

Issue 2

touchline

The journal of sport & risk with an international perspective



**World Cup:
In Jeopardy due to
Global Financial Crisis?**

Sponsors:
Heading for relegation?

**Insurer Pays Millions for
Cancelled Football Game**

Kitesurfer:
'peels off half his face'

**Who is watching
the children?**
Non-delegable duty of care



Sportscover Managing Agency Approved by Lloyd's

Lloyd's and the UK Financial Services Authority have given approval for a new managing agency to take over the management of the Sportscover syndicate, 3334 SCS. The new managing agency is known as Sportscover Underwriting Limited ("SCU") and commenced operating from 24th of December 2008.



distinguished career as a Lloyd's underwriter as well as having held several executive positions within managing agencies. Also on the board are Director of Underwriting Peter Nash, Syndicate 3334 Active Underwriter Chris Nash and former English rugby star, Andrew Ripley.

Sportscover's syndicate started writing business in Lloyd's in 2006 and has been highly successful in focussing on writing sports and leisure business from many markets around the world. This is business that has largely not previously been seen at Lloyd's.

SCU's CEO, Matthew Riley, said, "We are delighted that Lloyd's has approved our application. It clearly demonstrates that they are prepared to support businesses within the market and assist them to grow. Lloyd's excels in providing a platform for unique specialisms and capacity such as ours".

The SCU Board includes some highly experienced market practitioners in both executive and non-executive roles. The non-executive Chairman of SCU, Bob Wallace, has had a long and

Group Managing Director, Peter Nash, commented, "This is a significant achievement for Sportscover. We have come a long way since the company was established and we now write business in 16 countries on four continents and have offices in six cities. It proves the worth of our business model and is a tribute to the hard work and dedication of all the staff in the wider Group. We have always been convinced that Lloyd's is the right market for us and have stuck to our strategy to achieve our goal. This provides another major step in the Group's development."

Sportscover is one of only 52 managing agents operating in the prestigious Lloyd's Market and features alongside companies such as QBE, Ace and Travelers. All of the syndicates operating in Lloyd's have the benefit of the Lloyd's A security rating.

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Martin Kelly, Steve Boucher, Chris Hootton
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Crisis, what Crisis?

As I read the newspapers or watch the TV news, it is easy to think that the whole of the financial world is in freefall, never to recover.

It seems inconceivable now, but just over a year ago the financial markets were riding high and it seemed that the only way was up. But then it hit, slowly at first, but then with increasing destructive force until governments all over the world were forced into pledging ridiculously high sums of money to shore up banks and major industrial companies.

For many of us in the insurance industry, perhaps with a few notable and high profile exceptions, we could be forgiven for thinking, "crisis...what crisis?"

This disaster was not of our making and to a very large extent we have been onlookers so far. However, I have no doubt that over the coming twelve months and longer we will see some insurance companies being impacted by the crisis. Even for the many insurance companies that steered clear of the dubious financial derivatives that some thought were a sure-fire way of making a quick buck, there will be other concerns. Some will be affected by the increase in directors and officers insurance policy claims from disgruntled shareholders of now defunct corporations and the inevitable rise in fire losses arising from properties that have fallen in value but remain insured for greater sums. Strange how a recession leads to an increase in property fire losses!!

Other companies will be severely affected by their own decreasing stock price and the asset value of their investments and reserves.



Steve Boucher
touchline@sportscover.com

So are there any in the financial world who will come out of this crisis unscathed? Well most observers appear to agree that one group of insurers that will win out of the crisis are Lloyd's underwriters.

The way that Lloyd's syndicates are required to hold their assets means that the risks are much lower. Many, like Sportscover, have a very conservative investment policy which requires them to hold their reserves in cash and government bonds – the best performing asset classes at the moment. Add to that the chain of security behind a Lloyd's policy and the Lloyd's brand is at an all time high. This should lead to Lloyd's underwriters seeing more business than ever before.

But what of more important things... like sport! One of our lead articles (Sponsors heading for relegation) looks at the way in which the financial crisis is affecting sponsorship in sport. Its impact is being felt from football to formula 1. We also look at how this could jeopardise the 2010 World Cup. And, to help keep you informed, we have a number of articles on some of the latest studies and legal outcomes relating to sport around the world. Add our usual features and your letters and I hope that you will enjoy this edition of Touchline; a little oasis in the world of depressing financial news!

Best wishes,

January 2009

2010 World Cup Rights Sold for \$3.4 Billion

The commercial rights to the 2010 World Cup in South Africa were sold for \$3.4 billion, which is 30 per cent more than the last tournament in Germany three years ago, according to FIFA.

The sale was completed last November with an agreement with Nigeria for the sale of the remaining television deal, FIFA General Secretary Jerome Valcke told delegates at the Soccerex conference in Johannesburg yesterday.

Sponsorship, television and mobile telephone rights were included in the sale by the Zurich, Switzerland-based organisation. Sponsors include Coca-Cola, McDonald's and Visa. The rights for the 2014 World Cup in Brazil will bring in \$3.7 billion, he added. The 2010 tournament will be the first time the world's most watched sports event is held on African soil.

"There was not a single time a commercial partner asked for a reduction," said Valcke.

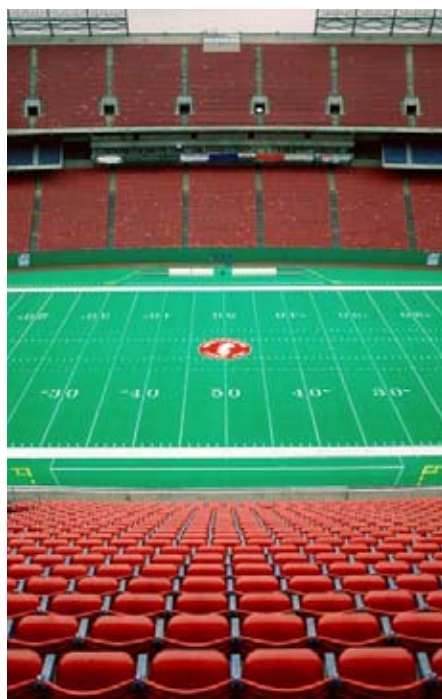
Most of FIFA's World Cup revenue is made from the sales of the global television rights. The organisation will make more than \$2 billion, said Niclas Ericson, who runs FIFA's television and new media operations.

While television access across Africa will be free, in other countries it will be available through a mixture of free-to-air and pay-television broadcasters.

"Of course we would rather have it on free TV," Ericson stated. "But it's very hard to manage the revenue expectations for a single broadcaster."



Insurer to pay \$1.625 million for cancelled US football game



Lexington Insurance Company, a subsidiary of AIG, will pay the city of San Diego \$1.625 million to settle a claim brought by the city to recoup lost revenues from a National Football League (gridiron) game that was cancelled due to the 2003 wildfires that swept across California.

According to the city attorney's office, San Diego officials determined the 27 October, 2003, Monday Night Football game between the San Diego Chargers and Miami Dolphins could not be played at Qualcomm Stadium because of ash and smoke, so the game was moved to Tempe, Arizona. As a result, the city lost out on about \$500,000 from its cut of stadium sales, taxes and other revenues.

City officials filed a claim with Lexington Insurance Co. in an effort to recover some of the money. The claim was initially denied so city officials sued the insurer in 2006.

Lexington Insurance recently said it would pay the \$1.625 million to close the lawsuit.

While sporting events are a low priority in the times of natural disasters, this cancellation of the game shows just how much one sporting event can mean to a city as far as revenue.

Global Financial Crisis Could Jeopardise World Cup

FIFA has taken out \$650 million insurance against the 2010 and 2014 cups being postponed or relocated, but insists that preparations for the 2009 Confederations Cup and 2010 World Cup in South Africa are on track, and that it is confident that the global financial crisis will not affect the next two World Cups.

"There has always been an insurance policy for World Cups (for) natural or non-natural catastrophe or any event that could lead to the postponement of the event to another country from South Africa... but we are on time to deliver the Confederations Cup [this year] and 2010 World Cup in South Africa," FIFA general secretary, Jerome Valcke said at a news conference in Zurich.

He stated that taking out insurance was standard practice and did not indicate a lack of confidence in the local organising committees.

In a statement, FIFA said that it had received a detailed analysis of the potential impact of the global financial crisis. According to this analysis, FIFA had not suffered any losses and was well-equipped to withstand the current crisis thanks to a number of factors, including "diversification of its financial assets; low exposure to currency fluctuations; the fact that 95 per cent of the 2007-2010 income budget is under contract; good cost management; and the diversity of its portfolio of commercial and TV partners".

The statement said that FIFA had taken out insurance as had been the case for all World Cups since 1998.

The \$650 million cover was for postponement or relocation of the 2010 and 2014 tournaments. The policy provided cover against terrorism, natural disasters, epidemics, war, accidents or turmoil.

In order to protect the welfare of the players, with regard to the 2010 World Cup, FIFA's executive committee decided that team members should play their last club matches on 16 May, 2010 at the latest. A mandatory rest period will be in place from 17-23 May, 2010.

The final of the UEFA Champions League -- scheduled to be played on 22 May, 2010 -- will be the only exception to this rule.

FIFA said that the executive also had agreed to announce the host countries for the 2018 and 2022 World Cups simultaneously.

In an article on preparations for the 2010 World Cup, South African web site, football365.co.za, stated that the global credit crisis coupled with slowing domestic growth and higher prices for building materials was causing projected costs to seem conservative, "a situation that could place a massive burden on the taxpayer for decades to come".

"As the cost of borrowing money from the world's financial institutions heads for stratospheric heights, economists claim SA could struggle to raise the necessary funds for massive infrastructure projects promised ahead of the World Cup," the web site said.

After South Africa's cabinet received a report, on 23 October



2008, on World Cup preparations, cabinet spokesperson Themba Maseko said that the construction programme for the stadiums was on track to meet all FIFA deadlines although cost escalation "remains a challenge".

On 21 October last year, South African finance minister Trevor Manuel, in a medium-term budget policy statement to parliament, said that an additional 8.8 billion Rands (about \$US880 million) was to be given to municipalities to help with the costs of preparing for 2010. Manuel made adjustments to the country's medium-term budget plans against the background of the global financial crisis.

An additional 5.4 billion Rands will go to alleviate the effects of inflation on operational and capital spending programmes and there will be an extra 3.4 billion for the municipal costs of the building programme. Of this amount, 835 million Rands will go to public transport and 497 million Rands to add to the existing budget for stadiums.

To host the event, South Africa is upgrading five existing sports stadiums and building a further five. The FIFA World Cup 2010 will be played at 10 venues in nine cities.

Maseko said that the cabinet had been told that South African telecommunications giant Telkom's upgrade of its core fibre optic network was progressing according to plan.

The Public Transport Infrastructure Support programme was being implemented with most infrastructure already under construction.

Power utility giant Eskom has guaranteed that construction of stadiums and the football tournaments would not be adversely affected by any power outages, and safety, security and disaster management plans had been completed, Maseko said.

Mutual set up to cover sports clubs stops writing new business

Credit crunch or just a bad idea? Either way the Insuresport Mutual Limited has suspended operations, since 30th of November last year, leaving thousands of UK sports associations having to find alternative cover.

InsureSport, a mutual set up to help sports clubs obtain civil liability cover, has been suspended because other insurers are "better placed" to do business.

InsureSport stopped writing new business and offering renewals on 30 November 2008, but existing policyholders will have their contracts honoured.

InsureSport was set up in 2006 by the Central Council of Physical Recreation (CCPR) and West Midlands broker Perkins Slade.

Policyholders, which range from ramblers' associations to gymnastics clubs, took 50% cover with InsureSport and the remaining half with its main partners, including RSA and Zurich.

The idea behind the mutual was to assist clubs that were struggling to find civil liability cover at a reasonable price.

John Ollard, head of finance at the CCPR, said: "The sports insurance market has recovered from the events of 9/11. It is a much more friendly place for sport than it was six or seven years ago - and that's really good news for CCPR members.

"The gap which existed for civil insurance in the sport sector has been filled again. InsureSport enjoyed retention rates of 90% and higher but the youth of the company meant we decided, in this market, other insurers are better placed to provide cover and field claims."

Chris Nash, deputy underwriter for Sportscover, Lloyd's syndicate



3334, said the mutual concept was a tough business model in insurance.

Nash said throwing together all the risks into a mutual structure rather than an insurance structure could cause problems.

He admitted to being puzzled by the explanation for suspension of the mutual; "I'm surprised that Insuresport Mutual's administrators think the market is expanding because the happenings of the last six months, with SLE's closure and AIG pulling back, definitely point to a contraction in capacity for sports insurance."

Chris added that Sportscover is willing to provide a solution: "Sportscover are happy to talk to all sporting groups who want to come out of the mutual and move to the piece of mind of A-rated security such as Lloyd's."



New faces on Underwriting Agencies Council

The Underwriting Agencies Council (UAC) in Australia elected six new directors and associate directors at its AGM in Sydney in

December. Heath Amber (Millennium); Kevin Corkery (Lawsons Underwriting Australasia); William Legge (Cemac); David Porter (AFA); Frank Van Rooy (Australis) and Simon Trowell (Sportscover) were elected. Chairman Martin McAvenna (Austagencies), Damien Coates (Dual Australia) and John Iles (SUA) were not required to stand for election.

The purpose of UAC is to serve the interests of Australia's underwriting agencies. UAC acts as a

representative body for the underwriting agencies and is frequently involved in lobbying on insurance legislation and regulation. It also has responsibility to promote the views of underwriting agencies to the media and the Australian public.

UAC has around 65 corporate members, representing the vast majority of Australian underwriting agencies. Many agencies' security is from Lloyd's of London.

Agencies frequently operate in specialist, niche markets, offering an array of insurance products that may not be available from other sources.



Above: Simon Trowell from the Sportscover Group.

Serious Head Injuries for Snowboarders and Skiers on the Rise

ScienceDaily reports that serious injuries among alpine skiers and snowboarders have increased over the past 15 years due to faster speeds and the inclusion of more jumping and acrobatics as the norm in these sports.

The findings are based on a comprehensive international review of published research on injuries sustained by mountain skiers and snowboarders between 1990 and the end of 2004.

The study looked specifically at serious brain and spinal cord injuries which make up a relatively small proportion of

the injuries sustained while skiing and snowboarding, but are the leading cause of death.

The research suggests that the rate of this type of serious injury is steadily rising in all of the countries that have reported data. The percentage of head injuries among skiers has increased from 12 per cent in 1993 to 15 per cent in 1997, while the number among snowboarders has quintupled over the same time.

Furthermore, the research suggest that

skiers and snowboarders under the age of 35 are more than three times as likely to have a brain injury as younger participants. Male sporting enthusiasts are significantly more likely to be seriously injured than their female peers.

The research also shows that the wearing of helmets can cut the risk of serious brain injuries by between 22% and 60%.

More needs to be done to promote the wearing of helmets and the enforcement of design standards for them.

Businessman left in wheelchair by skiing accident sues tour operators

A British businessman left in a wheelchair after he collided with a tree during a skiing holiday is suing his tour operators for millions of pounds.

Father-of-two Graham Anderson was staying in the exclusive resort of Puy St Vincent in the French Alps in February 2004 when the accident happened.

On the final day of his holiday, he was taken off piste by instructor Jerome Portejoie with the adult ski school he was enrolled in, despite the fact that during a previous trip he had "frequently fallen", Mr Anderson's lawyer said.

As he went down a steep, narrow slope, he lost control and sped into a tree at the bottom, losing consciousness on impact.

When he came round, he realised he could not feel his legs.

Now a tetraplegic, Mr Anderson, 46, of Crapston, Devon, is suing Michel and Wendy Lyotier, who run the Cambridgeshire-based tour operator Snowbizz, for breaching the terms of the holiday contract that services would be provided with reasonable care and skill.

Christopher Wilson-Smith QC, for Mr Anderson, told the High Court: "Mr Anderson accepts that skiing is a sport which involves a degree of risk.

"He further accepts that, in choosing to go on a skiing holiday, he was exposing himself to the possibility of injury."

But he said that way the group was selected was "negligent", pairing Mr

Anderson, whose skiing experience was limited to a few weeks, with a skier of 13 years' experience.

"The location of the accident was on a slope with a gradient which was manifestly too steep for a skier of his experience and lack of ability", he told Mr Justice Foskett.

The Lyotiers deny any liability, saying Mr Anderson was himself careless in attempting a slope he should have known he was not capable of tackling safely, and have sought a contribution to the damages and costs from Mr Portejoie.

Mr Portejoie's French insurers have agreed to make a 100 per cent contribution to any damages awarded against the Lyotiers, but his barrister, Richard Davies QC, argued that there was "slender support" for Mr Anderson's accusation of negligence.

Mr Wilson-Smith insisted that Mr Anderson, who runs printing business BGP in Plymouth and attended court in a wheelchair, could be awarded "potentially millions" in damages and costs, given his current and future care needs.

Mr Justice Foskett said that he had no experience of skiing whatsoever and that presiding over the case would be "a bit like skiing off-piste".

Source: Daily Telegraph - UK



Sponsors heading for relegation?

Story by Chris Hootton

While the economic crisis continues to ravage the world, there are more important things to discuss.

LIKE SPORT...

Many of us turn to sport as time to enjoy away from the doom laden financial headlines, but whether it's your village cricket team or your Premiership team of choice, sport is feeling the crunch.

But what are the repercussions of the stock market plunge for your local cricket team? Not directly linked you may imagine, but the chain of events starts at the top.

One man in the Premiership sobbing uncontrollably into his pillow at night is Newcastle United owner Mike Ashley who saw £180 million wiped off the valuation of his club as he desperately seeks a buyer.

Ashley has also seen personal losses of £300 million as HBOS shares plunged and despite clearing £60 million worth of debt at the club, the Geordies have vociferously called for his head.

Elsewhere, West Ham saw their shirt sponsor collapse, Travel Company XL having only paid one year of a three year £7.5 million deal when they went bust. The East London club's plight deepened as Icelandic bank and club owner Landsbanki went into receivership, leaving the club with questions surrounding the finances of the owners and their long term future.

West Bromich Albion also failed to secure sponsor by the start of the season.

Lord Triesman informed us all that "debts in English football as a whole have probably edged to the £3 billion mark", but teams in the Premiership don't appear too concerned. Much of the finance is secured long term, with season tickets paid up until May and the lucrative £2.7 billion TV deals run until 2010.

Many of the top clubs are operating with huge debts, Manchester United approximately £660 million in the red, and even potentially losing AIG as shirt sponsors would pose little obstacle for the marketable European Champions.

Liverpool's stadium plans have been delayed as a result of the credit crunch and the Merseyside club have been saddled with £350 million of loans by the dynamic duo of Hicks and Gillett.

However, none of this has deterred investors such as Manchester City's new billionaire owner, Sheikh Mansour bin Zayed Al Nahyan from showering the league with their petro-millions. Moreover, the majority of football clubs boast die hard fans who have somewhat surprisingly defied the credit crunch to pack out grounds to the rafters across the country, matching record attendances and bolstering season ticket waiting lists.

The credit crunch is not limited to football; financial uncertainty shrouds the Six Nations Rugby tournament which faces losing the Royal Bank of Scotland as sponsor. RBS has a major sports sponsorship programme including the British Open Golf tournament, supporting the Williams F1 team as well as the Murray brothers in tennis. With the government taking majority stake in the bank as part of its rescue package, future brand marketing commitments will be reassessed and the £4 million annual Six Nations obligation may be under scrutiny.

Across the pond, amongst a host of ailing American sports deals, the second most watched sport on TV, Nascar is suffering similarly. Four of the main racing teams will be cutting or dropping sponsors for next season while winners of the 2007 Indianapolis 500, Dario Franchitti, has been forced out of the stock car series by a lack of sponsors.

Many potential sponsors are flinching at the \$25 million cost of supporting a top team and Formula One convert Juan Pablo Montoya is facing starting next year with no main backer after Chevron decided to spread its funding across the lower echelons of the sport.

It's a similar story in Formula One where owners have begun to realise that the \$4.7 billion extravaganza that is the F1 Empire may be under pressure. "It has become apparent, long before the current difficulties, that Formula One was unsustainable," Max Mosley, President of motor racing's governing body said. "It really is a very serious situation. If we can't get this done for 2010, we will be in serious difficulty."

Last year F1 was subsidised by roughly \$900 million in sponsorship revenue, but potential sponsors are growing hesitant due to questionable business models in a sport where team owners splashed out a combined \$1.6 billion this year. Now there has been an announcement that Honda are withdrawing entirely from Formula One.

It is clear that although companies are carefully rethinking multimillion pound sponsorship deals in professional sports, it is not the giant elite that will suffer. It is a trickier situation however for lower league clubs and grass roots sports.

The major players in sports sponsorship are understandably attracted to the biggest, most marketable teams and as they spread themselves thinner holes are left in the lower leagues, making survival a struggle.

A perfect case study of this occurring prior to the current economic meltdown is in Australia leading up to the Olympic Games in 2000.

Sportscover Director Chris Nash had first hand experience of the 'flow effect' initiated by the allure of the Olympic Games for Australia's biggest sponsors.

Chris explains: "The Olympic Games are



Sponsors heading for relegation? continued...

one of the few truly globally broadcasted events, with an international television audience". Part of what makes the Olympic Games so far reaching is the 'real people' factor of the athletes - competitors with day jobs that the viewer can relate to, unlike the pampered millionaires of the football world for instance.

Companies jump at the chance to attach their brand or service to the message of elite performance that underlies the Olympics and the exhaustive array of sporting disciplines and events provide the perfect advertising vehicle, attractive to many differing audiences, including the Promised Land of America.

This means that when multinational corporations such as Coca-Cola or Nike redirect their sponsorship budget toward the Olympics, they leave gaps in the market for smaller companies to step up a level and fill the sponsorship vacuum left at the top flight.

An example of this was in the Australian AFL league where St Kilda employed a novel approach to finding new backers after their sponsors opted to jump ship for the Olympics. In the absence of one main sponsor St Kilda created a raffle whereby the club could have a different sponsor each week.

In the wake of the Olympics, some

sponsors force their way back into the top flight sports, creating more competition for the newly promoted companies, however some companies ditch their sport funding all together depending on the success of their marketing.

This flow-effect works all the way down the sporting food chain, until the bottom

end clubs and semi-pro teams struggle to find backers once everyone has moved up the ladder. In the current economic climate where the first place a company will look to reduce outlay is sponsorship, your cricket club may struggle to find local breweries to cover the cost of that new slip cradle everyone has been harping on about.

Summary of Sports Sponsorship Woes

NBA - was been forced to lay off roughly 9% of its workforce

LPGA - Doesn't have a TV Network contract. One third of tournaments up for renewal. Semgroup which sponsored Phoenix and Tulsa has filed for bankruptcy

MLB - Attendances have fallen, coverage in papers has been cut back, expects a decrease in car adverts (main sponsors), merchandise sales flat.

NFL - No negative impact on sport, but stadium construction in Dallas and NY is effected

NHL - season tickets are up 4% and single games 13%, but not immune to effect of financial downturn

Formula 1 - Canadian GP dropped, major cost cutting discussions ongoing

Six Nations - RBS sponsor uncertainty past 2009

Premiership - West Ham shirt sponsor XL collapse, West Brom fail to secure sponsor.

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Who is Watching the Children? **Non-delegable duty of care**

In this issue, Touchline's legal experts from Australia, Canada and the United Kingdom examine the ramifications of a recent decision by the Queensland Court of Appeal concerning non-delegable duty of care in their respective countries.



Australian Perspective

Now more than ever, supervision is imperative

The Queensland Court of Appeal has sent out a strong warning to sporting organisations providing recreational activities for children. In the recent case of *Fitzgerald v Hill* [2008] QCA 283 the Court imposed a non-delegable duty of care on the operator of a taekwondo school in favour of his students. The decision has significant implications for sporting organisations and clubs that provide recreational activities for children.

Non-delegable Duty of Care: General Principles

A non-delegable duty of care is a personal duty to ensure that reasonable care is taken for the safety of persons who are covered by the duty. The duty cannot be delegated to a competent independent party. A non-delegable duty of care departs from basic principles of liability in negligence by substituting a greater duty in place of the duty to take reasonable care.

Relationships in which a non-delegable duty of care have been found are characterised by a special dependence and vulnerability on the part of the person to whom the duty is owed. Traditional categories of relationships where a non-delegable duty of care exists include employer/employee, hospital/patient, and school/pupil.

Fitzgerald v. Hill

Facts

An eight-year-old boy (Fitzgerald) attended a class at a taekwondo school operated by Ivanov. The instructor took the class for a run along the road at dusk. Fitzgerald was struck by a car driven by Hill and suffered severe injuries. The trial judge found that the operator of the taekwondo school assumed personal responsibility for the conduct of the class and owed a non-delegable duty of care to the students, including Fitzgerald.

Court of Appeal

On appeal the Queensland Court of Appeal upheld the trial judge's finding. It was found that a non-delegable duty of care was evident from Ivanov's high degree of control and Fitzgerald's vulnerability. The Court emphasised the importance of ensuring that children involved in self-improvement and leisure activities are not treated negligently. The plaintiff's age was clearly an important factor.

Expanding the categories of non-delegable duties

In the recent case of *Leichhardt Municipal Council v Montgomery* (2007) 233 ALR 200, the High Court stated that relationships that give rise to non-delegable duties of care should not be expanded. The Court in *Fitzgerald* extended the principles of non-delegable duty of care to recreational and sporting organisations whose focus is on providing leisure activities for children. This will have implications for community and leisure organisations who have previously delegated the responsibility for children under their care to coaches or other supervisors.

A non-delegable duty of care is burdensome, especially when you take into account the foibles and unpredictable behaviour of children. Now more than ever, sporting and recreational organisations will have to ensure that supervision is exercised over the activities of children who are vulnerable to injury in the course of their activities.

David Randazzo is a Senior Associate at the law firm DLA Phillips Fox in Melbourne.



UK Perspective

Already wary, but so far unscathed

When asked to provide a UK perspective on the impact of the *Fitzgerald* judgement, the immediate difficulty faced is that “Breach of Non-Delegable Duty of Care” (BNDD) is not a concept specifically dealt with by UK courts, and it appears that our Australian counterparts have been wrangling over the issue in a way which has not been echoed here. There are, of course, situations in which its spirit has been upheld here – undeniably a hospital (Trust), for example, owes a non-delegable duty of care to ensure safety and quality of care for its patients, irrespective of the tort arising from the actions of one doctor without the knowledge or intervention of those ultimately responsible with dealing with the civil claim. Similarly, the courts here have engendered the ethos of BNDD in situations where, for example, a sports centre might be successfully sued as a result of the unsafe coaching provided by a trampolining coach in one of its gyms.

That we have managed to go about our business without specifically addressing “Non-Delegable Duty of Care” does not mean that the development in *Fitzgerald* is irrelevant to the UK in a wider sense. Most people would have little difficulty in acknowledging the duty of an employer to provide a safe system of work, or the duty of a hospital to ensure the physical safety of its patients. The idea of a school authority having the same duty towards its pupils, in circumstances which at face value seem separate from the function and purpose of the school, is perhaps more controversial, but if that is established (as it appears to have been in Australia), it is unsurprising that BNDD could be extended to a Taekwondo school in the context of a situation like that faced by the Defendant in *Fitzgerald*. What is of potential concern is that most of the people who teach Taekwondo (and countless other extra-curricular activities) to children are likely to be volunteers, and the growing number of ways to sue the clubs they provide services for might mean that the pool of volunteers will begin to dry up. Whilst we may want the utmost safety for our children, it would be unfortunate if these extra-curricular activities were rendered impractical such that no-one is prepared to offer them anymore.

Despite these potential concerns, the reality (in the UK at least) is that most sports clubs and instructors are now so wary of complaints and allegations of negligence that the safety of their pupils (particularly children) is at the forefront of their minds (or at least it should be?!). Whether or not the application of a concept like BNDD would make much difference to the litigation climate here is perhaps, therefore, questionable. Having said that, we share the view indicated by the Australian court that caution should be exercised about widening the net any further. This debate has not been something to greatly occupy the judiciary in the UK so far, but we would not be surprised if it reaches these shores sooner rather than later.

Steven Hooper is a solicitor with Eastwoods Solicitors, London.



Canadian Perspective

A duty to ensure care is taken

In Canada, like most common law jurisdictions, the principle of non-delegable duty is used to impose liability for negligence on Party A in circumstances where the performance of a particular task has been delegated to Party B. This special duty is not vicarious. It is personal. It is, therefore, the strict liability to ensure reasonable care is taken. Accordingly, this duty is often described as not just a duty to take care, but a duty to ensure that care is taken.¹

The leading case in the matter of non-delegable duties in Canada is *Lewis v. British Columbia*², where, in 1997, the Supreme Court of Canada found the Ministry of Transportation and Highways negligent for work completed by independent contractors. The Supreme Court reviewed the relevant statutes and found that the Ministry had paramount authority over highway maintenance. Additionally, the Ministry was to personally manage and direct all maintenance projects. As a result of this mandatory duty, the Ministry was liable for breaching its non-delegable duty when the requisite care was not taken by its contractors.

A recent case dealing with the duty of care relating to a not-at-fault party is *Newfoundland and Labrador (Minister of Health and Community Services) v. McEvoy*³. The Supreme Court of Newfoundland and Labrador found that a non-delegable duty may be imposed by reason of the existence of statutory duties or by operation of common law; when the activity to be carried out has an inherent risk of danger; and when the relationship between the defendant and the victim is such as to warrant the imposition of liability. The court, therefore, appears to be opening the door for liability beyond the historic statutory confines, and seems to be showing a willingness to impose liability on more objective grounds.

The recent Queensland Court of Appeal decision in *Fitzgerald v. Hill*⁴, goes further than Canadian courts have so far ventured. Canadian cases have dealt with the more institutionalised relationships of healthcare, education and Crown liability when finding the existence of a non-delegable duty of care. However, Canadian courts typically pay attention to developments in Australian jurisprudence and it is probably only a matter of time before the current boundaries of non-delegable duty are expanded. Obvious areas in which the law of non-delegable duties might be developed would be in the provision of children’s day care, sporting clubs and other recreational activities.

Graeme Mew is a partner with Nicholl Paskell-Mede LLP in Toronto (gmew@npm.ca) He is also an arbitrator for the Court of Arbitration for Sport and a Judicial Officer for the International Rugby Board.

1 *Lewis v. British Columbia*, [1997] 3 S.C.R. 1145
2 [1997] 3 S.C.R. 1145
3 [2008] N.J. No. 112 at para. 63.
4 [2008] QCA 283.

on track

QUICK NEWS TO KEEP YOU IN THE FAST LANE

Awards not to win

America's largest personal lines insurer Allstate ranks as the worst US insurer for consumers, according to a new report that details thousands of legal documents uncovered from litigation, testimony and complaints filed with state insurance departments.



The report says Allstate set the standard for insurance company greed, conspiring with consulting giant McKinsey & Co in the mid-1990s to place profits over policyholders' interests.

The report, produced by the Washington-based American Association of Justice (AAJ), shows a distinct pattern of insurance industry greed among 10 companies that refuse to pay legitimate claims, employ rough tactics against policyholders, reward executives with extravagant salaries and raise premiums while making excessive profits.

"While Allstate publicly touts its 'good hands' approach, it has instead privately instructed its agents to employ a 'boxing gloves' strategy against its policyholders," AAJ CEO Jon Haber said.

Disability insurer Unum ranked as the second-worst insurer, with AIG – which the AAJ described as "the new Enron" – coming in third.

Sporting Injuries Cost \$127 per Participant

Recent American research indicates that the average cost of sporting injuries in amateur sports in the United States is \$127 per participant per year.

After surveying the top 10 most popular US sports at amateur level, the study by TheSportDoctor.com calculated this price tag for sporting injury treatments, such as sprained ankles, ligament damage and broken bones.

The study also revealed that many of those suffering from sporting injuries were forced to pay out of their own pocket, with a number of insurance policies failing to cover some sporting injuries.

Onna Walsh of *TheSportDoctor.com* indicated the rising cost meant more and more grassroots sportspeople were requiring injury insurance to safely enjoy their pastimes.

"What we're seeing with these rising costs is a growing trend on the part of health care providers to bump up costs for specialist procedures. And what's worse, many health insurance policies don't cover injuries picked up in the course of sporting activities, like those we see on a daily basis. Unfortunately now this means amateur athletes may need to look into individual insurance policies to cover themselves against the growing perceived risks."

Death by Boules

By Henry Samuel in France

The gentle French Pastime of boules has taken a tragic turn after a player was accidentally killed by a flying metal ball during a game.

Petanque, or boules, is traditionally seen as a tranquil sport played by pastis-sipping retirees in Provence. But the heavy iron balls used can prove lethal. Frank Hourcade, 39, was struck by a fellow player's ball as he bent to check how close his own was to the cochonet – the smaller wooden target ball. He was rushed to hospital in Lourdes but pronounced dead on arrival.



Petanque has hit the headlines recently due to a rise in "le bouliganisme", when players have come to blows. The unrest has been blamed on increased prize money, alcohol and a rise in uncivil behaviour in France.

Source: *Telegraph, London*

Best for Business

Singapore has achieved top spot out of 181 countries in an international survey of business regulation.

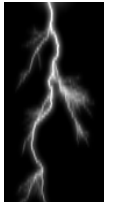
NZ was ranked as the second-best country to do business with for the third consecutive year.

The survey by the International Finance Corporation and the World Bank compared regulations and ranked each on 10 key factors of business regulation. The rankings do not cover macroeconomic policy, quality of infrastructure, currency volatility, investor perceptions or crime rates.

Singapore leads the global rankings due to its simplified online business start-up service. NZ was second, with the report praising its single online procedure for business start-up, lowering the corporate income tax and creating a new insolvency regime.

The US ranked third in the survey with the UK in sixth place, Canada in eighth and Australia ninth.

Lightning Kills Three Players in Cambodian Football Match



A lightning bolt killed three Cambodian football players and put three others in hospital at a match played in Phnom Penh during a monsoon season thunderstorm in June last year.

The president of the Cambodian Soccer Federation, Sao Sokha, told Reuters the victims, all in their 20s, were taking part in a tournament organised by the government to introduce young people to the game and to build the strength of the national team.

Players and coaches have been warned not to play on fields while thunderclouds loom overhead, a regular occurrence during the May-October rainy season. "We encourage children to play the game, but they should not do so during bad weather," Sao Sokha said.

Keo Vy, of the national disaster committee, reported 40 people had been killed by lightning in Cambodia so far this year, nearly as many as the total killed for the whole of 2007.

Sports clubs and employers liable for individuals' behaviour



The Court of Appeal in the UK has found that a rugby club could be held accountable for the actions of its players.

Redruth Rugby Football Club was found "vicariously liable" for the actions of a player who punched an opponent in the face during a match.

"It is a decision that could have far-reaching implications for employers in general," said Warwickshire solicitor Richard Moon, whose firm, Blythe Liggins, made legal history in 1985 when it took the case of a footballer whose leg was broken by a reckless foul, to the Court of Appeal.

"Previously, those suffering from sports injuries would not have considered legal action," said Moon. "However, the court found on that occasion that injuries caused during sport could not be exempt from personal injury law."

He added this recent case goes even further, attaching liability not only to the player, but also the club that employs him.

Moon said: "It is certain that sports clubs will have to act on this case and have a clear code of conduct issued to all players.

"Equally though, employers in all businesses should be wary and protect themselves from possible liability of their employees' actions.

"This would involve ensuring that all employees have a contract of employment and are aware of what is acceptable conduct, as well as making sure adequate insurance is in place.

"For example, the victim of a road rage incident may be able to fight a claim against the employer of the van driver who committed the offence.

"The wronged party could take the course of suing an employer, who is more likely to be covered by insurance, than the individual who committed the act."

Broker Profile Nathan Case

2008 Sportscover broker of the year - Nathan Case at the 2008 Sportscover International Brokers Conference in the Hunter Valley, Australia.



your business is enjoyable. However, seeing the business grow to where we envisaged by achieving our goals is by far the most rewarding aspect of our business."

With this exciting new business on the incline, Nathan was a logical choice for the Sportscover Broker of the Year award.

In response to the award, Nathan said, "it was a total surprise and a massive honour for both me and for Choice. As we have only been in existence for a relatively short period, this augurs well for the future."

And what does the future hold for the industry? Nathan believes one of the most important issues facing his clients is receiving the right advice. It is essential that clients are educated on the covers that are available to them and their members. He has "seen first hand that some clients do not receive the right advice and potential ramifications of this are huge."

Nathan also commented that clients are now beginning to understand the benefits of spending the time to implement a suitable risk management plan for their sport or business. Clients are finding that by having this in place, more insurers are interested in assisting them with their cover. Previously, without proper risk management plans, clients were forced to deal with offshore and unauthorised dealers.

In his spare time, Nathan loves watching the Aussies play any sport against the Kiwis and the Poms, but his true passion is rugby league.

"As a passionate Queenslander, nothing compares to watching the State of Origin series, as we have won the past three series."

In November, Nathan participated in the Masters Games, with mates he has played touch football with for the past 20 years. He is also enjoying great success in his warehouse cricket team which has recently made the finals.

Nathan is a dynamic individual with great enthusiasm and professionalism. Congratulations to him on the broker of the year award.

Congratulations to Nathan Case, the 2008 recipient of the Sportscover Broker of the Year award. He is a highly motivated individual with a burgeoning business, a love for rugby league and maroon blood coursing through his veins. His personal motto is "hard work breeds success" and it is clear from his impressive achievements in the industry that this motto is working for him.

Nathan's insurance career began when he left school in 1992. He joined Sun Alliance & Royal Insurance as a Junior Clerk. He worked his way up in the company progressing to Commercial Underwriting and then a Senior Claims Consultant dealing with domestic claims.

He furthered his claims experience by joining GAB Robins Loss Adjusters and later Wyatt Gallagher, another Loss Adjusting firm. In his time at these firms, Nathan found the opportunities to assist families and businesses in the aftermath of natural disasters most rewarding.

It was in 2002, that Nathan seized the opportunity to follow his passion for sport and joined IEA Brokers, a leading sports insurance brokerage at the time which was later acquired by OAMPS.

Capitalising on his experience and initiative, in 2007 Nathan and Larry Ellis established Choice Insurance Solutions a brokerage specialising in the sports, leisure and amusement industries. The company has recently become an authorised representative of Ausure Insurance and Finance and is growing rapidly through its industry partnerships with companies such as Sportscover.

Nathan has enjoyed the opportunities afforded by starting this business. "To decide the direction of

Kitesurfer: 'peels off half his face'



A kitesurfer who was suddenly lifted into the air by a southerly breeze and dragged through bushes and a fence nearly "peeled off half his face" when he slammed into a street-sign pole, a lifesaver says.

The 48-year-old man had surgery for facial fractures and a blood clot to the brain after he lost control of his kite at Ettalong Beach on the Australian Central Coast about 4.30pm on 6 December. He was in a stable condition at Royal North Shore Hospital, a hospital spokeswoman said.

Kitesurfing is a sport in which a rider uses wind to propel a modified surfboard while holding on to a specially designed kite.

When lifesavers found the man, he was unconscious and the pole into which he had smashed was bent at an angle. Moments earlier, a southerly buster had lifted him about 15 metres into the air and carried him away from the beach towards bushes and a nearby road, police said.

"The surfer descended rapidly and was dragged through the bushes, struck a wire fence, which he broke through, and then struck and bent a street-sign pole," police said.

The man had just set up his kite on the beach when the incident happened, Ocean Beach Surf Life Saving Club president Scott Hannell said. "He hadn't been in the water. He was still setting up

to go out. From what I understand, most injuries in kitesurfing happen at that stage."

The lifesavers followed the man as he was carried away from the beach, and were the first on hand after he smashed into the street sign.

He continued, "The injuries were pretty horrific from what I understand. When he hit the signpost it peeled off half his face, and there was talk he may lose one of his eyes".

While most kites had an in-built safety release that allowed surfers to release the kite before they were pulled away by a sudden gust of wind, there was little that could be done after a gust had taken hold, Rob Smallgood, from the Australian Kitesurfing Association, said.

"Once you're 15 metres in the air it's too late to pull the safety release because you'll drop like a stone," he said.

"After that, the idea is just to slowly go from one side to another like you're dropping from a parachute, but while you're up there you're going to blow in the direction of the wind.

But as the sport became more popular, large numbers of people were taking it on without first getting crucial lessons, he said. Mr Smallgood said kitesurfing was safe in winds of up to 25 knots, but above that it was usually only experts who ventured onto the water.

On the safety section of the NSW Kite Boarding Association's website, kite surfer Jimmy Barnett provides a firsthand account of what happens when things go wrong.

"I was hoisted 4m in the air and 50m along half the length of the beach. I landed the unintentional jump successfully, but was immediately carried again into the hostile stone seawall and timber crash barrier.

"Here I snapped all four of my forearm bones, ascended over a car and then headfirst into the side of a car on the other side of the street, breaking some feet bones in the process.

"The kite settled briefly and I remember trying the safety system release with my arms flapping uselessly like seal flippers and blood spewing out of my head, cheek and eye.

"Luckily a fellow kiter with quick wits leaped on me and fully released the kite".

Source: *Sydney Morning Herald*



touchline letters

Olympic Security

I was fortunate enough to go to the Olympics in Beijing in August. In the article on the games in the September edition of Touchline you mentioned the risk of Terrorism. I must confess to being slightly concerned before I went to Beijing, partly because of all of the publicity and bad feeling that had surrounded the Olympic torch journey, and partly because I thought that, like you mentioned in the article, there was a real possibility that some idiot would use the games as a way to publicise their cause.

However, I feel that the Chinese handled the security very professionally. I didn't feel at all threatened and I have to say that everyone was extremely friendly. The volunteers (and there were thousands of them!) were so very helpful and really tried to use their English. They were really lovely people.

I am so glad I went. It was a trip of a lifetime and has given me some great memories.

Tom, Kent, UK

Congratulations

Just a quick note of Congratulations for getting your first issue of Touchline off the ground.

Annie, Melbourne, AUS

Why not Aluminium Bats?

I read with interest the story in your last edition concerning the new hazard of maple bats in Major League Baseball. I was wondering if they had considered using aluminium bats, as was used, albeit for a very short time before it was banned, by Dennis Lillie the Australian cricket player in the early 80's

Frank, Brisbane, AUS



Spectator Deaths

It was sad to hear in your recent story about the nine spectators who died at the football match between Gambia and Liberia. With the massive amounts of money in football today, there is no excuse for these types of tragedies to happen. It seems that only after a major disaster, like the 1985 Bradford City fire when 56 people died when the stand at caught fire, or the 1989 Hillsborough Disaster where 96 football supporters where crushed to death, did any major changes happen.

Do we need to wait for another major incident before things change?

Orsen, Bradford, UK

Make your mark...

Provide us with feedback on the magazine, or any comments on the sport and/or insurance industry. The best letters will be printed in the next edition of touchline.

Please send letters and contact details to touchline@sportscover.com

US study catalogues diving risk for kids

A recent study published in the medical journal *Pediatrics* estimates 6,549 young people go to US emergency departments each year with diving injuries.

The study by a research team at Nationwide Children's Hospital in Columbus, Ohio is the first US study to look at competitive and recreational injuries among children and adolescents. The researchers hope their findings will guide injury-prevention efforts.

Recreational swimming and diving are the third-most common physical activities in the US and the most common among children. Competitive diving continues to increase in popularity with more than 20,000 people younger than 18 registered with USA Diving.

Head, neck and face injuries are most common, according to the National Electronic Injury Surveillance System. About five per cent of the young people were hospitalised.

The research did not include deaths.

- 44% of those injured hit a diving board;
- 18% hit the bottom of the pool;
- 15% were injured by contact with the water;
- 13% hit the side of the pool;
- the remainder hit another object.

Most were 10 to 14 years old and dived head-first from a height of 1 meter or less.

Across the US over the past several years city pools have removed high diving boards as a result of injuries and an increase in the insurance premiums.

Proper education of divers is important, especially when they attempt new dives. Children should be kept from jumping into shallow water, and pools should post visible depth indicators and provide lifeguards.



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