

From: Peter Berney <peter.berney@solutionsie.com.au>

Subject: Owners Corporation hit with \$210,000 damages bill...

Reply: peter.berney@solutionsie.com.au



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Trip & Slip on common property costs \$210,000

THE CAUSE? The need for a mat!??

A simple safety issue that would have taken one minute to fix and would have been picked up in a basic safety report has cost owners of a unit block \$210,000 collectively.

A South Sydney man who is now unable to work took an Owners Corporation to court over a trip and slip on the common property of a building he was renting a unit in. The trip and slip resulted in multiple lower back injuries which left him suffering a major depressive disorder.

What? When? Where? Why? How?

Thomas Patrick Morgan had returned to his unit in Kogarah on the evening of 5 March 2000 only to realise he had left his car unlocked outside in the street. It was raining heavily outside as he left his unit and headed towards the open security door. Morgan said that when he was half way through the door his left toe snagged on something, causing him to trip onto wet tiles on the complex's landing, slip down the stairs and land on his back.

Morgan stated, "Once I hit the ground the pain hit me and I was blank for a couple of seconds." His next recollection was of people lifting him up to the landing and noticing a carpet off-cut under the door which he assumed caused him to trip.

He suffered compression fractures in his back of the anterior vertebral bodies at T12 and L1, discogenic lesions at L4/5, and anterior wedging at T8 and T9 to T12. For a couple of years after the incident he suffered severe chronic pain, which left him unable to continue his work as a carpenter.

What had the Owners Corporation failed to do?

It was found that the duty the Owners had failed to provide was the general duty of care owed by occupiers to entrants to take such care as is reasonable in the circumstances for their safety, and to protect them from risks of injury which can be foreseen and avoided.

The risk in this case was the risk of injury to a person exiting the premises by tripping on a carpet off-cut which had been wedged under the front door to hold it open temporarily. This risk, combined with the failure to provide a slip-proof mat, resulted in the fall and eventual massive payout.

The judge stated that in order to comply with the standard the Owners Corporation would have only had to supply an external slip-resistant weatherproof doormat (which can be purchased for as little as \$25), as the landing was located at the top of a flight of steps and was known to be exposed to rain.

He ruled that the provision of such a mat would have prevented the trip and averted Mr Morgan's injuries.

The payout

The plaintiff received;

- \$27,000 for general damages for non-economic loss;
- \$12,752 for past medical related expenses, including interest;
- \$145,334 for past loss of earnings, including interest;
- \$11,627 for past loss of superannuation;
- \$21,650 for future medical treatment (including counselling for depression);
- \$95,142 for future loss of earning capacity, with interest; and
- \$8,563 for future loss of superannuation.

Totalling \$322,068 the payout was cut by 35% due to the Court's ruling that the accident was partly due to the plaintiff's negligence in the disregard to his own safety. This brought the payment to \$209,344 which the judge rounded to \$210,000 plus costs.

Insurance

If the unit block did not had any insurance this payout, all court fees and other legal and time costs would have had to be split between the owners of the complex.

With only 15 units in the complex, each owner in the building would have had to raise \$14,000 plus any other costs that were accrued throughout the hearing. This sum of money would be a massive blow to any owner and all because of a simple, easy to remove, piece of carpet and the need for a \$25 mat.

On the other hand, if the unit block had insurance, the individual owners may have still been required to pay the amount awarded to the plaintiff, as typically Strata Building Insurance does not cover fines, punitive damages or penalties awarded by courts. The policies also often require all lawful statutory obligations (including safety obligations) to be met when they are considering a payout.

If the unit block did have a policy that covered punitive damages there would still be a wide range of additional costs, such as higher insurance premiums, out-of-pocket expenses during legal proceedings, court costs, and the time and energy involved in fighting the claim.

Summary

On average there are three fatalities among people over 65 as a result of slip or trip hazards in Australia and over one thousand people are hospitalized daily. People who injure themselves on the common property of unit blocks are increasingly turning to Owners Corporations to pay damages.

Owners Corporations owe a duty of care to all people who access their building and need to ensure that their common property is safe and that all possible risks to owners, tenants and visitors are controlled.

As a manager, you can also be held liable if you contract employees to work at your buildings. For example, if you were to organise an electrician or plumber for maintenance work on the common property of a building you would be seen as an "employer" under the Occupational Health and Safety Act 2004 (in Victoria) and therefore have to comply with all Sections of the Act.

A safety inspection of your common property is designed to identify any tripping hazards on the common property of your building as well as any other safety risks applicable to all relevant building codes, the Occupational Health and Safety Act and its Regulations as well as all National Codes of Practice. This assists with your common law duty of care and could potentially prevent unit owners from having to part with over \$14,000 each.

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Solutions IE

Phone: 1300 136 036

Fax: 1300 136 037

Street Address: Level 2, 50 York Street,
SYDNEY, 2000

Postal Address:

PO Box A72 Sydney South 1235

Website: www.solutionsie.com.au

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