

Marsh Game Day Checklist

Case Study

October 2019

Williams v Latrobe Council and Others (2007)

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Executive Summary

The following information is provided as a summary of proceedings and decisions of the Supreme Court of Tasmania:

- A footballer injured his ankle when he landed on an edge of a sprinkler cover in March 2004.
- Legal action seeking over \$100,000 was taken against the Council, the home club and the away club. A Public Liability insurance claim was lodged by the football clubs in June 2005.
- The Supreme Court of Tasmania heard the case in December 2006 with the court's findings delivered in February 2007.
- The court found the council was negligent and 85% responsible for the player's injury because they did not ensure the sprinkler cover was level or that an even playing surface was maintained.
- The football clubs were both found negligent and 15% responsible for the player's injury because they did not sufficiently inspect the sprinkler covers prior to the game and ensure that they were level with the playing surface.
- The Council and the Clubs appealed the original court decision in May 2007 with the appeal findings delivered in September 2007.
- The Clubs were successful in appealing the original court decision and were cleared of negligence.
- The appellate court found that "a reasonable club, whether at home or away, should not have been expected to have had one of its members, probably an unpaid volunteer... down on their hands and knees and lifting the grass at the edge of the five irrigation pits... checking to make sure that there was not a significant hard edge height difference. The Match Day Checklist did not require that."
- The appellate court judge noted that because one of the clubs did not complete the Match Day Checklist, it had breached its duty of care to the players. However, the court found that even if it had completed the required Match Day Checklist it still would not have detected the height difference of the sprinkler cover and prevented the player's injury.
- The Match Day Checklists were deemed to be a valid visual inspection tool and a requirement for the standard duty of care for all clubs.
- The Council's appeal was not successful. The Council was found to be 100% responsible for the player's injury.



The picture above is an example of a sprinkler cover.
This picture does not reflect the actual cover or conditions referred to in this case study.

Recommendations

Based on the decisions delivered by the Supreme Court of Tasmania in reference to this case, Marsh provides the following recommendations:

- Marsh strongly recommends the completion of Pre-Event Checklists prior to commencement of the event or game and if conditions change throughout the day.
- Due to the timeframe between the date of the incident and the date of the legal action taken against the clubs in this case, Marsh recommends storing completed Pre-Event Checklists for a minimum of 7 years.
- Pre-Event Checklists should be integrated into the overall Risk Management strategies for all sporting organisations.
- Open and ongoing communication should be maintained between all sporting organisations and their facility managers (such as Councils, Schools, etc) in regard to facility maintenance and safety.
- All sporting organisations should adopt proactive Risk Management practices that will identify risks early and enable risks to be addressed to an acceptable level prior to commencement of play to provide safe playing conditions.

Case Study

The following report will provide a detailed summary and commentary of the original trial and the subsequent appeal. This information aims to assist sporting organisations understand the importance of the Match Day Checklists and practical risk management strategies for player safety.

The report will outline the key points of the trial and the outcomes of the court's decisions. This report is provided only as a general guide and does not constitute advice.

Introduction

The following case study and comments are provided in reference to the decisions of the Supreme Court of Tasmania involving a football player claiming negligence against a Council and Football Clubs.

This report involves excerpts and commentary from two court decisions handed down in 2007. The hearings involved a football player who was injured during a reserves game in March 2004. The injury occurred when the player landed on the uneven edge of a sprinkler cover and severely broke his ankle.

To demonstrate negligence, the player was required to show that there was a duty of care owed to him by the defendants, that the defendants breached that standard duty of care AND that their breach of duty caused his injury.

The key points in this case included whether the Council provided a safe facility, and whether the clubs inspected the ground for potential risks prior to commencement of play.

This case involved two separate court hearings. The first hearing found that the Council and both Clubs were negligent and responsible for the player's injury (85% and 15% respectively). However, the second hearing (the appeal), found that the Clubs were cleared of negligence.

The appeals court decided that it was unreasonable to expect a club volunteer to get "down on their hands and knees and lift the grass at the edge of the five irrigation pits" to check that the sprinkler covers were level with the surrounding surfaces.

Whilst the Council was found to be responsible for contributing to the player's injury in this case, Marsh would like to stress the importance of partnership and communication between sporting organisations and Councils in regard to risk management.

Councils and Clubs play an important role in the safety and well being of players, spectators, officials and organisers of sporting events.

This case demonstrates how the Supreme Court of Tasmania determined the duty of care for the Council and the Clubs. It has shown that Marsh's Match Day Checklists are adequate for inspecting grounds prior to commencement of play. Conversely, it should be noted that failure to complete a Match Day Checklist may be deemed a breach of the club's duty of care owed to players.

The benefits of Public Liability Insurance have also been demonstrated through the proceedings of this case. Since the initial insurance claim was lodged in June 2005, the AFL's Public Liability insurer has defended the claim on behalf of the clubs. The total cost of the claim was likely to exceed \$110,000, however, the Clubs involved were only out of pocket \$2,000 for the insurance excess (please note the AFL's 2007 Public Liability Excess was only \$1,000).

Marsh will continue to monitor and review the impact of these court decisions, and similar decisions in the future. Through consultation with our sporting partners, we will endeavour to provide services, resources and risk protection that will assist sporting volunteers address risk management in a practical and effective manner.

Risk management plays an important role in the daily operations of all sporting organisations and can help defend claims of negligence as shown in this case.

Our aim is to help sporting organisations reduce their risks wherever possible through the provision of education programs, resources and an extensive understanding of the risks at hand.

For further information contact Marsh direct or visit www.marsh.com/au/afl

Part One – Initial Trial

Williams (the Plaintiff)

v

Latrobe Council (the Council)

Latrobe Football Club Inc (the Latrobe FC) East Devonport Football Club Inc (the EDFC)

Supreme Court of Tasmania – 5 February 2007

Background

- A footballer was injured due to an irrigation pit cover (sprinkler cover) set in ground below the level of the playing surface.
- When going for the ball in the third quarter, the Plaintiff suffered a serious injury to his left ankle.
- The Council owned and maintained the football ground (the Latrobe Recreation Reserve).
- The Plaintiff's left foot landed on, or partly on, an irrigation cover (the Cover) placed over a pit dug into the playing surface, at the bottom of which an irrigation tap (sprinkler) was installed.
- The Cover was not set flush with the surface of the surrounding ground and/or was not level.

The Council & the Ground

- The Council was the owner of the Latrobe Recreation Reserve (the Ground).
- In the summer, the Ground is used for cricket and in the winter it is used for Australian Rules Football.
- During the football season, the Ground is used for Under 19's, Reserves and Seniors' games as rostered by the Northern Tasmania Football League (NTFL).
- In addition, the Ground is used for training four nights per week and for school football matches, finals games and sports carnivals.
- The Council leased the "Function centre, secretary's room and memorabilia room" to the Latrobe FC for four years.
- This lease included permission to use "the sporting facilities" as per the terms of the lease.
- The Council agreed to provide "all ground care and maintenance for the sports arenas and facilities as per the service agreement".
- The Council was "solely responsible for the main area surfaces..."
- The Council horticulturalist and the groundsmen at the Ground "were responsible for the upkeep of the grounds and environment within the ... recreation ground precinct".
- The Council required that the Latrobe FC complete a "Facility Inspection Sheet" at least 24 hours before the ground is used.

The Football Clubs

- The NTFL, through AFL standards and rules, expects the home team to ensure that the ground is properly marked out and in a safe condition.
- The AFL, prior to the start of the 2004 season, had made new insurance arrangements for all clubs and leagues, this was arranged by JLT, now a business of Marsh.
- As part of these new arrangements, the teams were requested to embrace a National Risk Protection Program.
- Part of the National Risk Protection Program required the clubs to complete a written Match Day Checklist prior to the start of the first match of the day.
- The checklist must be signed by a representative of each club and put into the match envelope (to be sent to the NTFL).

The Irrigation Hole and Cover

- The Latrobe Recreation Reserve contains five irrigation outlets (sprinkler tap holes).
- The outlet involved in the incident in question measures about 200mm by 400mm and is about 350mm deep.
- The sprinkler tap is surrounded by a cement sheet box, the hole is covered with a metal lid, soil and a wooden block covered with Astroturf.
- The idea behind this structure is that it will sit flush with the playing surface.
- The significance of this cover is whether, on 27 March 2004, the cover was flush with the surface of the surrounding soil or not and, if not, whether the plaintiff landed on the uneven surface and thereby suffered his injury.

The Injury

- The ball was kicked in the plaintiff's direction and the plaintiff ran for the ball with his arms raised. After running about 20 metres, the plaintiff jumped up and came down, breaking his ankle.
- The broken bone was sticking out of his football sock and he had to be carried off on a stretcher and taken to hospital.
- According to medical evidence, the risk of suffering an ankle injury is higher if the foot lands on an unpredictable surface than if it lands on a predictable surface.
- The injury sustained was an eversion and not an inversion injury. Eversion injuries are very uncommon on the football field.
- The court heard that the probability is that the plaintiff's injury was caused by his ankle landing on an unpredictable surface.

The Condition of the Cover

- The Plaintiff's brother and another witness, inspected the Cover following the game and determined that the Cover was "one to two inches below the surrounding soil".
- The Ground's caretaker, employed by the Council, also inspected the cover following the game and, using his foot, determined that the cover was stable.
- The Caretaker did not inspect the cover to see if it was level with the surrounding soil.
- Other witnesses who inspected the cover's height difference did so by getting down on their hands and knees and lifted the grass edging to reveal the cover's rim.
- The court determined that there was a height difference that placed the cover's edging below the height of the surrounding soil.

Checklists and Inspections

- On the Wednesday before the game, a Latrobe FC Committee Member completed the required Facility Inspection Form. Question 20 asked, "Oval surface fit for purpose?" and question 23, "Water tap holes covered and padded?" The committee member placed a tick in the "OK" column next to both items.
- The Committee Member completed the inspection by walking around and looking at the covers from a standing position, putting his foot on them to test their stability and moving on.
- The Court determined that the Committee Member could not ensure that the covers were completely level. This could only be done by getting down close to the ground, or feeling with his hand.
- The Latrobe FC Team Manager was responsible for completing the required Match Day Checklist prior to the game on 27 March 2004, which he did shortly after 8am that day.
- The Match Day Checklist asked "Is the surface in a good condition? (grass length, free of holes)" and "Are sprinkler covers correctly in place?" and the Team Manager placed a tick in the "Yes" column for both questions.
- The Team Manager made only a visual assessment and did not make any close physical examination of the Cover. He said that the Cover "appeared to be intact, even and level".
- The Team Manager said he could not locate a representative from the EDFC until after the game was over.

Council's Duty of Care

- The court found that at the time of the Plaintiff's injury, the top of the cover was at least half a centimetre below the level of the surrounding ground.
- The court determined that it is more probable than not that the Plaintiff suffered his eversion injury because his foot landed awkwardly partly on top of the cover and partly on the surrounding soil and that the height difference was sufficient to cause injury.
- The judge stated "A reasonable council and a reasonable football club would have foreseen that if the top of a cover is not flush with the surrounding soil, a hard edge height difference will be created which will give rise to the risk of injury to a footballer. That risk is more than foreseeable. It is obvious."

- “The relevant risk of injury could be removed easily and without expense or, at least, with only minimal expense, by removing the covers during the football season and simply filling the hole in with soil, tamping it down level with the surrounding surface and sowing grass on it.”
- The Council was, and is, responsible for the maintenance of the Ground and its failure to do the same at its ground for the football season as was done at similar local grounds constituted a breach of the duty of care owed to the Plaintiff on 27 March 2004.
- As a result of that breach the Plaintiff suffered loss, injury and damage.

Club’s Duty of Care

- Whilst representatives of the Latrobe FC inspected the ground, as required, prior to the game, the court found that the EDFC did not complete any inspection.
- The court found that the inspections conducted by the Latrobe FC were insufficiently thorough to detect the height difference that contributed to the Plaintiff’s injury.
- The judge stated “A reasonable club in the position of Latrobe FC would have been aware of the risk of injury arising from a height difference, inspected the ground in a manner that would have detected a height difference, and asked the Council to eliminate it.”
- In regard to the EDFC the judge stated “a reasonable club would have inspected the ground before the match was played.”
- The Match Day Checklist should have been completed as per the requirements of the National Risk Protection Program and the EDFC did not complete this requirement.
- The court found that if the EDFC had made the inspection as required, it would have detected the height difference and asked the council to eliminate it.
- The failure of the EDFC to complete the Match Day Checklist constituted a breach of the duty of care owed to the Plaintiff and caused him to suffer loss, injury and damage.

The Court Decision

- The judge found for the Plaintiff against the Council and the clubs with damages to be assessed.
- The court found that the greatest share of responsibility falls upon the council and the judge assessed that share at 85 per cent and the clubs responsibility at 15 per cent.

Part Two – The Appeal

Latrobe Council (the Council)

v

Williams (the Respondent)

Latrobe Football Club Inc (the Latrobe FC) East Devonport Football Club Inc (the EDFC)

v

Williams (the Respondent)

Supreme Court of Tasmania (Full Court) – 27 Sept. 2007

Background

- The previous trial (delivered 5 February 2007) found that all three defendants (the Council, the Latrobe FC and the EDFC) were liable in negligence for the Respondent's injury.
- The Council's share of responsibility was 85 per cent and that between them, the two clubs were responsible for the other 15 per cent.
- All of the defendants appealed the original decision. They attacked the findings that they breached the duty of care they owed to the Respondent.

Key Points for Appeal

- The Northern Tasmania Football League (NTFL) expected the home club to ensure that the ground was properly marked out and in a safe condition.
- The AFL's National Risk Protection Programme required all clubs to complete and sign a Match Day Checklist prior to the start of the first match of the day.
- The Checklist had to be signed by a representative of each of the clubs playing at the venue that day.
- The trial judge stated that "Australian Rules Football is a fast moving contact sport, frequently requiring players to jump in the air whilst running forward at considerable speeds. It is obvious that a smooth grass playing surface is necessary to ensure that players do not injure themselves whilst engaged in such activity."

The Council

- The trial judge stated that "A reasonable council and a reasonable football club would have foreseen that if the top of a cover is not flush with the surrounding soil, a hard edge difference will be created which will give rise to the risk of injury to a footballer."
- The appeals court sought to determine what steps would a reasonable council have taken to address the risk and whether the Council failed to take those steps, with the consequence that the Respondent suffered his injuries.
- On a different ground, the home ground of the EDFC, the groundsman prepares the irrigation pits for each football season by filling the hole with soil and sowing it with grass.

- The groundsman held the view that the AFL considered that for its competition, holes should not be filled with loose sand or dirt and as such the soil is packed down before sowing it with grass.
- The appeals court considered the magnitude of the risk and the degree of probability that it will occur, and the expense and difficulty for the Council in taking steps to alleviate the danger.
- The Council's duty did not extend to ensuring the safety of all footballers who used the oval in all circumstances.
- The risk identified by the trial judge was that of the hard edge height difference.
- If participants needed to concentrate on the surface of the ground for their own protection, the playing of the game would be substantially different.
- The evidence showed that if the Council had adopted the course of replacing covers with properly compacted soil and sown grass or turf, the Respondent's accident would not have happened.

The Football Clubs

- The trial judge considered that it was the responsibility of the Council to maintain the surface of the Ground and not the responsibility of the clubs.
- The trial judge found that the Latrobe FC was liable because it failed to ensure that the ground was safe and in a reasonable condition for the purpose of playing football and it failed to ensure that the level of the cover was the same as the surrounding playing surface.
- The Latrobe FC was required to inspect the Ground at least 24 hours prior to match day, as required by Council, and on the Match Day, as required by the National Risk Protection Programme.
- The Council's Facility Inspection Form was completed by a Latrobe FC committee member who determined the Covers to be "secure" and in "good condition".
- The Match Day Checklist was completed by the Latrobe FC's Team Manager on the morning of the game day. This inspection determined that the surface was in "good condition" and the sprinkler covers were "correctly in place".
- The purpose of the Match Day Checklist was to ensure the safety of the players, which the club well knew, and was a requirement of the new insurance arrangements that been entered into by the NTFL and the AFL.
- The Team Manager said that he could not locate a representative from the EDFC until after the game was over.
- No one carried out an inspection of the Ground on behalf of the EDFC, which was something that was also required by the NTFL in the interests of the safety of the players.
- The Latrobe FC's Team Manager agreed that he had adequate time to conduct a sufficient inspection of the Ground.
- However, the trial judge did not accept that the Team Manger's inspection was carefully undertaken.
- The Team Manager said that while he did not touch the covers, he went to them and looked at them and they appeared to be level.

- The trial judge found that a reasonable club in the position of the Latrobe FC would have been aware of the risk of injury to the Respondent, by inspecting the Ground in a manner that would have detected a height difference, and asked the Council to eliminate it.
- The trial judge found that a reasonable club in the position of the EDFC would have inspected the ground before the match was played.
- The trial judge found that if the EDFC had made completed the Match Day Checklist as required, it would have detected the height difference and asked the council to eliminate it, and that its failure to complete the Match Day Checklist constituted a breach of the duty of care owed to the Respondent.
- The observations of the hard edge height difference were made by close inspections of the Cover whilst on hands and knees.
- One witness commented that he put his head down to ground level and another witness needed to lift the grass that was hanging over the edge of the Cover.
- Neither the Facility Inspection Form nor the Match Day Checklist directed the clubs to compare the height of the Covers with the height of the surrounding soil.
- The appeals court found that the trial judge's implication that the clubs should have conducted a comprehensive inspection beyond the scope of their documented requirements was "too onerous a standard of care".
- A reasonable club, whether at home or away, should not have been expected to have had one of its members, probably an unpaid volunteer, down on their hands and knees and lifting the grass at the edge of five irrigation pits, or in some other way taking considerable care.
- The Match Day Checklist did not require any more than a visual inspection.
- An inspection carried out for the purpose of the Match Day Checklist would have been sufficient if all that the club representatives did was to walk around the ground checking visually for appropriate conditions.
- The EDFC breached the standard of care required of it by its failure to complete the Match Day Checklist at all, but it should not have been found liable to the Respondent because a reasonable inspection by a representative of a visiting club would not have disclosed the height difference.

Findings of the Appeal

- The court dismissed the Council's appeal and upheld the appeals for the Latrobe FC and the EDFC.
- This made the Council 100 per cent responsible for the Plaintiff's injuries/damages.

Recommendations

Please refer to page 2.

The following is a summary of Marsh recommendations provided to all sporting organisations:

- Pre-Event Checklists should be completed prior to sporting activities.
- Conditions should be monitored throughout the day and if conditions change.
- Completed Pre-Event Checklists should be stored for a minimum of 7 years.
- Pre-Event Checklists should be part of overall Risk Management strategies.
- Open and ongoing communication should be maintained.

Proactive Risk Management practices should be adopted and implemented early.



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