TAC to provide the documents.

The case proceeded to judgement at the VCAT. The TAC asked for it to be heard by the President of the Tribunal. It was heard on 28th July 1998 by Justice Kellam. Noteworthy for a jurisdiction in which the lowest County Court cost scale generally applies, the Transport Accident Commission briefed a senior Queens Counsel and with him another member of the Bar. At the eleventh hour the TAC released a copy of a psychiatric assessment which it had arranged six months earlier, which confirmed that the TAC advertisements caused an aggravation of the post traumatic stress disorder.

The Tribunal found that the advertisements have caused psychiatric injury to Ms. George.

A Transport Accident?

The hurdle for Ms. George, however, was to establish that her injuries were directly caused by the driving of a motor vehicle. The TV advertisement portrayed driving, but was that enough to fall within the Transport Accident Act? The Tribunal found that it was not, and that there had to be an incident separate to the driving. There was no transport accident, so the TAC was not obliged to pay "no-fault" compensation.

The case received interest from the press and was reported in each of the daily newspapers. Neither the name of Carla's solicitor, nor his firm, were identified in those articles.

Things became personal. At about 5:30 p.m. on Friday 7th August, prior to judgement, the TAC delivered two large folders of documents. They gave notice that they intended to pursue the applicant's solicitors for costs asserting that the application had been pursued solely for an ulterior purpose and not to represent the applicant's interests. In support of this application they asserted that the requests for further documentation during the running of the case was evidence that the material was sought for ulterior motives. Furthermore they provided a selective dossier of articles, television interviews, letters to the editor, and other documents relating to any issue whatever of commentary by the instructing solicitor about TAC.

Furthermore the TAC briefed a senior Queens Counsel and another barrister to argue that costs ought to be ordered against the applicant's solicitor personally.

The Tribunal rejected TAC's request. Justice Kellam said that whilst the Applicant's case was not without difficulties, it had been considered appropriate by TAC for the matter to be heard "by a judicial member of VCAT and furthermore for the retention of very senior Queens Counsel". The Tribunal found that the case, although a difficult case from the viewpoint of prospects of success, was a case defining the outer boundaries of the words "directly caused by" appearing in Section 3(1) of the *Transport Accident Act*.

Conclusion

The case was always going to be a difficult one; however, it highlights the importance of corporate image to insurers. In this particular case the TAC took what it perceived to be an attack on its corporate image, in circumstances where a woman suffered injury from viewing depictions of her son's death in TAC advertisements, and it defended the case with a personal attack not seen before in this jurisdiction.

In a sense, the soft underbelly of the TAC has been revealed.

A different method of compensation is now being sought for Ms. George, and hopefully a successful outcome will be reported in a future edition of *Plaintiff*. ■

For the Applicant: Mr D.C.Pulling, instructed by Maurice Blackburn & Co.

For the Respondent: Mr R.K.L.Meldrum Q.C. and Mr P.Solomon, instructed by TACLaw Pty Ltd

John Voyage is a Partner at Maurice Blackburn & Partners, and the Convenor of the APLA Motor Vehicle SIG in Victoria. **Phone** 03 9345 2700, **fax** 03 9347 6284.

Sport rule makers liable as crippled players win case

By AMANDA PHELAN

Sports administrators can be sued for making rules that cause injury to players under a landmark decision by the NSW Court of Appeal yesterday.

Two rugby union hookers, who became quadriplegics after being mowed down in scrums in separate games, won the right to sue 16 officials from around the world who drew up new rules for the game in 1986 and 1987.

Mr Luke Hyde, a Sydney man injured in 1986, and Mr Peter Worsley from Wagga Wagga, who was crippled the next year, maintain these administrators from the International Rugby Board are negligent.

Justices Spigelman, Mason and Stein dismissed arguments by lawyers for the officials that sport could be "crushed by legal claims by athletes" against administrators who are part-time amateurs.

"Sports administration in the modern era bears many of the trappings of big business," the court ruled. This included corporate controlling bodies, paid full-time executives and staff, and insurance, marketing and sponsorship deals designed to attract viewers, rather than merely enable the game to be played for pleasure.

The Australian Rugby Football Union Ltd and officials from other rugby sporting groups are listed as the defendants in the case. The 16 officials – from Australia, New Zealand, Ireland, Britain, France and South Africa – will be forced to defend themselves in court in NSW and may be held responsible for a "duty of care" to players.

Lawyers for the sporting bodies warned the decision had "dangerous potential".

"The court has broken new ground today," said Mr Brendan Swift, representing the 16 officials, and the New Zealand Rugby Football Union.

"This finding has widespread implications for other sports, particularly those with a high incidence of injury."

Mr Swift stressed the issue of negligence is still to be put to the test before a trial judge.

The court said the sports administrators, or defendants, "are sued for negligence in the conduct of the particular football match or their responsibility for rules under which it was played, including responsibility for failure to enforce the rules or to have them modified locally, so as to require scrummaging to take place safely".

Mr Hyde, a first grade Colts player for the Warringah Rugby Club, was injured in a scrum against Gordon. Mr Worsley, who played for Wagga Agricultural Rugby Football Union, was crippled in a scrum against Rivcoll.

A lawyer for the two injured players, Mr Michael Ryan, said: "We are looking forward to finally getting on with our case. We have had to fight 30 interlocutory proceedings just to get this far."

Sydney Morning Herald 20/10 1998. Reproduced with permission.