Scuba Diving

Rob Davis, Qld

SCUBA Diver suffers the 'bends'. Inadequate supervision of dive by Dive Master (negligence). Use of NAUI 1990 Dive Tables when DCIEM Tables carried less risk for the particular dive. Failure to take risk factors into account. Settlement and No-contest verdict.

Andrewartha -v- Rawlings & Coolangatta Dive Pty Ltd., Southport District Court, Qld., Australia, No. 378-91, Oct. 3,1994.

Allison Andrewartha, a NAUI 'Openwater 1' certified recreational SCUBA diver undertaking her 20th dive, contracted the 'bends' on a dive to 26 meters for 25 minutes. The supervising Divemaster (also NAUI certified) planned the dive using 1990 NAUI Dive Tables that permitted a maximum dive time of 30 minutes before a decompression stop was required. There was in existence at that time numerous other types of dive table that provided for shorter dive times and significantly lower risk of decompression sickness than the NAUI Tables. (For example, the Canadian Defence Force Dive Tables (DCIEM) provided for a maximum time of 20 minutes for that dive). The Plaintiff also contended that the defendants had failed to reduce the planned dive times to take into account the existence of risk factors that increased the risk of the bends, such as rough water, strong current, cold, and seasickness.

The First Defendant (Divemaster) alleged that the Plaintiff's injuries were not the bends, but were Arterial Gas Embolism (AGE). It was argued that 'AGE' was not the result of any negligence on the Defendant's part, but in fact occurred because the Plaintiff was an asthmatic who took vasodilator asthma medication on the day of the dive. The Divemaster further asserted that the plaintiff had lied about her asthma condition to obtain her diver's medical certificate and that he would never have allowed the Plaintiff to dive if he had been told of her condition.

The Plaintiff and the First Defendant agreed to settle for an $80,000 payment to the Plaintiff and an order that the First Defendant pay the Plaintiff's legal costs of the action. The court entered a no-contest judgement against the Second Defendant (the dive charter company) for $200,000 damages, plus $96,000 interest on damages and an order that the Second Defendant also pay the Plaintiff's costs (as against that defendant).

Plaintiff's Experts: Surgeon Commander Dr. Des Gorman, RNZN, Auckland, New Zealand. Mr. John Lippmann, SCUBA Diving Expert, Melbourne, Vic., Australia.

Plaintiff's Counsel: Rob Davis, Attwood Marshall Lawyers, Coolangatta, Qld., Australia.

Recent Changes to Department of Social Security Guidelines Plaintiff Preclusion Periods

By Simon Morrison, Qld

A difficulty faced by plaintiffs in personal injury litigation in the past, has been the commencement of preclusion periods imposed by the Department of Social Security when learning of a common law settlement. The practice of the Department has been to impose the preclusion period immediately on notification of a settlement. The catch for the plaintiff has been that the Workers' Compensation Board will not forward cheques until the necessary clearances have been obtained from the Department of Social Security. The resultant problem has been that the plaintiff has been left without income, pending receipt of the common law damages. In some cases this can be as much as four to six weeks depending on the attitude of the Workers' Compensation Board and/or its solicitors, in arranging for discharge documents and drawing settlement cheques etc.

As a result, a submission was forwarded to the Parliamentary Secretary to the Minister for Social Security by our firm (Shine Murdoch), addressing that particular problem. After considering the submission he has introduced new guidelines addressing the problem.