(3) If a potentially toxic chemical is used, or produced, in a particular industrial activity it is incumbent on the producer to be able to provide an account of the quantities and fate of that chemical. For example, for many years laboratories using radioactive tracers have been required to maintain records of their usage and disposal. These records are audited to ensure that all radioactive material can be accounted for and no health risks exist resulting from their inappropriate handling and disposal.

In the case of any potentially toxic waste products of a manufacturing or other industrial process the audit must extend to the amounts and methodology of disposal of the waste products. In many cases their disposal will be regulated by law, and the person or organisation responsible for their disposal should be able to demonstrate their compliance with that legislation.

(4) When the evidence has been compiled and it can be demonstrated that a specific "synthetic" chemical was, on the balance of probabilities, the cause of the distress for which redress is being sought, it remains to be established whether or not a "duty of care" was broached. If there has been some flagrant disregard of legislation, enacted to protect the public or workforce from known dangers, the proof of a failure in duty of care should not be onerous. But what do we do if no legislative protection exists, perhaps because the "synthetic" chemical is new, or is being used in a novel way or for a novel purpose? In these situations a key element in establishing the diligence with which a duty of care has been undertaken will be an analysis of the risks associated with the substance.

Depending upon the circumstances, an analysis of risks can be either qualitative or quantitative. For example, consider the position of a domestic water supplier. We all know water, a "natural" chemical necessary to our very existence, can be dangerous. Every day we each use about 400 litres of potable water. Only about 10% of that water is drunk or used in food preparation. The rest is used for washing, toilet flushing, laundry and in the garden. Each year there are a number of reports of people drowning in their bathtubs. Clearly the very act of reticulated water to a home creates a finite risk of injury or death. However, we would all concur that the provision of reticulated water to each home is an acceptable, qualitative risk for which the supplier is not liable.

Only a very small part of the water provided to the home is used for drinking and cooking. However, we would all agree the quality of the water supplied to us should be such that the risk of us contracting some illness from consuming it is negligible. To satisfy their duty of care the supplier of reticulated, potable water has three tasks to complete. Firstly, they need to establish the risk to human health, and the acceptability of that risk, resulting from the quality of the water leaving their water treatment plant. Secondly, they need to establish the risk, and the acceptability of that risk, of the treated water becoming contaminated with substances, both chemical and microbiological, whilst in the reticulation main. Thirdly, they need to show that where an unacceptable risk has been identified they have implemented "best practice" measures to minimise it. If some form of risk analysis, either qualitative or quantitative, has not been undertaken, it could be argued that a duty of care has not been properly fulfilled.

Summary

The task of identifying the probable cause of client's distress requires:

- the identification of a probable causal "synthetic" chemical;
- a mechanism for contact;
- the presence of the "synthetic" chemical at the appropriate location and time.

The task of auditing the perceived source of the chemical requires:

- establishing its presence, and the quantities present;
- confirming a potential mechanism of contact with the client;
- identifying that all legislative requirements have been met;
- identifying whether an appropriate "risk analysis" has been undertaken to fulfil the duty of care. ■

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AFL star's $90,000 injury payout breaks new ground

BENJAMIN HASLEM

FORMER Australian rules football star Phil Krakouer yesterday received $90,000 in an out-of-court settlement with the AFL, MCG Trust and his former club North Melbourne over a serious knee injury he sustained playing at the MCG in 1989.

The settlement is believed to be the first time an AFL player has been compensated by the league after taking a case to court over an injury sustained while playing.

Krakouer's barrister, Dyson Hore-Lacy QC, said the result would send out a warning to all sports administrators that they carried the same responsibility as any employee to provide a safe workplace.

Krakouer and his brother Jimmy formed a celebrated combination at North Melbourne in the mid-1980s, dazzling football fans with their skills.

But on July 23, 1989, Krakouer severely injured his left knee during a match against Fitzroy (now merged with Brisbane) at the MCG.

Krakouer had been running for the ball when his feet became stuck in mud and he injured his knee.

His career then declined.

At the end of 1989, he moved to Footscray (now the Western Bulldogs) where he played seven games. He was drafted by Sydney in 1992, but only played for the reserves.

Yesterday's $90,000 payout was compensation for pain and suffering and future economic loss, Mr Hore-Lacy said.

He said he believed the settlement was the first in which a Victorian elite athlete had successfully recovered money for an injury from a sporting body.

"The lesson is that all sporting organisations should be insured," Mr Hore-Lacy said.

"If they continue to provide unsafe surfaces they'll continue to get sued."

Mr Hore-Lacy said he had not spoken to Krakouer but predicted he would be "very pleased" with the outcome.

"I think Phillip's made a point, the condition of the MCG was absolutely atrocious on the day and one of the interesting things is they have a similar problem at the moment," Mr Hore-Lacy said.

"Unlike in 1989, when they had people running off firm ground into a quagmire, now they have people running off firm ground onto a skating rink," he said referring to recent criticisms of the hardness in the MCG centre square.

AFL communications manager Tony Peek described yesterday's settlement as "a sensible commercial outcome" and dismissed suggestions it would encourage other injured players to follow in Krakouer's footsteps.

AFL Players' Association chief executive Andrew Demetriou said his organisation recently teamed up with the AFL Medical Officers Association to set up a standardised "ground-hardness" to prevent injuries.

"It's a step in the right direction," he said.