

player. Investigations involved advice from paint technicians and tradespeople as to the "proper" materials and method for re-surfacing an indoor court.

In a lot of cases the Plaintiff or fellow students can provide anecdotal or direct evidence of prior incidents involving the particular structure in question or details of warnings given by staff members which make it clear that the school authorities were on notice of the particular defect.

Australian Standards quite often impose minimum safety standards, as do uniform building regulations. In cases involving laceration injuries from glass there are very specific regulations governing the need for safety glass in specific areas. Arguments by defendants that school buildings pre-date the relevant building standards will usually count for little in the face of evidence of a prior injury involving a similar structural defect within the school.

Litigation tools for defect cases

(i) Expert Evidence

As noted the use of appropriate experts is essential in proving that there has been a deviation from the appropriate standard of care.

It is not always easy to obtain the services of a practising teacher to explain what is "reasonable" in a given circumstance and in our experience it can be useful to seek expertise from educational consultants or teacher trainers. Recently retired teachers can also be very helpful especially as they usually have high expectations of professional teachers. Technical expertise should be gathered on a needs basis. It is only worth calling if it adds real weight to the allegation - although it must be said that a good technical expert can carry the day in the right case.

(ii) Discovery

This is an essential tool in this area. School authorities, particularly State Education Departments, tend to generate a large amount of documentation, very little of which ever appears in a defendant's Affidavit of Documents. Practitioners need to turn their mind to the types of documents that might exist which assists the plaintiff's case. In this respect, a "friendly" teacher can be a very

helpful source of information as to the variety of relevant documents likely to be available and the descriptive title of those documents. Teacher's manuals, school policy manuals or department guidelines, maintenance work orders (including "working bee" work schedules) and prior incident reports etc. should be chased down with the zeal necessary to uncover the required evidence. Do not accept inadequate discovery if you have good reason to believe that other relevant documents exist. Even if documents do not get discovered it can often be a strong argument to say that the absence of these types of documents reflects a poor approach by the school to safety issues. For example, a lack of evidence about general equipment maintenance suggests that no maintenance was carried out by the school at all.

(iii) Interrogatories

Carefully drawn Interrogatories based on thorough discovery will elicit helpful admissions about prior knowledge of defects, equipment maintenance programs, prior accidents, safety warnings and the like. Again, admissions that a school has not carried out routine maintenance programs can be more damning than an admission that they did have such a program even though it was not performed with sufficient regularity.

Summary

This area of practice can be a most rewarding one. To achieve a favourable settlement or verdict for a young plaintiff is one of the most gratifying for plaintiff practitioners, particularly when the outcome has been achieved after considerable investigative work and strategic preparation. We can only encourage practitioners in this area to carefully consider the facts as presented by the client before undertaking the investigative steps prior to commencing proceedings. Proper preparation is essential to give practitioners the upper hand in litigation and the practical hints above will hopefully be a useful starting point. ■

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Notes:

- ¹ Practitioners are referred to the paper delivered by Dr Keith Tronc to the 1997 APLA National Conference titled: "School Injuries"
- ² *Stephens v. State of Victoria* (unreported) Victorian County Court, 11 May 1998.
- ³ *Dunn v. State of Victoria* (unreported) Victorian County Court, 27 May 1997.
- ⁴ *Stephens v. State of Victoria* This point was considered at length in the judgment.

\$60,000 for losing mum

A TEENAGE boy whose mother died in jail from a chronic heart condition was yesterday awarded almost \$60,000 damages after authorities were found negligent in caring for her.

Shawn Delaney, 17, and his grandparents, Dawn and William Delaney, had accused the State of NSW of causing Janet Beetson's death in 1994.

Ms Beetson, 30, died in Mulawa prison in the early hours of June 4, 1994, from complications as a result of her heart condition, known as endocarditis. Downing Centre District Court acting Judge Jennifer Blackman found yesterday Ms Beetson's medical condition was noted on court and prison documents.

"The prison medical authorities should have done something for Ms Beetson's heart condition," the judge said.

Instead, prison medical staff apparently assumed Ms Beetson was displaying symptoms of drug withdrawal, she said.

Mr and Mrs Delaney, of Eastern Creek in Sydney's western suburbs, claimed they had the right to sue over Ms Beetson's death because they acted as her parents.

Judge Blackman refused to award damages to them, but awarded Shawn \$58,730.

□ AAP

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