store manager).

The judge found Mr Jacobe's wife to be an honest witness who gave evidence that corroborated the plaintiff. Similarly, Ms Frihy and Mr Rohanna were found to be credible witnesses. Ms Frihy's evidence was that the lighting, according to her training, was switched on each afternoon before dark. Mr Rohanna stated that the lighting was switched on the night of the plaintiff's fall and he could not recall any instance of a malfunction in the lighting.

The judge accepted the evidence of Ms Frihy and Mr

Rohanna, finding that evidence that the lights were off was most improbable in the absence of evidence of malfunction of the lights.

Issues

The court then considered the following issues:

1. Whether the circumstances involved an obvious risk within the meaning of s 5G of the *Civil Liability Act 2002* (NSW) (**CLA**);
2. Whether KFC had breached its duty of care to Mr Jacobe as the occupier of the car park;
3. Whether there was contributory negligence on the part of Mr Jacobe and if so, to what extent; and
4. The assessment of damages.

Issue 1 - Was the risk obvious?

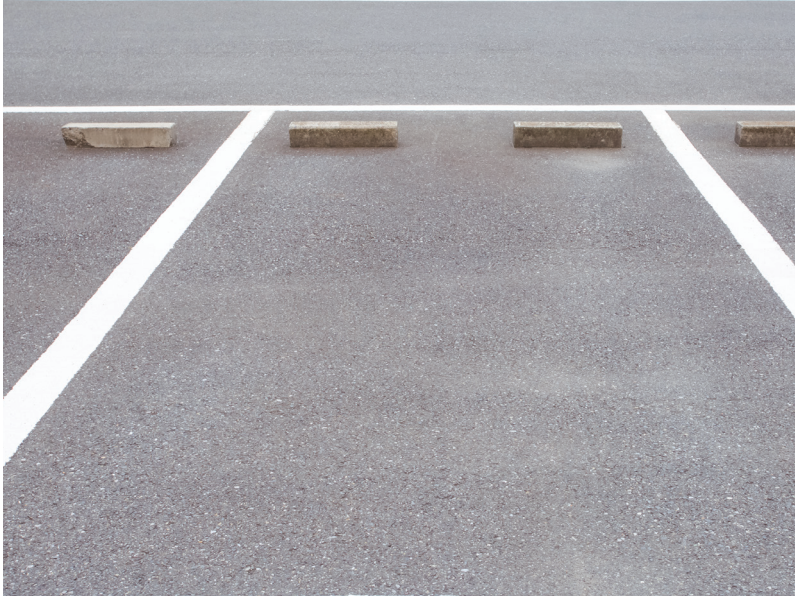
The judge considered whether, at the time, the risk of tripping in the car park was an obvious one to a reasonable person in the position of Mr Jacobe. It was acknowledged that KFC did not owe a duty to warn of risks of injury that were obvious (pursuant to ss 5G and 5H of the CLA).

The plaintiff had been in the car park in question on a number of occasions before the subject accident. In those circumstances, the judge found that a reasonable person in the position of the plaintiff would have been aware that there was an obvious risk of tripping and falling over a wheel stop.

Issue 2 - Duty of care and alleged breach

KFC was found to owe Mr Jacobe a duty to exercise reasonable care for his safety whilst he was at its premises. Mr Jacobe alleged that KFC was in breach of this duty by failing to provide sufficient lighting, failing to warn of the danger of walking in the car park at night and installing a concrete wheel stop which protruded beyond the width of a motor vehicle.

The judge found that the wheel stop would have been visible to Mr Jacobe even at relatively low levels of external lighting. Further, it was held that there is no need for a warning when the risk is obvious. The court also accepted expert evidence that the length of the wheel stop was an irrelevant factor. Therefore, Mr Jacobe failed to establish that KFC breached its duty of care.



Issue 3 - Contributory negligence

KFC argued that Mr Jacobe's claim, if successful, should be discounted for his contributory negligence.

Mr Jacobe would, on occasions, require the use of a walking stick. He was using that stick on the evening of this incident. KFC argued that Mr Jacobe failed to take the most suitable and appropriate route whilst using a walking stick. The judge found that no contributory negligence arose from Mr Jacobe's choice of route as the entire car park was available for use by pedestrian traffic, except the points involving an obvious risk of tripping.

KFC also argued the plaintiff failed to keep a proper lookout. On this issue, the court accepted KFC's submission, finding that Mr Jacobe would not have tripped on the wheel stop if he had first looked down.

The judge concluded that Mr Jacobe's own negligence overrode any potential negligence of KFC in the event his findings had not breached its duty of care to Mr Jacobe was not upheld, and assessed contributory negligence at 100%.

Issue 4 - Assessment of damages

The judge found that, had Mr Jacobe succeeded on liability, having regard to the medical evidence, damages would be assessed at a monetary equivalent of $14,000. The plaintiff only made a claim for non-economic loss.

Decision

Judgement was ordered in favour of the defendant with the plaintiff required to pay the defendant's costs on a standard basis.

Case Note

Packer v Tall Ships Sailing Cruises Aus P/L & Anor [2015] QCA 108

Where a plaintiff must show that an occupier was aware or ought to have been aware that a patron was acting violently or disorderly in order to succeed.

The facts

December 2006 the appellant was struck in the head by an unidentified assailant whilst he was boarding a ship following a Christmas party on South Stradbroke Island. The assault left the appellant with facial injuries and neurological problems. The appellant commenced proceedings against his employer, Commercial Waterproofing Services Pty Ltd (**CWS**), and the operator of the ship, Tall Ships Sailing Cruises Australia Pty Ltd (**TSSCA**). The appellant's claim was dismissed against both respondents. He appealed the decision of the trial judge against TSSCA only.

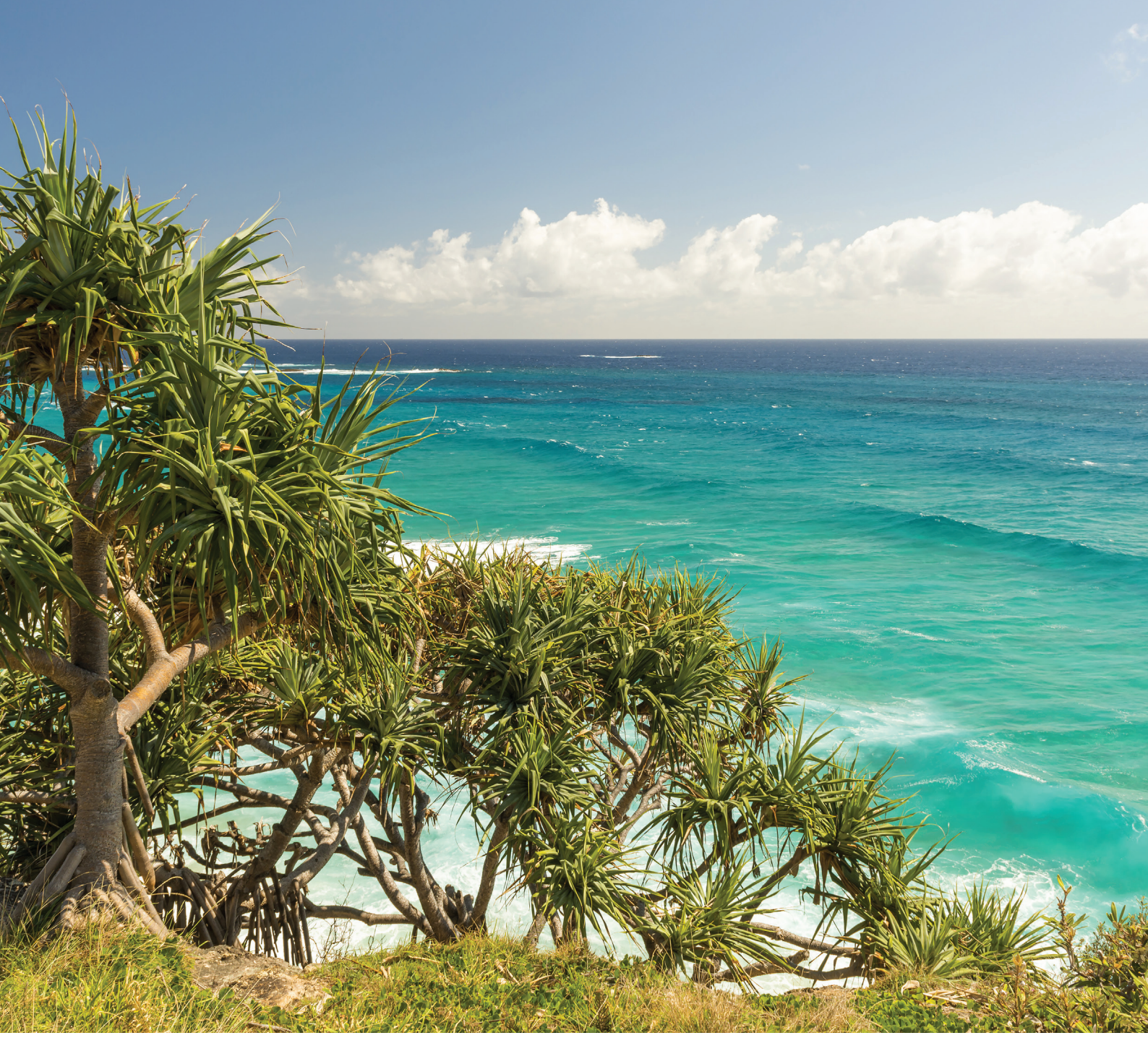
CWS held its annual Christmas party for its employees and their families onboard a cruise ship which was operated by TSSCA. The ship transported passengers to South Stradbroke Island where TSSCA operated a venue including a bar and restaurant. After a few hours on the island the passengers were then transported back to the mainland. As the appellant boarded the ship he noticed a group of people swearing loudly and carrying on in a drunken manner and asked that they keep their language down. A few minutes later the appellant saw the same group of people at the bar and again approached them to ask that they stop swearing. He was then punched from behind in the head.

Issues

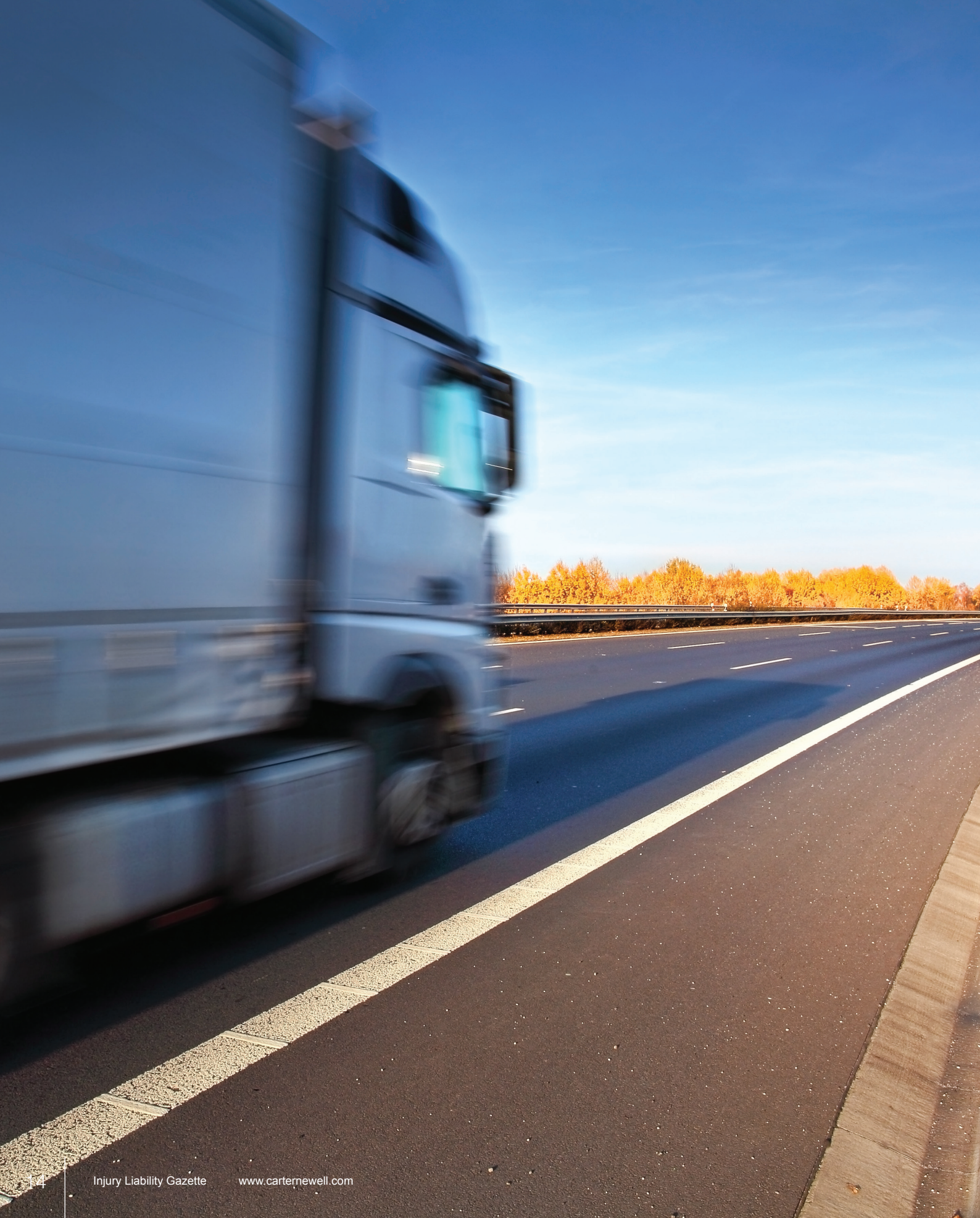
The appellant submitted that the trial judge made a number of factual errors, namely, there was evidence that TSSCA knew or ought to have known that the group from which the assailant had come had been acting loudly and boisterously while on the island, were drunk within an hour on arrival on the island, continued drinking over several hours and were swearing and confrontational during boarding. The appellant submitted that this was sufficient to place an obligation on TSSCA's employees to have taken steps to prevent against the risk of violence occurring such as stopping the service of alcohol to the group or prohibiting the assailant from reboarding the ship.

Decision

The Court of Appeal upheld the decision of the trial judge and dismissed the appeal. The Court reaffirmed that TSSCA's duty of care was not absolute and the scope of its duty required a consideration of all the



surrounding circumstances. However, the Court thought it was open for the trial judge to find that it was not reasonably foreseeable in the circumstances that a member of the group from the bar would engage in violent, quarrelsome or disorderly conduct. While the group were drinking alcohol, swearing and carrying on there was no evidence that their behavior was directed at any other patrons and there was no commotion or interchange which suggested a risk of violent behavior to other patrons. Furthermore, the Court noted that the use of offensive language by the group and noisy or boisterous behavior was not sufficient so as to constitute disorder quarrelsome or disorderly conduct. As such, there was no obligation on behalf of TSSCA to take steps to exclude the group from the ship or to withdraw the service of alcohol to the group or monitor their behavior. The Court of Appeal concluded there was no factual or legal error and dismissed the appeal with an order that the plaintiff pay TSSCA's costs.



Case Note

BlueScope Steel Ltd v Cartwright [2015] NSWCA 25

The Court of Appeal considered the scope of the duty owed by a manufacturer to a truck driver after changing the design of goods being carted, and whether the alleged breach of this duty or the excessive speed of the first respondent was the cause of the accident.

The facts

Mr Sydney Cartwright (**Mr Cartwright**) sustained a serious injury while driving a prime mover loaded with a container holding two 7.3 tonne steel coils and one 6.4 tonne steel coil. An accident occurred while Mr Cartwright was negotiating a left hand bend during which the trailer capsized to the right, onto the wrong side of the road, pulling the prime mover with it. Mr Cartwright's employer, Mannway Logistics Pty Ltd (**Mannway**) was contracted to transport the coils on behalf of the appellant, BlueScope Steel Ltd (**BlueScope**) who had manufactured the coils.

Shortly before the accident, BlueScope, without informing Mannway, began manufacturing coils with an additional timber runner underneath. This change was significant, as it meant that the method of loading employed by Mannway no longer ensured that the coils would remain stable in the container during transport. Previously, Mannway forced wooden wedges underneath the coils, in accordance with BlueScope's guidelines, to prohibit them from moving. However, as a result of the changed design, the wooden wedges were no longer high enough to come into contact with the coils.

Mr Cartwright succeeded against both BlueScope and Mannway at trial and was awarded $926,000 in damages for the alleged breaches by BlueScope and Mannway. That decision was appealed by BlueScope, with cross-appeals made by Mr Cartwright and Mannway's insurer.

Issues

There were three key issues to be considered on appeal:

1. Whether the Primary Judge erred in failing to make a finding as to the speed at which the prime mover was travelling at the time of the accident;
2. Whether the Primary Judge erred in failing to accept opinion evidence of the parties' expert engineers; and
3. Whether BlueScope was in breach of any duty it owed to Mr Cartwright and, if so, how liability ought to be apportioned between BlueScope and Mannway.

Decision

The New South Wales Court of Appeal held that:

1. The accident was caused by Mr Cartwright travelling at an excessive speed;
2. BlueScope was not in breach of the duty of care that it owed Mr Cartwright; and
3. Mr Cartwright was entirely responsible for his own injuries.

Cause of the capsize

It was implicit in the decision reached by the trial judge that the court concluded the load had shifted, thereby causing the trailer to capsize due to inadequacies in the placement of the wooden wedges. In arriving at this conclusion, Her Honour relied upon the evidence of Mr Cartwright who stated that he heard and felt '*a loud bang and a thud*' before the trailer capsized.

BlueScope contended that the evidence before the Primary Judge could not support a conclusion that the relevant coils shifted position and toppled prior to the capsizing of the trailer. It argued that, in order to a determination as to whether the load shifted before the trailer capsized, the speed at which the vehicle was travelling must be known and Her Honour made no such finding.

The Court of Appeal found in favour of BlueScope on this issue, finding there was considerable doubt as to the speed at which the vehicle was travelling when the trailer capsized as it was unclear whether Mr Cartwright was travelling at 55km or 60km per hour at the time of the accident. Both engineers giving evidence agreed if the vehicle was travelling over 70km per hour, the trailer would have rolled on the bend at the accident site before the load would have shifted or toppled, even assuming BlueScope's guidelines had been complied with. Conversely, the load would not have shifted or toppled if the vehicle was travelling at a speed of 55km per hour, even if the wedges were not in contact with the pallets on which the coils were mounted.

The Court of Appeal went on to find that Mr Cartwright's evidence was equivocal. The '*loud bang and a thud*' allegedly felt and heard by Mr Cartwright could have been the result of the coils hitting the side of the container as the trailer rolled, or after it began to roll, as opposed to being, as the Primary Judge found, an indication that the load shifted before the trailer began to roll. The sounds heard by Mr Cartwright could be explained by multiple scenarios.

Consequently, the Court of Appeal determined that Mr Cartwright had failed to establish on the balance of probabilities, that improper or incorrect packing, namely by use of the wedges, caused the trailer to capsize. The expert evidence that the accident would not have occurred unless the vehicle was travelling at a speed in excess of the limit applicable at the accident site was accepted.

Scope of BlueScope's duty

The Court of Appeal found that BlueScope was not in breach of any duty of care it owed to Mr Cartwright. Although it failed to notify Mannway about the change to the coils, the guidelines it had previously provided to Mannway made it clear, by use of the word '*forced*', that the wedges used in the loading process were required to make physical contact with the pallet or coils.

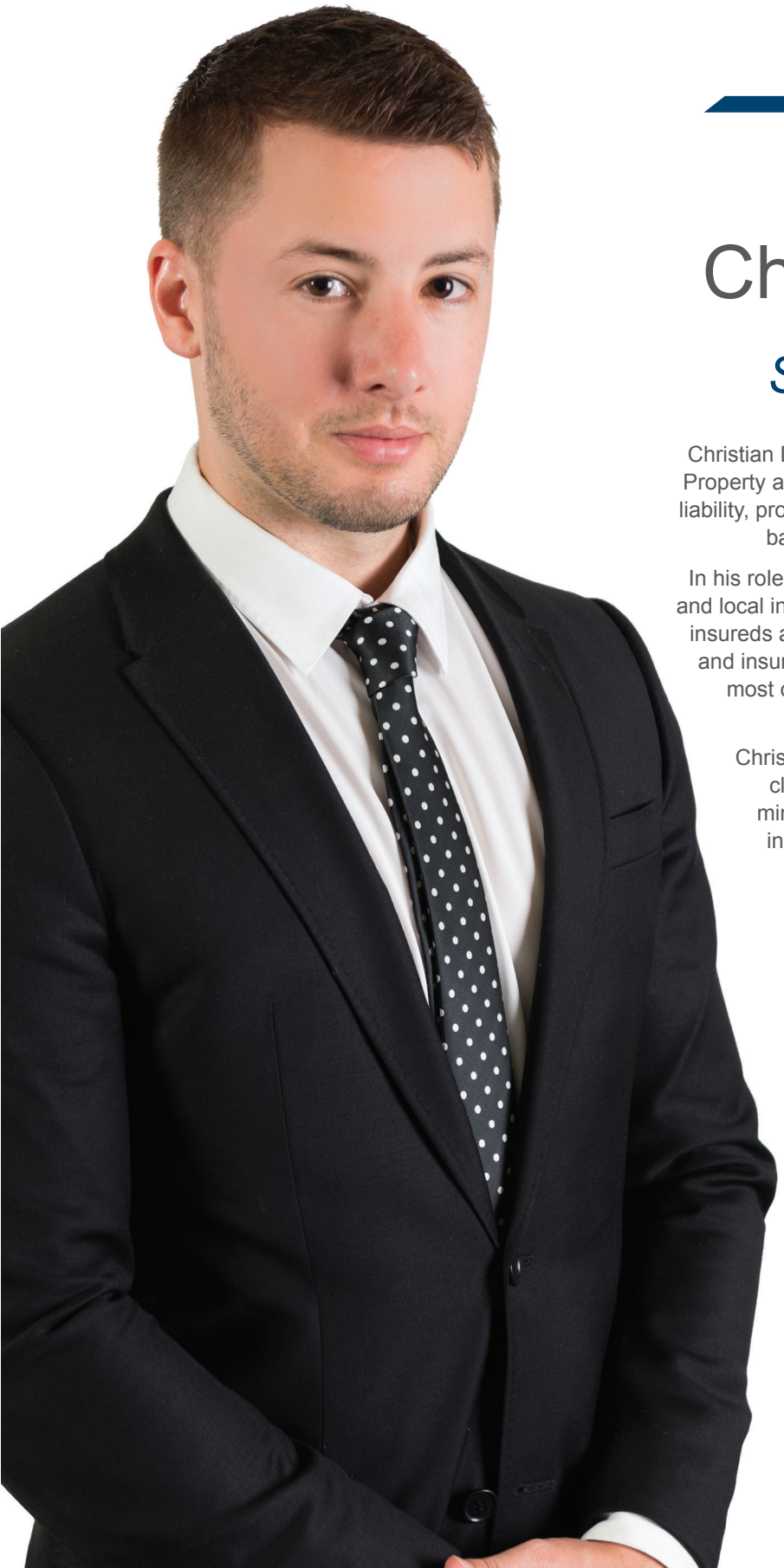
The court therefore found that Mannway should have adapted its loading process to take into account the change to the coils and to ensure the wedges still came into contact with the coils.

However, this finding did not have a material impact on the claim as the Court of Appeal had already found that it was Mr Cartwright's excessive speed that caused the accident, rather than Mannway's failure to adapt its loading process.

Apportionment and the cross-appeals

Since Mr Cartwright's claim against Mannway was based on its failure to adapt the loading process and the Court of Appeal found this failure did not cause the incident, Mr Cartwright's case against Mannway also failed.

Interestingly, the Court of Appeal indicated that a broader claim against Mannway may have been successful, such as a claim based on failure to provide adequate training in relation to driving trucks around corners at an appropriate speed.



Christian Breen

Senior Associate

Christian Breen is a Senior Associate in Carter Newell's Property and Injury Liability team, specialising in general liability, property damage and aviation claims. Christian is based in Carter Newell's Sydney office.

In his role, Christian works with most major international and local insurers and brokers, as well as many corporate insureds and self-insureds, conducting complex liability and insurance litigation Australia-wide, as well through most of the Asia Pacific, the USA, Italy, the United Kingdom and New Zealand.

Christian has considerable experience in managing claims and conducting litigation ranging from minor to catastrophic loss. He is also involved in interpreting and managing policy coverage and indemnity matters.

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Case Note

WB Jones Staircase & Handrail Pty Ltd v Richardson & Ors [2014] NSWCA 127

Contractors found liable for defective workmanship of their subcontractors.

The facts

In 2006, the plaintiff sustained injuries when the balustrade along the landing of the first floor of his home gave way, which caused him to fall and injure his back. The plaintiff's house was a project home built in 1998 by Mirvac (**builder**). The builder designed the balustrade and contracted with a staircase supplier, WB Jones Staircase & Handrail Pty Ltd (**manufacturer**), to manufacture and install the subject staircase. The manufacturer in turn subcontracted the installation of the staircase to JMKG Pty Ltd (**installer**). The plaintiff brought proceedings in the District Court against all three parties.

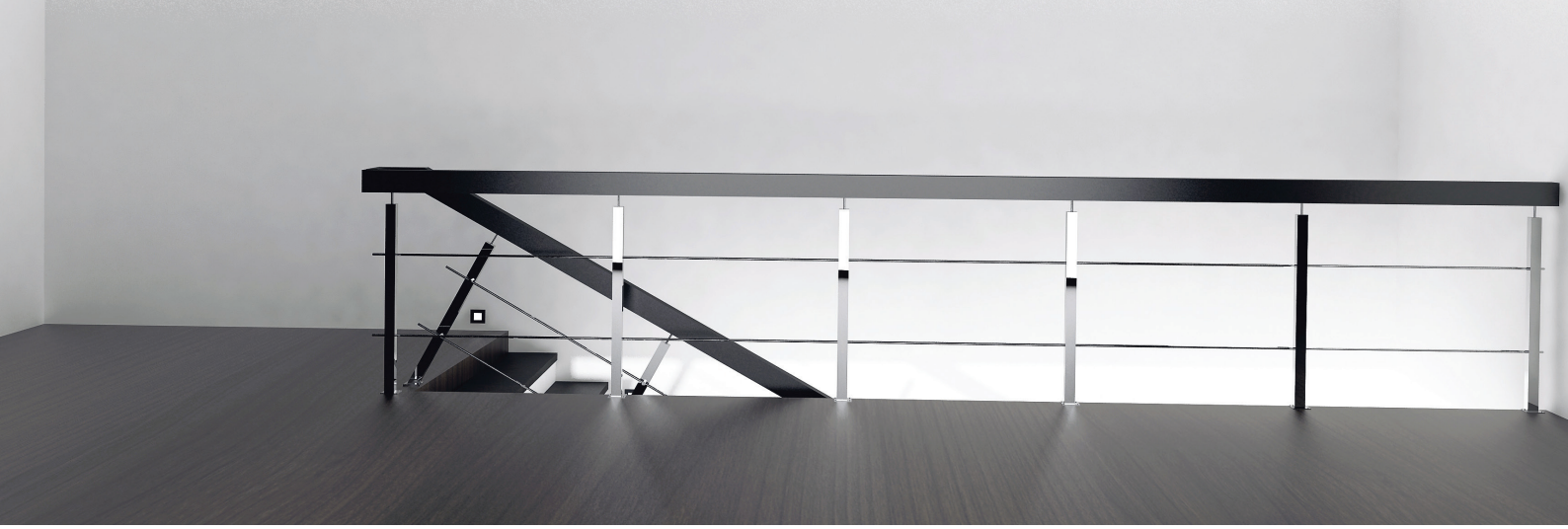
The evidence indicated that the balustrade had failed due to a defect with how the floor directly beneath the balustrade was laid. There was an air gap between the gyprock floor sheeting and wooden bearers which resulted in the balustrade not being properly affixed to the flooring. The experts commissioned by the parties were in consensus that while there were no defects with any of the balustrade's components, the nails used by the installer to secure the balustrade were not of sufficient length and gauge. It was agreed that the gap in the flooring would have been detected had the installer conducted nailing by hand, as opposed to gun-driven nailing (which was the method adopted by the installer).

At first instance, the plaintiff succeeded in negligence claims against all three defendants, but failed in his claim for breach of contract against the builder. The plaintiff was awarded damages of $826,891 which was reduced to $750,000 due to the jurisdictional limit of the District Court. The defendants appealed the trial judge's decision.

Trial decision

At first instance, the installer was held to be primarily liable for the balustrade's failure. His Honour accepted the plaintiff's expert evidence that the relevant Australian standards required the subject balustrade to be installed with hand driven nails. By electing to use gun driven nails, the installer had installed the balustrade negligently.

The trial judge held that, as part of its duty to engage competent contractors, the builder was required to carry out inspections of its subcontractor's works. It was accepted that, had the builder inspected the



flooring the balustrade after they were installed, it would have identified the gap in the flooring and the fact the nails were not hand driven.

As for the manufacturer, the trial judge held it had breached its duty of care by allowing the installer to secure the balustrade using gun-driven nails.

The trial judge apportioned the claim as follows:

1. The installer – 40%;
2. The builder – 30%; and
3. The manufacturer – 30%.

Appeal decision

The builder and manufacturer brought an appeal on liability, whereas the installer appealed on quantum only. The main issues on appeal were:

1. Whether the builder was negligent and had breached its obligations under contract;
2. Whether the manufacturer was negligent; and
3. Whether the trial judge's ruling on apportionment was erroneous.

The builder submitted on appeal that its duty of care was limited to the coordination of trades and did not extend to inspecting the work of its subcontractors who were experts in their field. It further argued that, even if inspections were carried out, they were of the kind to be expected of a general builder who did not have an expertise in the installation of balustrades. Reasonable inspections would not have revealed the defect as it did not have the requisite knowledge to appreciate the risks associated with securing a balustrade with a hand gun.

The court did not accept that the builder's standard of care was similar to a non-technical builder with little expertise in building. It was noted that the builder was the one who designed the balustrade and owed an obligation, under contract, to ensure that the house was built in accordance with relevant legislation and standards. The court agreed with the trial judge that the builder's duty of care required it to inspect the work of its subcontractors with reasonable care, and a reasonable builder in the circumstances (with knowledge of the relevant standards) would have discovered the gap in the floors during their inspections and that the nails were being inserted with a nail gun.

The manufacturer also appealed the trial judge's decision on the basis that its duty to the plaintiff only required it to exercise reasonable care in selecting a competent contractor, which it had discharged by retaining an expert installer. This was dismissed by the court who saw the manufacturer as an expert in the field who cannot be said to have relied entirely upon the expertise of the installer. Like the builder, the court found the installer had a supervisory role over the work carried out by the installer, which it failed. The manufacturer ought to have known that the installer it engaged was carrying out an unsafe and inappropriate method of inserting nails, and rectified the issue.

While the court agreed with the trial judge's finding that the builder and manufacturer were both liable, it considered the installer, who held itself out as an expert and installed the balustrade negligently, was substantially more liable than the other two defendants. Apportionment was revised as follows:

1. The installer – 50%;
2. The builder – 25%; and
3. The manufacturer – 25%.

Judgement was awarded in favour of the plaintiff against all three defendants in the amount of $750,000 plus costs.

Case Note

Pioneer Studios Pty Ltd v Hills [2015] NSWCA 222

An employee attending an employer's residence for a party was held not to be in the scope of their employment.

The facts

The respondent attended a party held at the premises of her employer. The party was organised by a co-worker (**co-worker**) of the respondent and two of the co-worker's friends (who were not under the same employment of the respondent). The party was to celebrate the respective birthdays of the co-worker and their friends, and to farewell the co-worker who was leaving their employment with the appellant. The employer made no financial contribution to the event and had no involvement in the organisation, control or promotion of the party.

In the early hours of the morning when the respondent was about to leave the party, she fell over the balustrade in the stairwell of the employer's home and hit her head and shoulder when landing on the level below (**the incident**). She suffered significant injuries to her head and shoulder.

The respondent commenced proceedings under the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) against the appellant. The respondent claimed she attended the party because she was encouraged to do so by the employer so she could meet clients and co-workers. The employer denied that the respondent was encouraged to attend, claiming the respondent was only asked whether she was attending the party.

Litigation history

The matter went to the Workers Compensation Commission for determination by a Senior Arbitrator. The Senior Arbitrator rejected the respondent's claim, holding the injury did not arise in the course of the respondent's employment.

The Senior Arbitrator's decision was successfully appealed to the Deputy President of the Commission. However, the decision of the Deputy President was set aside by the New South Wales Court of Appeal in 2012 and remitted the matter back to the Workers Compensation Commission for consideration according to law.

In 2014, the matter was reconsidered by a different Deputy President of the Workers Compensation Commission. The Deputy President held the worker's

injury arose in the course of her employment, and also found that employment was a substantial contributing factor to the injury despite no further evidence being tendered since the prior proceedings.

The appellant sought to appeal the 2014 decision of the Deputy President to the Court of Appeal of New South Wales. The issue concerned whether the incident was in the course of employment of the respondent.

Decision

The majority set aside the Deputy President's decision of 2014.

The Court of Appeal considered the Deputy President erred in their approach to fact finding and misconceived the legal test for when an injury is held to be '*in the course of employment*'. Further, the Court of Appeal held that the Deputy President erred in the identification of the scope of employment. In this instance, the respondent was not injured during an interval in an overall period of work. The incident was seen as an interval in between discrete work periods.

The respondent stated she *'understood'* the party was a work function, and *'felt'* it was important to meet clients at the event in order to impress her employer. The Court of Appeal reasoned the fact the respondent was encouraged to attend the party was not sufficient to render it part of her employment. The Court of Appeal reasoned that not every activity which an employer may encourage an employee to attend will result in the employee acting in the course of his or her employment. The Court of Appeal held the fact the employer anticipated members of staff would attend the party, did not mean the function was rendered part of each employee's employment.

The Court of Appeal stressed the issues of determining whether an injury arose in the course of employment is premised upon the '*objective characterisation*' of the employer's requirements and expectations of the employee at work. This was in contrast to the circumstance of what the employee subjectively thought. The respondent's subjective impression that her attendance was expected was not sufficient to make the party an employment activity. The Court of Appeal reasoned that although the employer's enquiry as to whether the appellant was intending to attend the party may be treated as encouragement, it was not sufficient to turn the party into an employment activity.

AILA AUSTRALIAN INSURANCE LAW ASSOCIATION

AILA Sir Ninian Stephen Masterclass in Insurance Law 2016

Brett Heath, Special Counsel, will be presenting 'Indemnity Clauses and Insurance Clauses' at the upcoming AILA Sir Ninian Stephen Masterclass in Insurance Law 2016.

This session will consider the effect of indemnity and insurance clauses in contracts entered into by insured, which are often difficult and prone to ambiguity, and the potential ramifications for the insurer.

Masterclass Start Time: **8:00AM**

Masterclass Finish Time: **6:30PM**

Location: **Rooftop Level, 480 Queen Street Brisbane**

To view a copy of the full event programme, please visit **www.aila.com.au**

Case Note

Woolworths v Perrins [2015] QCA 207

Woolworths held not liable for an employee's psychiatric illness which allegedly occurred when the employee was rejected from a management trainee position.

The facts

The respondent was employed by Woolworths Distribution Centre (*Woolworths*) as an order selector, forklift operator and truck unloader. The respondent had a significant history of drug abuse resulting from childhood abuse, and was imprisoned during his teenage years for burglary and drug offences. In more recent years, the respondent blamed his former partner for suffocating his eight month old child whilst under the influence of drugs.

The respondent commenced employment with Woolworths in May 2008. In his application for employment, the respondent completed two Pre-Assessment Forms. In the two Pre-Assessment Forms, the respondent denied any pre-existing physical or emotional factors which would impact on his performance.

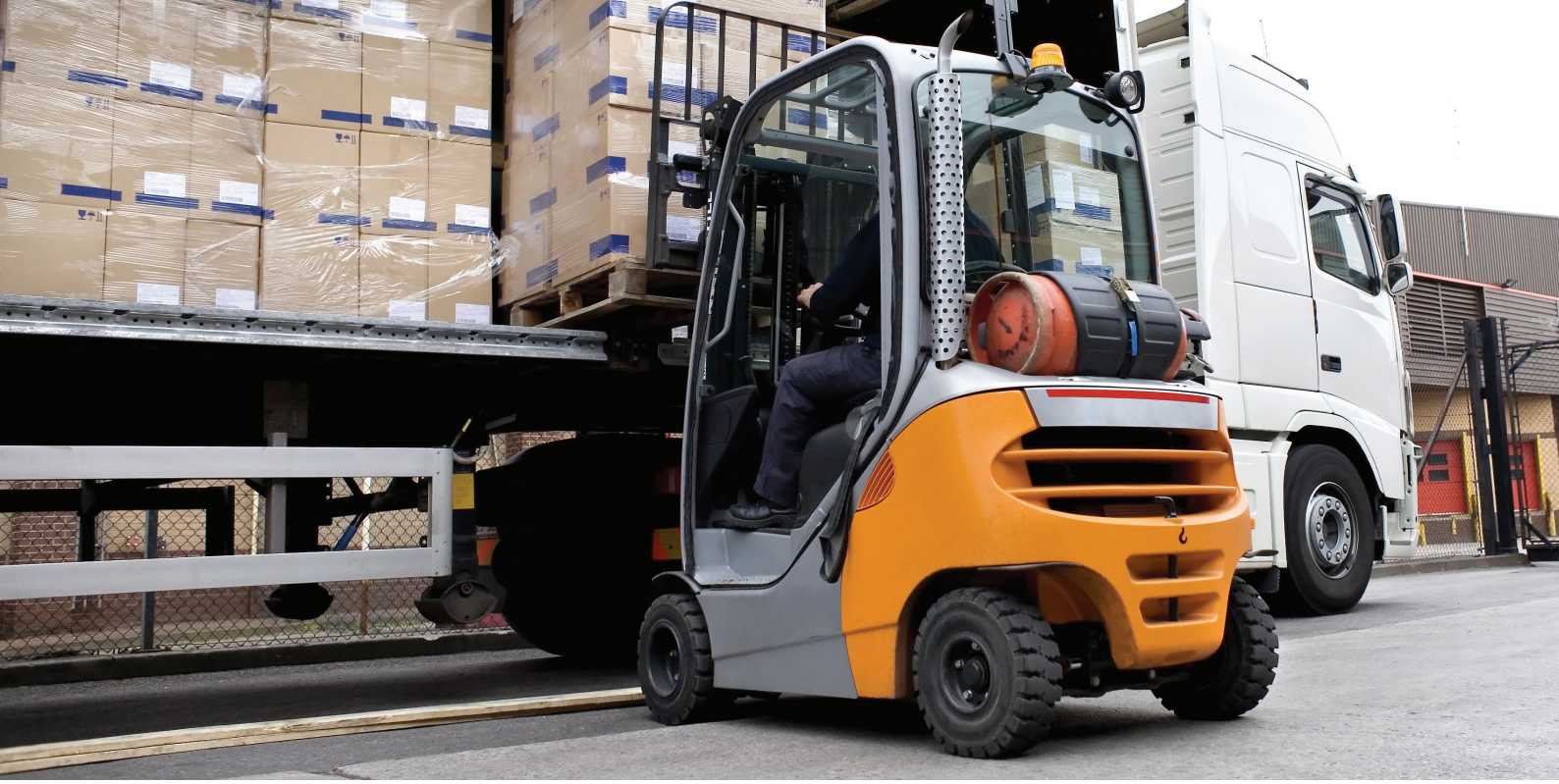
The respondent applied and was accepted into a management training program in early 2009. Prior to Woolworth's offer, the respondent claimed he informed the Logistics Manager of his previous drug abuse, criminal history and psychiatric illnesses.

Prior to the commencement of the management training program in July 2009, the respondent was informed by the Human Resources Manager, that he would be removed from the program due to an unsatisfactory attendance record in accordance with Woolworths policy. The Human Resources Manager provided the respondent with a Woolworths' Standard Individual Performance and Development Program which outlined the requisite competency level.

In May 2010 the respondent reapplied and was offered and accepted a place in the management training program. However, in July 2010, the Human Resources Manager removed the respondent from the program because of his attendance issues. The respondent was informed of his removal from the course on the day of his expected commencement. The respondent alleged he immediately felt unwell and went home. The respondent was subsequently diagnosed with a psychiatric illness.

Trial

The respondent commenced an action, alleging Woolworths had breached its duty of care by unreasonably ceasing his participation in the management training course. The respondent argued Woolworths had knowledge of his past issues prior to selecting him for the program. The respondent alleged Woolworths engaged in unreasonable management



action in allowing him to progress through the selection process and then deny him entry into the program. The respondent alleged this '*unreasonable management action*' exposed him to a risk of a debilitating psychiatric injury. The trial judge found in favour of the respondent.

Appeal

Woolworths appealed the primary judge's findings, alleging the findings of fact were not supported by the evidence. Woolworths argued there was no foreseeable risk of psychiatric injury and consequently, Woolworths was not in breach of its duty of care.

Appeal decision

The Court of Appeal rejected the findings of the trial judge, holding that Woolworths had a right to control its own processes with regard to training suitable applicants. The allowance of applicants into the training course who did not fulfill the criteria was regarded by the Court of Appeal as adverse to the interests of Woolworths. The Court of Appeal highlighted that the terms of traineeship program stated the plaintiff was not guaranteed a position on the successful completion of the course. Woolworths reserved the right to transfer the respondent back to his previous role.

Reasonable foreseeability

The Court of Appeal rejected the trial judge's finding of fact regarding the foreseeability of harm. The court stated the treatment the respondent received would not have likely caused psychiatric damage, as disappointment was common in the workplace as opposed to psychiatric decompensation. The court reasoned that Woolworths ought not to have reasonably foreseen that by taking the respondent out of the training course, there was a risk of causing such mental anguish to result in psychiatric decompensation.

Vulnerability

The Court of Appeal rejected the argument advanced by the respondent that the casual conversation alleged by the respondent was sufficient to force Woolworths not to rely on their own criteria regarding assessment of that employee.

The Court of Appeal ultimately found that Woolworths did not have notice of the vulnerability of the respondent, holding there was no reliable evidence of conversations between the respondent and other employees of Woolworths. Even if the alleged conversations did take place, the Court of Appeal reasoned such conversations would not have alerted a reasonable employer to the respondent's alleged psychiatric decompensation.

Case Note

Ireland v B&M Outboard Repairs [2015] QSC 84

Mr Ireland sustained injuries after his boat caught fire and the boat repairer was found to have breached its duty of care and an implied term of the service agreement with Mr Ireland.

The facts

In September 2004, Mr Colin Ireland (**Mr Ireland**) approached B&M Outboard Repairs (**the boat repairer**) about problems with his boat. The boat repairer informed Mr Ireland that he needed to replace the fuel lines and install an electric fuel pump in the battery compartment of the boat. Mr Ireland instructed the boat repairer to undertake the recommended repairs. Once the repairs had been completed, Mr Ireland used the boat several times without incident.

In April 2006, Mr Ireland undertook repairs to the boat with the assistance of a friend, Mr Keech, a qualified mechanic. During the course of the repairs, Mr Keech informed Mr Ireland that it was dangerous to have the fuel lines, electric pump and the battery compartment in close proximity to one another because of the risk of a spark.

In mid April 2006, Mr Ireland took the boat to Port Hinchinbrook to launch it for a seaworthy trial. When Mr Ireland turned the ignition key, the boat erupted into flames. Mr Ireland alleged that he suffered psychiatric injury and a cervical spine injury as a result of the incident.

Issues

1. Whether the boat repairer was in breach of an implied term of an agreement with Mr Ireland;
2. Whether the boat repairer owed a duty of care which was subsequently breached; and
3. The quantum of the claim.

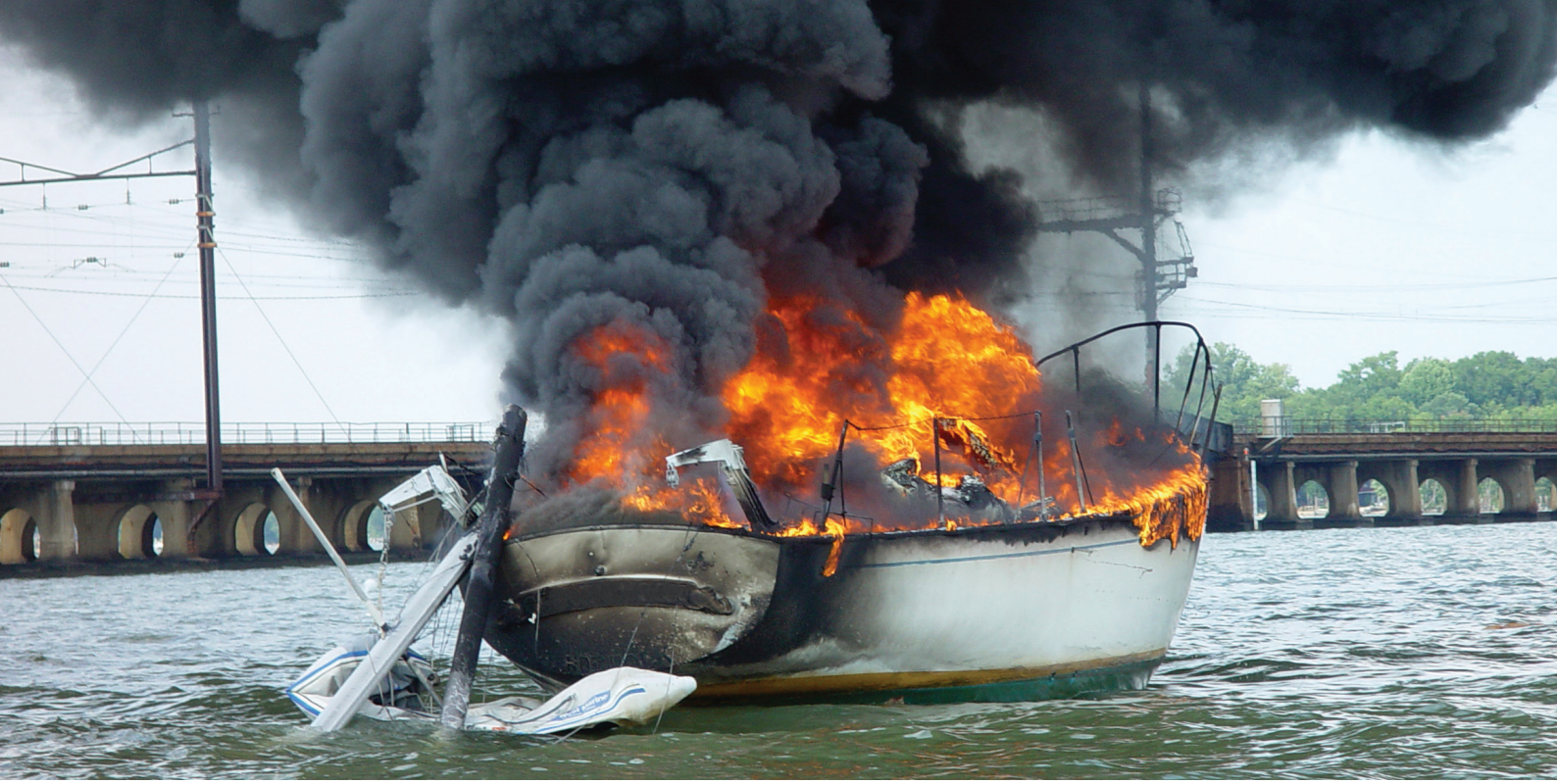
Decision

The agreement

The boat repairer and Mr Ireland did not enter into a written agreement. The court considered that the agreement arose by the boat repairer agreeing to undertake repairs and Mr Ireland agreeing to pay for the repairs. The court found that an implied term arose by operation of law, by reason of the expert trade of the boat repairer.

Duty of care

The court found that the boat repairer had co-existing duties: a duty of care in tort and a duty of care as an



implied term of the agreement. The boat repairer owed a duty to act with reasonable skill, care and diligence in the performance of their services.

Breach

The court considered that the boat repairer's actions of recommending and installing the non-marine grade electric pump was a breach of duty and the implied term. The boat repairer failed to provide Mr Ireland with a clear and explicit warning of the risks associated with a non-marine grade electric fuel pump. The court also considered that the boat repairer's actions of using non-marine grade clamps to secure the fuel lines was also a breach.

Further, the court considered that the boat repairer's omission of not recommending that regular inspections be undertaken of the fuel pump, clamps and fuel lines was a breach of duty of care and the implied term, due to the heightened risk associated with the installation of the fuel pump and its proximity to the battery.

The court held that the boat repairer had breached their duty of care to Mr Ireland and breached the implied term of the agreement. That breach was the cause of Mr Ireland's loss.

Quantum

Mr Ireland claimed that he suffered severe and chronic post-traumatic stress disorder and a cervical spine injury (which he had not complained of until 17 months after the incident). The court accepted medical evidence that Mr Ireland suffered a serious and disabling psychiatric illness. Regarding his physical injuries, the court accepted that Mr Ireland did not focus on his physical injury problems due to his mental health issues.

The court turned to Mr Ireland's claim for economic loss. It found that Mr Ireland, a pastor in a church, had suffered a significant and permanent partial destruction of his earning capacity as a consequence of the boat repairer's breaches. Whilst for some years Mr Ireland may have been over compensated by the church having regard to his performance, the court considered that his capacity to earn wages, the value of fringe benefits and loss of superannuation was an average loss of $750 net per week, which equated to an award of $351,000 for loss of earning capacity over nine years. As to future economic loss, the court noted that there is no mandated retirement age for pastors in a church, but in all probability would have continued until age 70. A loss of $600 net per week until age 70 equated to $238,000.

He was awarded total damages of $703,721.90.

Case Note

Alameddine v Glenworth Valley Horse Riding Pty Ltd [2015] NSWCA 219

The operator of the quad bike activity was found negligent through the actions of the instructor, who accelerated and thereby caused her to accelerate in order to keep up. The activity was not a dangerous recreational activity.

The facts

Mrs Alameddine arranged for her children to take part in a quad bike excursion with Glenworth Valley Horse Riding Pty Ltd (**Glenworth**), a recreational facility.

She visited Glenworth's website which stated that any person over 12 years old could participate in the activity, and all riders would receive a safety briefing, individual instruction, practical training and assessment before going onto the course. She paid for the activity over the telephone.

On 21 May 2011, the Alameddine family visited the recreational facility. Mrs Alameddine's daughter Alissa Alameddine (**Miss Alameddine**) was two days short of her 12th birthday. Miss Alameddine's sister signed an application form on behalf of the her which stated that she was 14 years old.

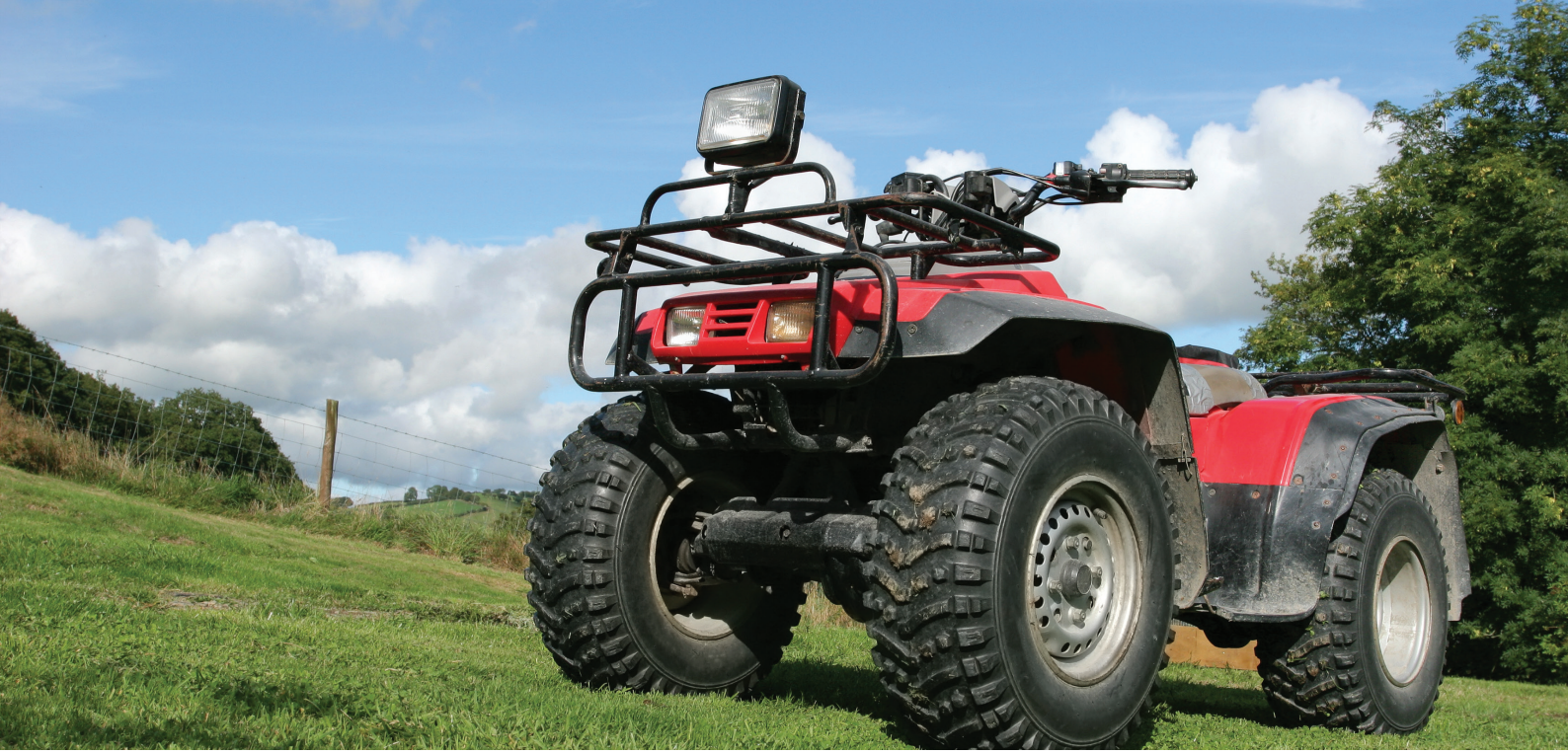
The application form stated the activity was a dangerous recreational activity pursuant to the *Civil Liability Act 2003* (NSW) (**CLA**) which involved significant risk of physical harm and waived liability against the respondent. Further, there was a sign in the waiting area of the property which stated the activity was inherently dangerous and is engaged at an individuals own risk.

Glenworth's instructor gave a presentation about the safety risks of the activity and instructed the children on how to use the quad bikes. The instructor informed the children to ride at a speed which they felt comfortable. During the course of the activity, the instructor who was leading the group increased the speed of his vehicle. Miss Alameddine accelerated to catch up with the instructor, lost control of the bike and fell off, sustaining physical injuries.

Decision at first instance

Miss Alameddine commenced proceedings against Glenworth, claiming they were liable in negligence and for noncompliance with guarantees pursuant to the Australian Consumer Law (**ACL**).

The primary judge found that Glenworth was negligent through the actions of the instructor, who accelerated and thereby caused her to accelerate in order to keep up.



However, the primary judge found that liability was excluded under the application form. Further, the ACL claim failed as Miss Alameddine was not a consumer for the purposes of the ACL.

Appeal decision

Miss Alameddine appealed the decision to the New South Wales Court of Appeal.

Negligence

The Court of Appeal affirmed the trial judge's finding that despite Miss Alameddine being told to *'ride at a comfortable speed'*, she had no choice but to follow the instructor's dictation of speed. The Court of Appeal stated that the primary judge did not err in concluding that Glenworth were negligent. Further, the fact that Miss Alameddine was not 12 years old was irrelevant, as Glenworth had met and assessed her skill level before the activity commenced.

Dangerous recreational activities

The Court of Appeal concurred with the finding of the primary judge that the activity was not a dangerous recreational activity within the meaning of the CLA. The Court of Appeal had regard to the assurances made by Glenworth that individual instruction would be provided and close supervision would be given for the duration of the activity.

Contractual waiver

The Court of Appeal considered that the primary judge erred in the construction of the contract between the parties. The contract was formed on the previous day when the mother made arrangements for the activity and paid the respondents. The Court of Appeal stated the application form did not form part of the contract, citing the application form solely waived liability without any consideration being provided. Consequently, the application form's exclusionary clauses did not apply and liability was not waived. The Court of Appeal reasoned the exclusionary clauses are not construed to extend to the consequences of the defendant's negligence unless the clause refers to that basis of liability.

Australian Consumer Law

The Court of Appeal found the appellant could also recover compensation for breach of consumer guarantees under s 267 of the ACL. The contractual waivers were held by the Court of Appeal as inapplicable because the waiver clauses were not limited to personal injury. Instead, as the waiver clauses extended to property damage, s 139A of the *Competition and Consumer Act 2010* (Cth) did not apply, and the waiver clauses were void.

Case Note

Liverpool Catholic Club Ltd v Moor [2014] NSWCA

Young male slipped and fell as he was descending the stairs of an ice skating rink whilst wearing skating boots. The Court of Appeal considered whether the plaintiff's activity was a dangerous recreational activity and whether the risk of injury was obvious.

The facts

This decision involved a young inexperienced skater (**plaintiff**) who slipped and fell on 14 January 2009 when walking down the stairs of an ice-skating rink whilst wearing skating boots. The plaintiff fractured his right ankle as a result of the fall.

The plaintiff argued the owner and operator of the ice rink (**occupier**) had failed to warn him of the risk of descending the stairs with skating boots on.

At first instance, Justice Levy found the plaintiff's act did not constitute a dangerous recreational activity, as it was a step preparatory to engaging in the recreational activity of ice skating. The trial judge did not accept the risk of injury involved in walking down stairs in skating boots was an obvious risk of which the occupier was not required to warn. His Honour found that the occupier had acted negligently in failing to either:

1. Warn patrons not to put on skating boots before descending the stairs; or
2. Instruct patrons to use a '*duck walk*' technique if they descended the stairs whilst wearing skating boots.

The occupier appealed to the Court of Appeal.

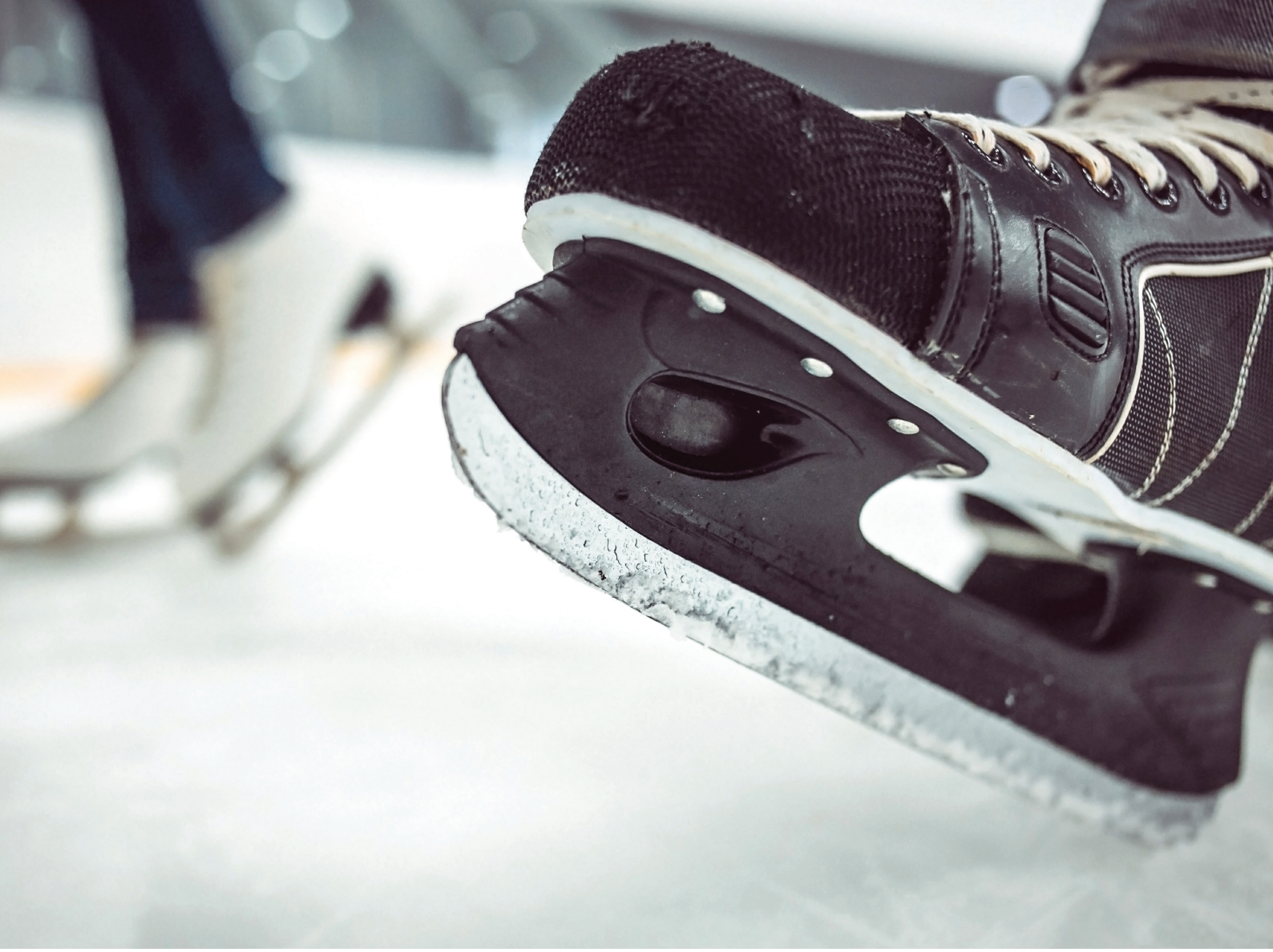
Issues

The issues on appeal included:

1. Whether the act of walking down stairs in skating boots was a dangerous recreational activity within the meaning of s 5L of the *Civil Liability Act 2002* (NSW) (**Act**);
2. Whether the risk of harm which materialised was an 'obvious risk' pursuant to ss 5F and 5H of the Act; and
3. Whether the occupier breached its duty of care in failing to warn patrons not to put on skating boots before walking down the stairs and/or instruct patrons to use the '*duck walk*' technique if they proceeded to do so.

Decision

The Court of Appeal upheld the trial judge's findings that the act of walking down the stairs in skate boots was not a dangerous recreational activity. Even though



the stairs were a means to access the skating rink, the court held it was not necessary for the plaintiff to walk down the stairs in skates and therefore the act did not form part of the recreational activity of ice-skating.

However the Court of Appeal overturned the trial judge's finding that the risk of injury associated with descending wet stairs in skating boots was not obvious. The court held the difficulties in descending the stairs in skating boots would have been readily apparent to a person in the plaintiff's position as a matter of common sense, as well as being easily observable to the plaintiff who would have seen others walk down the stairs in skates before him.

The plaintiff argued that the two precautions the primary judge held the occupier should have taken were not, in substance, warning of the risk of walking down the stairs in skating boots, but, instead, were instructions on what should be done to avoid and reduce the risk.

The court did not accept this argument. It was held that a warning about a risk of harm may be given in various forms (whether general or specific), including bringing to patrons' attention certain precautions they should take to minimise the risk of harm. Accordingly, the two measures the primary judge outlined constituted 'warnings' within the meaning of s 5F of the Act. These were warnings the occupier was not required to provide given the risk of injury was obvious.

The court was satisfied the occupier had discharged its duty of care and the plaintiff's claim failed.

Case Note

Harrison v The Actors Workshop Australia Pty Ltd [2014] QDC 40

Whether it was unreasonable to require acting students to engage in an activity called '*slow motion tag*'.

The facts

Mr Gavin Harrison (**Mr Harrison**) claimed $749,114.99 in damages resulting from physical injury he suffered while completing a film and television acting course conducted by the Actors Workshop Australia (**AWA**). Mr Harrison fell while participating in an activity called '*slow motion tag*' and suffered a fracture dislocation of his left elbow. The game involved the teacher instructing the students to run at various speeds to avoid being tagged. Mr Harrison stated that during a full speed segment, he tripped on an unidentified but firm and rigid object (either an object or a student's leg), fell forward at high speed, and put his left arm out to break his fall.

Issues

Mr Harrison alleged that AWA was negligent by:

1. Failing to identify the foreseeable risk of his falling and not eliminating the risk;
2. Providing a space for the activity that was significantly restricted, having regard to the nature of motion tag. Further, the activity area was cluttered by objects stored on the periphery of the space; and
3. Instructing students to run '*as fast as possible*' within a confined space with obstacles on the perimeter and no control over the direction or speed of students running.

AWA denied liability. It alleged contributory negligence (on the basis that Mr Harrison was overly competitive and did not follow AWA's instructions to focus on bodily movements rather than to avoid being tagged). Mr Harrison's claim for damages was grossly overstated.

Plaintiff's credibility

One of the main issues in question was Mr Harrison's credibility as a witness. Mr Harrison did not mention two subsequent proceedings in which the Australian Competition and Consumer Commission issued a recall notice for products of his business, causing financial hardship as a result.

Justice Reid also expressed serious reservations about Mr Harrison's credibility due to the conflicting evidence

of other witnesses. In particular two students, involved in the activity, (**Ms Petridis** and **Mr Chio**), and the instructing teacher (**Ms Randall**). Mr Chio stated that he did not see Mr Harrison trip on anything and that the game was designed to focus body on body movements rather than avoiding being tagged. Ms Petridis stated that the area of floor in which Mr Harrison fell was well clear of items stored on the perimeter of the room.

Justice Reid stated that Mr Harrison's evidence was designed to further his case, rather than be a genuine recollection of what occurred. In comparison to Mr Harrison's evidence, Justice Reid stated that Ms Randall's evidence was reliable and generally consistent with other evidence.

Ms Randall explained that completing the '*slow motion tag*' activity was designed to develop the ability to slow down and speed up one's performance in accordance with a cinematographer's demands. Ms Randall gave evidence that she did not instruct the students to run '*as fast as possible to avoid being tagged*'. She stated that she instructed the students to play with chivalry and to avoid sudden movements.

Decision

Mr Harrison's claim was dismissed. He was ordered to pay AWA's costs, as AWA's conduct was not shown to be unreasonable.

The court held that Mr Harrison's overly competitive drive was contrary to Ms Randall's instructions to play the game with chivalry and to focus on body movements (not to run as fast as possible to avoid being tagged as Mr Harrison alleged).

Mr Harrison suffered injury as he tried to run excessively fast and look backwards to avoid being tagged, an approach contrary to the purpose of the exercise as explained to him by Ms Randall. Justice Reid rejected Mr Harrison's evidence that he was told to run as fast as he could and that the object of the exercise was to avoid being tagged.

Justice Reid accepted the evidence of Mr Chio, Ms Petridis and Ms Randall that at the time Mr Harrison fell he was not near any objects which might have caused him to trip.

Justice Reid stated that the exercise had been regularly used in the past as part of AWA's training of students without any prior mishap. He concluded that the exercise was important to help actors develop precision in their movements.

'Justice Reid stated that Mr Harrison's evidence was designed to further his case, rather than be a genuine recollection of what occurred.'

Justice Reid held that it was reasonable to allow ten adults to perform such an exercise in the space provided (10 metres long and 5 to 7 metres wide).

Whilst a reasonable person in AWA's position would have foreseen that the activity involved some risk of injury to Mr Harrison or to others, it was not unreasonable to conduct the activity as Ms Randall directed – that is to play the game with chivalry and focus on body movements not avoiding being tagged. It was not necessary for AWA to take any specific precautions against such a risk, other than giving directions to the participants as Ms Randall did.

Hypothetical alternative

Justice Reid stated that had AWA been found to have acted unreasonably, he would have found Mr Harrison liable for one third contributory negligence on account of his own conduct, in engaging in the activity in the way he did.

Justice Reid commented that Mr Harrison appeared credible to the extent that he did not appear to be feigning his disabilities. Mr Harrison succeeded in liability he would have assessed damages in the sum of $90,850, reduced by one third on account of contributory negligence, makes an award of $60,566.66.

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Natural Resources Law

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