

Stephens v State of Victoria

County Court of Victoria, unreported 2 June 1998
Rod Matthews, Melbourne



Rod Matthews

The Plaintiff was a 17 year old male student at Kensington Community High School, a school that attracted students unable to cope with or benefit from main stream education. In many ways it was a school of last chance. In the early afternoon of 1 August 1990 the Plaintiff was struck a blow to the face by a fellow student whilst involved in a lunch-time class, and suffered injury to the nose and an aggravation of a pre-existing psychological state. Both the Plaintiff and the assailant had come to Kensington Community High late in their secondary education having had unsuccessful experiences with previous schools.

The Plaintiff's claim was couched generally in terms of a failure on the part of a teacher at the school to adequately supervise a class room situation. It was also alleged that the school had failed to adequately check (and disseminate to the teaching staff) the assailant's previous background, particularly his propensity to violent aggressive behaviour including incidents of biting fellow students. This failure was alleged to have ill equipped teachers to respond to the conduct of the assailant in a given situation.

The Plaintiff gave evidence that whilst speaking to a teacher during the lunch-time class about a forthcoming art exhibi-

tion, a fellow student commenced to tease and harass him. His evidence was that the teasing went on for between 7 and 10 minutes and during this time the teacher did nothing. As the Plaintiff was about to leave the room he attempted to tell the fellow student to "shut up" and in the course of this utterance was struck on the face by the fellow student.

The teacher supervising the lunch time class room was called by the Defendant. The teacher disputed that he did nothing, giving evidence that he told the assailant to stop. He also stated that the teasing was not aggressive. In his written reasons the judge also raised the stark differences between the 2 incident reports filed by the teacher commenting that the earlier report (made on the day of the incident) made no mention of having told the assailant to stop whereas the later report, (filed at the request of the schools administration), did. His Honour also noted the divergence between the earlier statement made by the teacher and his evidence at trial.

The Defendant also called the school principal who under cross-examination admitted failing to check and ensure the school was aware of the assailant's previ-

ous school history particularly previous incidents of aggressive behaviour. The principal also gave evidence that in the situation that arose he would have actively instituted a stratagem to separate the Plaintiff from the assailant (ie by asking the Plaintiff to accompany him to another room or separating the students).

In light of all this evidence his Honour found that the teacher supervising the lunch-time class failed to appreciate the gravity of the situation (contrasting this with the recollection of another student witness who sensed that something was going to happen) and therefore departed from the conduct of the reasonable teacher in the circumstances. By this failure the teacher deprived himself of the opportunity of taking the final step of separating the Plaintiff and the assailant. The State of Victoria was held vicariously liable for the teacher's action.

The Plaintiff was awarded the sum of \$30,000 for pain and suffering and loss of enjoyment of life as well as \$15,000 for future economic loss in accordance with Farlow principles. ■

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PacDun offers \$15,000 to heart patients

By HELEN SHIELD
in Melbourne

The long-running Australian legal tussle over pacemaker leads, manufactured by Pacific Dunlop's then-subsubsidiary Teletronics, took a new turn yesterday.

Under a deal subject to the approval of the Federal Court in Sydney, Pacific Dunlop's insurers would pay \$15,000 to each Australian patient whose pacemaker leads had been or will be removed.

Pacific Dunlop was continuing to meet unreimbursed medical costs of other patients whose leads had not been removed and had not been identified as faulty. But the company said it intended to vigorously defend

compensation claims from this group of patients.

It is believed 1,200 Australians had been recipients of the leads and an estimated 183 had had them removed.

The Accufix Atrial "J" pacemaker leads, manufactured by Teletronics, were blamed for two deaths in late 1994 when some of the pacemaker leads fractured and protruded into patients' hearts.

Although Pacific Dunlop sold Teletronics to the US-based St Jude Medical in October 1996, Pacific Dunlop's subsidiary, the Accufix Research Institute, had assumed the potential liabilities arising from legal cases over the J-wire leads in Australia, the US and Canada.

The Canadian claims were settled for a maximum of \$23.1 million in October last year.

The US litigation, which involves an estimated 440 cases naming about 660 people, has not been resolved.

Pacific Dunlop said Australian patients who had their Accufix pacemaker leads removed and believed they should be entitled to more than the \$15,000 compensation would have an opportunity to have their claims assessed by two barristers.

The Federal Court has ordered Pacific Dunlop to notify all Australian patients with Accufix pacemakers of a 7 August court hearing about the settlement offer.

The chief general counsel of

Pacific Dunlop, Mr Martin Hudson, said the company hoped the offer would "resolve completely the claims of one group of people".

"Regrettably, the whole Teletronics issue has been something in which there has been a great deal of interest and has affected Pacific Dunlop as a whole," he said.

"Our aim all along has been, firstly, to defend the company where that was proper, obviously with an eye to resolving matters where they can be resolved in totality. We did that in Canada.

"This [the proposed settlement with Australian patients who had the J-wire removed] should have no impact on the US litigation."

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Update: Interim approval has been given by a US court to a settlement of 500 suits arising from faulty pacemakers manufactured by Pacific Dunlop. The settlement covers both those who have had the devices removed, and those still with the implants. However, a preliminary settlement of Australian claims does not cover the latter group, with lawyer Peter Cashman predicting compensation will be obtained for them as well.