

The APLA Update

AUSTRALIAN PLAINTIFF LAWYERS

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EDITORIAL

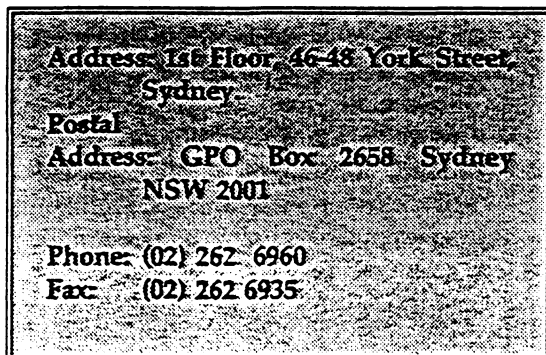
Welcome to the 2nd issue of the APLA Update. This issue contains both articles and case notes on a wide range of legal issues. Our contributors this month come from across the country and represent both our barrister and solicitor members.

We are endeavouring, through the APLA update, to supply our members with a valuable information exchange resource. If you wish to contribute articles or case notes or have any suggestions about ways to improve the Update, please call Anne Purcell on (02) 262 6960.

Another important Information Exchange Service APLA will be offering its members is the Expert Database. We have enclosed two forms for you to complete and return. It is essential that all APLA members supply names of experts for the database. The success of this services depends on you.

I am sure everyone will be pleased to know that the membership continues to grow and currently stands at 56.

Finally, I am happy to announce that APLA now has its own office.



ATLA WINTER CONVENTION - SAN DIEGO '94

By Peter Carter, Carter Capner
Solicitors

The Association of Trial Lawyers of America(ATLA) held its 1994 winter convention in San Diego in January.

Three Australian lawyers were among the 600 delegates. There were several Canadian lawyers and one from Sweden.

There were two streams to the formal program Strategies for a Successful Practice: Maximising Resources and Talents and Trends in the 1990's.

One of the very topical issues covered was institution sex abuse. Stephen Rubin and Bruce Pasternak addressed the subject they titled Organised Religion's Watergate. The Catholic church's position as to the allegations and the litigation were discussed. Causes of action being pleaded by lawyers in these areas included sexual battery, false imprisonment, intentional infliction of emotional distress, negligent hiring supervision and retention and negligent entrustment.

Former ATLA President Roxanne Barton Conlin addressed the conference on security liability for sexual assault. She has established a new litigation group on this subject which focuses on damages recovery from parties other than the assailant in violent crime situations. Such third parties might include the property owner/manager, security firm, architect builder or lock manufacturer /installer.

A good example of this type of case is an Iowa award of substantial damages against a building owner who failed to repair a

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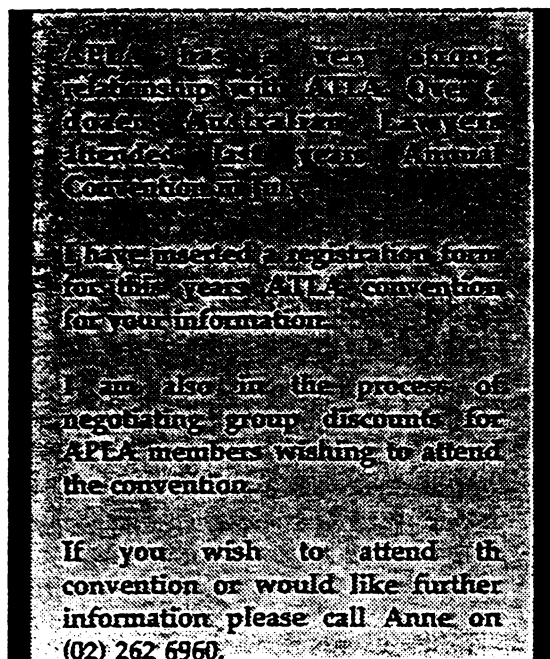
window lock in rented premises after a rapist gained access to the premises through a defective window. In that case there was evidence of previous persistent request by the victim to the owner to have the lock repaired.

In the medical negligence field one of the numerous topics covered was the high incidence of complications in laparoscopic gall bladder removals, where surgeons accidentally snip the bile duct rather than the gall bladder duct which may cause peritonitis and other serious complications.

Most other injury topics were addressed. In addition to the formal program, many litigation groups met.

Litigation at Sunrise sessions were a bonus. Described as an "eye opening series of fast paced back to back presentations with up to the minute information on a wide array of hot litigation topics", the ten issues were dispatched in two hours before breakfast. The program certainly lived up to its claims.

As a First time ATLA attendee my reactions were various: excitement, wonder, admiration, inadequacy and fervour. The educational content was outstanding. Experiencing the enthusiasm, commitment and creativity of ATLA members was invaluable.



CASE NOTE

Commercial Minerals Pty. Limited v. Hollins & Ors.

Angul Pty. Limited(originally Quality Earths Pty Limited) v. Hollins & Ors(unreported, NSW Court of Appeal)

By Anna Katzman, Barrister.

These were appeals from a judgement of Johns CCJ. In the Dust Diseases Tribunal, New South Wales, in which he entered a single judgement in the sum of \$502,272.00 against three defendants who had consecutively employed him in the same premises where he was exposed to silica dust. The plaintiff was employed by each defendant respectively between 1953 and 1955, between 1957 and 1962, and between 1969 and 1973 and from 1973 to 1986. He was diagnosed with silicosis first in 1971 when his disability was assessed at 10% by the Dust Diseases Board but the assessment progressively increased until 1986 when he was classified as 100% and he retired at that time. His father, who was also employed in the premises, died from silicosis in 1978.

He commenced proceedings against the three defendants in March 1991 and each defendant pleaded the Statute of Limitations. The appeals were brought by the second and third defendants. The first defendant did not appeal.

Handley JA, with whom Meagher and Sheller JJA. agreed upheld both appeals with costs for the following reasons:

(a) By April 1979 the worker's knowledge of the extent of his disability was for all practical purposes complete. The further deterioration that occurred since then was reasonably foreseeable and the worker was aware of this risk or chance. As a general principle, variations in the later progress of a disease within limits that were reasonably foreseeable at an earlier stage cannot establish a relevant lack of awareness of the nature or extent of that disease for the purposes of s.60F of the Limitation Act, 1969 (as amended).