

Civil Liability Act award - \$151,165

In *Kawecki v Tobin & Suncorp Metway Ltd* [2007] QDC 321, the plaintiff suffered injuries to her back, neck, wrist and shoulder as a result of a motor vehicle accident. Dr Todman assessed her as suffering from an 8% whole-person impairment in respect of her cervical spine injury, and 6% for her lumbar spine. Dr Morgan assessed a 1% impairment in respect of the cervical spine, and 1% for the upper limb. Dr Reid and Dr Goode also provided negative assessments. The court accepted the evidence of Drs White and Todman over Drs Morgan, Reid and Goode. The defendant argued that the plaintiff's awards for economic loss should be reduced for a number of reasons, including other health issues such as menopause, anxiety, high blood pressure, problems with her feet, etc. The court discounted economic loss by 25% only, noting that the plaintiff had worked satisfactorily in her position prior to the date of the accident. A small component was also awarded for future paid care, on the basis that the gratuitous care currently being provided would not always be available to her. The court also made an allowance for the cost of ongoing massage, on the basis that it was necessary to allow the plaintiff to continue with her employment.

Fall on steps – no contributory negligence

In *Wickes v Body Corporate for 'Kabi Kabi' Community Titles Scheme 10963* [2007] QDC 312, the plaintiff was injured when she fell down some steps in an apartment complex. The steps were made of cut off tree stumps, and the last three steps had rotted out and had depressions in them. Further, the injury occurred at night and the lighting was insufficient, such that as the plaintiff descended, she could see the top two steps, but not the following three. The plaintiff had used the steps one or two times previously. The defendant submitted that the plaintiff had either voluntarily assumed the risk of injury, or was guilty of contributory negligence, on the basis that she should have used the main entrance to the complex, or alternatively should have stopped her descent when she realised she could not see the bottom three steps. Judge J M Robertson, in rejecting the defendant's submissions, accepted that the plaintiff was unaware that there was another means of access to the premises, and found that asserting 'that the plaintiff should have turned around, as it were, in mid-flight, when she realised that she could not see the bottom three steps, is entirely unreasonable and does not accord with what happens in the real world'. Further, there was a simple and cheap method of obviating the risk, by removing the stairs altogether (as was done after the accident), or alternatively providing better lighting. In assessing quantum, the court found, importantly, that a psychological injury that was not given a PIRS rating could not be taken into account when determining the relevant ISV under the *Civil Liability Act* 2002.