Allianz Legal Reviews

Case 1 – incident in yard

This first case involved a slip and fall by a student in the school yard during an organised PE Class. It had been decided to play five-a-side football outdoors on the day and the nets had been set up at appropriate locations to allow the games proceed. This claim was brought some two years after the event and an incident report form had been completed. Under the statute of limitations, a minor has 2 years after they reach their age of majority (18) in which to bring a claim where in an adult's case, they have 2 years from the date of the actual incident. During the course of the game, a student slipped on grit on the tarmacadam surface and suffered a laceration to his leg. The school was going through a programme of resurfacing the yard and the area where the incident occurred was due to be completed during the summer holidays of that year. On examination of photographs taken at the time, it was clear that there were some significant amounts of loose grit on the surface. As it was some time from the incident, witnesses did not have a very clear recollection of the accident. One witness did advise that they had a recollection that the yard was in poor condition at the time. The decision to use the yard rather than the school hall was open to criticism in the investigator's view. In addition, while this grit might be present in many yards and in many areas where there is tarmacadam laid around the country, and football is played on it, a strict application of the Occupiers Liability Act 1995 by a Judge could be critical of the surface. That coupled with the decision to hold the games outside in the knowledge that the yard was not in the best order was sufficient for a finding to be made against the school for defective premises which resulted in this case being settled on a 100% basis in favour of the claimant.

Case 2 – incident in yard

This case involved a fall in a school yard this time on a ramp. The claim was brought 2 years after it occurred and took a further 8 years before it was brought to a conclusion after a hearing in the Circuit Court and an appeal to the High Court. A student fell on a ramp in the school. The ramp in question was examined by an engineer who expressed the opinion that while the ramp was not quite compliant with the Building Regulations, she was of the view that the ramp was well constructed and had no obvious defects or hazards on the surface. A full defence was filed and the case ran to a full hearing in the Circuit Court. The Plaintiff gave evidence that he/she was not really able to say how his/her injuries took place. The Plaintiff also admitted that students at the school ran around the school yard regularly and that it was not uncommon for a child to have a fall. Medical evidence also confirmed the Plaintiff had another fall in school and had 2 falls at home. The Judge dismissed the Plaintiff's claim after all the evidence was heard but made no order as to costs.

An appeal was lodged on behalf of the Plaintiff and the case went to a full hearing in the High Court. The Plaintiff's case was again dismissed by the High Court Judge who again did not make any order as to costs. This was a very good outcome for the school but unfortunately still resulted in a significant cost to their policy as the costs incurred by the defence legal team had to be paid under the policy as both Courts made no order as to costs despite ruling in favour of the school on both occasions.

Case 3 – incident in school yard

On this occasion a game of football at "*big break*" was taking place and a number of students were participating. There were 3 teachers on supervision duty (an SNA was also in the yard) and football was a regular and popular game played at lunch time. The students had asked permission to get the football which was allowed and the game proceeded and was in play for approximately 5 minutes when one of the students stumbled and fell when attempting to kick the ball. The student suffered an injury and a claim was pursued on his behalf. The claim submitted made the case that the ball was partially deflated and was the cause of his fall. Evidence was given that the ball was in continuous use for the rest of the break and indeed was used the following day as there was no problem with it. Engineering evidence was also called to give evidence and he confirmed that he had carried out a number of experiments on the inflation of the ball. He had used a valve to release air from the football and had to stand on it to get it completely flat. A number of other examples were given and the engineer felt it was impossible for your foot to become embedded in the football (as was being alleged) as there was still air in there and it does not compress more than one to two inches. The Judge proceeded to give his judgement and said the circumstances giving rise to this claim were most unusual and he way trying to figure out exactly how one could kick the ball if it was deflated to the extent that the Plaintiff says it was and how therefore it was ever used for a game of football in that state. He said the day where somebody kicking a ball with a level of deflation leads to a claim means that one would have to stop playing football in the school yard at all. He said that was far from the reality of the case and he felt there were no grounds for holding the school responsible on the Plaintiff's version of events. He noted the witness evidence on behalf of the school that the Plaintiff never came in contact with the ball, what happened was an accident and that these things happen, people trip and fall. He went on to say that the claim against the school for providing a defective football could not succeed and he could not see how the Plaintiff could blame the deflated football for losing his balance. The claim was dismissed with an order for costs.

Case 4 – incident at breaktime

This case involved an incident at lunchtime under normal supervision. A first-year student was in the school playing fields and his friend asked him to punch his older brother in the arm and run off instigating a chase. He did so and while being chased, he slipped and fell to the ground and was caught by his friend's brother and another boy. They lifted him up and swung him from side to side but was dropped in the process and suffered an injury to his shoulder. The incident was seen by the supervising teacher who was on the scene in seconds. The case proceeded to a full hearing in the Circuit Court. It was suggested that the teacher was talking to another supervisor at the time but this was denied. More so, the teacher he was supposed to be talking to was not in the school at the time. In addition, it was alleged that the incident took place over a much longer time than it had, but again this was denied in evidence by the teacher who confirmed that he had seen the boys gathering and was on the scene immediately. In his judgement, the Judge made reference to the fact that it was an unfortunate accident, but that there were two teachers on supervisory duty. The chase was unpredictable and he accepted the teachers evidence that he was not chatting to anybody and the level of supervision was adequate. The Plaintiff had not established any breach of duty of care and therefore his case must fail – the claim was dismissed with no order as to costs.

Case 5 – accident during a woodwork class

A student was working with a sander and a piece of wood when his thumb got caught between the wood and the sander causing a very nasty injury to his thumb nail. The big toe nail was grafted on to his thumb during surgery and took some considerable time for both to heal. Initially, it looked as if the school had a very solid case but following a pre-trial consultation, our Counsel was not as confident on the liability front as he might have been as witness recollection was hazy and evidence on training was going to create a problem for us on cross examination. Also, the precise location of supervision on the day was not clear and signage had been introduced since the incident stressing caution and reminding students how to use the machines. The Plaintiff was of age and the proceedings were moved into his own name. The insurers were able to argue a case for contributory negligence and achieved a significant reduction on the settlement reached. There was no requirement to rule the case as the Plaintiff had reached his/her age of majority

Case 6 – an unusual case

During the course of a game of football on an astro turf surface which was being supervised by a teacher, the teacher called for the ball and as it arrived at his feet, the student slide tackled him and the teacher inadvertently stood on his finger. The student got up and the teacher enquired if he was all right, to which he confirmed he was and continued on his way. He later attended at 1st aid where it was confirmed his finger was fractured. A claim was pursued and an investigation on behalf of the insurance company reported that they could see no negligence where the teacher was concerned and the proceedings brought were fully defended. The case proceeded to a full hearing in the Circuit Court and the Judge confirmed there was no negligence on behalf of the school and the case was dismissed again with no order as to costs provided that no appeal was submitted.

Case 7 – trip and fall

This case involved a trip and fall on school grounds and serves as a reminder that the risk is always present. School Authorities need to be always be vigilant and proactive in respect of the maintenance of surfaces in the school premises. In this case, pot holes had developed after a period of bad weather and vehicle traffic. The potholes were in an area not normally traversed by parents or visitors of the school and had not been repaired or cordoned off. A parent was walking up the drive of the school and tripped and fell in one of the potholes causing a nasty injury. The insurers had no answer on liability and the case was allowed proceed for assessment by the Injuries Board. The award was rejected by the Plaintiff through her solicitors and eventually settled after proceedings were served.

Case 8 – injury in school yard

The accident happened in 2008. However, a solicitor's letter was not received until 2012 and proceedings were not issued until 2015. The yard itself had been completely resurfaced in the meantime. This case was defended in full. The teacher supervising at the time was on the scene of the accident immediately and had noted that the area was free of any defects or debris. After looking after the student, she completed a statement and incident report form noting it was a fall while running in the school yard. A photograph was produced of a crack in the surface of the yard but it was admitted that it was not the actual area where the accident had occurred. The Judge ruled that it was difficult to see how the school could be held responsible for this accident. He said that accidents happen, that people fall and that some sustain nasty injuries. There was no negligence and no blame – it was part of growing up. He said to the injured party that the onus was on them to satisfy the Court

that the grounds were unsafe and that they had not proven this to be the case. He therefore had no alternative but to dismiss the claim. No order was made as to costs.

Case 9 – injury to caretaker while moving metal cupboard

This case involved an injury to a caretaker whilst moving a metal cupboard from one classroom to another. A list of jobs had been left for the caretaker to complete over the school summer holidays. Included on the list was an instruction to move a metal cupboard from one classroom to another classroom which was situated down two flights of stairs. The caretaker had been told previously not to move the metal cupboard by himself. As it was on the list of jobs to complete, the caretaker went ahead and moved it on his own as there was no one else on the school grounds that day. He strained his lower back and aggravated a chronic pre-existing issue with his knees. The list of the '*to do'*s' was not checked and there was no mention on the list that the movement of the metal cabinet was to be done only with the assistance of another individual. The case was listed for hearing in the Circuit Court and after consultation with Counsel, it was decided to settle the case arguing contributory negligence. He had ignored previous instructions that he was not to move the metal cupboard on his own but acknowledging that the '*to do*' list had not been specifically checked and highlighted that the moving of the metal cupboard was a two-person job. The case was settled on the basis there was a significant discount for contributory negligence on the part of the caretaker.

Case 10 – injury to student who kicked glass door open

This next case involved a student who was carrying books along a school corridor and karate kicked a door open. His foot went through the glass and he got stuck in the glass. As he pulled back his foot, he suffered a significant laceration to his Achilles tendon/heel. The glass in the door was at a height that in any other circumstances could not be kicked as it was at waist level. The case proceeded to the Circuit Court. Settlement was sought on a 50/50 basis arguing that the glass was unsuitable as his foot had gone through it. This in fact was the only argument that the injured party had. Eventually the case did not proceed and the injured party withdrew his claim on the basis that the insurers agreed to make a small contribution towards his legal costs.

Case 11 – student injured while playing a game of chase or tag

This case involves an injury sustained by a student while playing a game of chase or tag. The injured student gave evidence that the game was called '*dogs*' and was dangerous and should not have been permitted to be played in the school yard. It was essentially a game of chase or tag. The Plaintiff in her evidence stated that the game had been played in the school for about two weeks prior to the day of the accident and that it had been banned after the accident had occurred. The Plaintiff confirmed that she was crouched down behind a wall when suddenly and without warning another pupil jumped on her back causing her to fall. A witness from the school gave evidence that she was never aware of the game and therefore denied that the game was subsequently banned as they were never aware of it. The Judge stated that he could not countenance a situation where chasing games were being banned in schools. He accepted that students could bump into each other in the school yard. He said that there was no negligence on the part of the school and that he had no option but to dismiss the Plaintiff's legal action.