

Acting for a catastrophically injured infant plaintiff:

Jackson Paul Stubbs



Tom Goudkamp is a Partner at Stacks the Law Firm in Sydney
PHONE 02 9223 6155
EMAIL tgoudkamp@stlf.com.au

Jackson Stubbs was born on the 17 August 1993. On 23 November 1993, baby Jackson's life went horribly wrong. In the early hours of that day, Jackson's parents were killed and he suffered appalling injuries when the car they were travelling in had an accident.

Jackson was thrown from the car. Rescue workers later found his seemingly lifeless body many metres from the wreckage. The baby was taken to John Hunter Hospital in Newcastle and then airlifted to the Prince of Wales Hospital at Randwick.

No one expected Jackson to survive. No one, that is, except his grandmother, Judie Stephens.

Although Mrs Stephens was a successful financial planner in her early fifties and numb with grief from the loss of her daughter and son-in-law, she committed herself to baby Jackson's survival and optimal recovery.

Since then, she has dedicated most of her time and energy to that task, propelled by extraordinary faith, self-belief and great love for her young grandson.

INJURIES

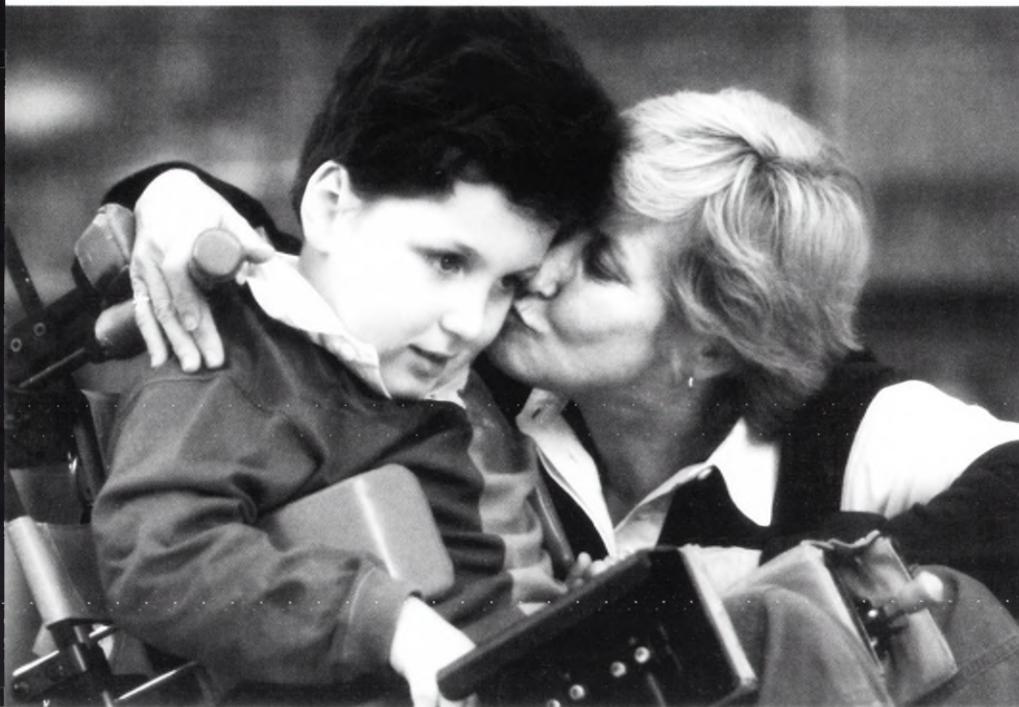
Jackson suffered appalling injuries as a result of the accident, including severe brain injury, significant loss of vision, spastic quadriplegia and cerebral palsy.

His ongoing disabilities include severe brain damage, severely impaired vision, paralysis of his lower limbs, bowel, bladder and sexual functions, and an acute speech impediment.

ISSUES IN DISPUTE

There was no dispute that:

1. Jackson will require 24-hour care for the rest of his life.
2. He was entitled to receive the maximum for non-economic loss, pursuant to section 79 of the *Motor Accidents Act* ▶



“Had Jackson not been injured he would have completed his Higher School Certificate at the age of 18, his academic performance would have been above average, and he would have had a career in management or administration earning above-average weekly earnings.”

1988 (NSW), despite the defendant's assertion that Jackson has minimal awareness.

3. He will be unemployable.

The main issues in the case were Jackson's life expectancy and the quality and quantum of care he will require.

LIFE EXPECTANCY

It was alleged on behalf of the plaintiff that Jackson's life expectancy would diminish by no more than 10% of normal, provided he continued to receive high-quality care and therapy.

The defendant's lawyers relied on reports from a world-renowned biostatistician and epidemiologist.

Using statistical analysis, he predicted that Jackson would survive for just 14.7 years. However, this conclusion

did not consider Jackson's actual circumstances, progress and development.

Had the expert's opinion prevailed, Jackson's claim for future loss, including care and equipment, would have been reduced very significantly.

Opinions were obtained on Jackson's behalf from other epidemiologists and biostatisticians. Their findings contradicted the opinion provided by the defendant's expert. The plaintiff's experts had a distinct advantage because they actually assessed Jackson's condition, including his mobility and level of awareness.

They also viewed a series of videos, which recorded Jackson's activities over the years. The most recent video showed that Jackson was able to perform a number of physical tasks,

such as using a walker and sitting on a surfboard in the water. Importantly, the video depicted Jackson taking obvious pleasure and delight from those activities.

The plaintiff's experts concluded that Jackson would survive for a further 55 years.

CARE

Mrs Stephens was Jackson's primary carer for two years after he left hospital. This was extraordinarily taxing on her, emotionally and physically. As Jackson became heavier and more difficult to manage, Mrs Stephens began to develop back problems.

An application was made to the Supreme Court for the insurer, which had admitted liability, to pay for care provided on a commercial basis pursuant to section 45 of the Motor Accidents Act.

Justice Dowd found against the plaintiff. He held that under section 45 the insurer had no obligation to provide funding for care. The Court of Appeal unanimously upheld this decision. An application to the High Court for Special Leave was unsuccessful.¹

Despite this decision, the insurer and plaintiff struck an agreement whereby the insurer would continue to pay about \$3,000 a week to help fund commercial care, while Mrs Stephens would pay the difference.

Mrs Stephens assembled a remarkable team of carers, providing Jackson with top-quality, round-the-clock care. One carer has been employed for over seven years.

Jackson was eventually able to attend the Alice Betteridge School for Handicapped Children at North Rocks. His level of awareness and physical integrity improved as a result of detailed and expert therapy.

Mrs Stephens moved from her home at Oatley and arranged for a suitably modified house to be built at Sylvania. She gave up her career as a financial planner.

It was claimed on behalf of the infant plaintiff that he would need

24-hour care for the rest of his life, including vigilant night-time care. One of the carers would have to be a registered nurse. The insurer contended that such high-level care was both unnecessary and unreasonable.

HEADS OF DAMAGES

Jackson sought damages for the following:

1. Non-economic loss (maximum).
2. Past and future medical expenses, aids and equipment.
3. Future economic loss – It was claimed that had Jackson not been injured he would have completed his Higher School Certificate at the age of 18 (at the end of 2011), that his academic performance would have been above average, and that he would have had a career in management or administration earning above-average weekly earnings.
4. Past gratuitous care (maximum).
5. Future gratuitous care – The claim

for future care was the most significant part of his claim and exceeded \$5 million.

6. Past and future care provided commercially.
7. Additional holiday expenses.
8. Additional transport expenses.
9. Home modifications – Claims were made for properties at Oatley, Sylvania, Thirlmere and Engadine.
10. Superannuation loss.
11. Computer equipment.
12. An assistance dog.
13. Funds management.

LITIGATION

The experts generally agreed that Jackson's claim should not be finalised until he turned seven years old. When that milestone was reached, final preparations began. This included updating medical evidence, interviewing witnesses, such as medico-legal experts, carers and lay witnesses, and finalising the statement of particulars, the chronology

and the assessment of damages.

The case was listed for four weeks before Justice Simpson in the Supreme Court, to start on 3 March 2003.

Jackson's Queen's Counsel opened the proceedings and invited the judge to take two days to read the material presented to her. She accepted that invitation.

Over the ensuing two days the legal teams for the parties engaged in settlement negotiations. These were ultimately successful and the claim was settled on 5 March, with approval for a very significant sum. The settlement involved a modest compromise, taking into account the opposing views on life expectancy. **PL**

Endnote:

¹ Note that the *Motor Accidents Compensation Act 1999* (NSW) has included provision for the payment of the cost of commercial care, as incurred.

Engineering and Ergonomics Expert

Mark is a professional engineer, a qualified ergonomist and has been an APLA member for several years. His consulting group has advised about 2000 enterprises since 1977 in safety, engineering and ergonomics. He also assists many Australian law firms in their personal injuries matters, and has prepared over 5000 reports on public and workplace accidents. Mark appears regularly in court in several States, giving independent expert opinion, most commonly on **back and upper limb strains; machinery incidents; slips and falls; RSI; and vehicle accidents.** Fee options for plaintiffs include deferred payment, with special arrangements for regular clients. Details, a brief CV and a searchable list of cases can be found at www.ergonomics.com.au

Mark Dohrmann
AM FIEAust BE (Mech) CPEng Cert Erg MESA



Mark Dohrmann and Partners Pty Ltd
PO Box 27
Parkville VIC 3052

(03) 9376 1844

mark@ergonomics.com.au

Search Mark's cases by keyword at:
www.ergonomics.com.au

COLES & ASSOCIATES PTY LTD

HELEN L. COLES

MEDICO-LEGAL OCCUPATIONAL THERAPIST
(25 years medico-legal experience)

- Assessment of residual function, rehabilitation potential, employability
- Home visits/work site evaluations
- Recommendation of aids, equipment and services for home and work
- Assessment following work injury, motor vehicle accident, medical negligence, criminal assault, public access injury
- Assessment for family court related to special maintenance needs of former spouse or dependant
- Assessment for administrative appeals
- Availability - local, all states & overseas by negotiation

Watkins Medical Centre
225 Wickham Terrace, Brisbane
Tel: (07) 3832 2630 or (07) 3839 6117
Fax: (07) 3832 3150