

IN THE COUNTY COURT OF VICTORIA AT MELBOURNE

No.

B E T W E E N:

STUART LARNER

Plaintiff

- and -

PARKS VICTORIA

Defendant

CASE SUMMARY

On 28 July 2008 Judge McInerney found that Parks Victoria was negligent and/or in breach of Section 13B of the Wrongs Act and so liable to Stuart Lerner for the damages he suffered as a result a Redgum branch falling upon him whilst in his tent at the Murray River reserve camp ground near Echuca on Boxing Day 2002.

The trial in relation to Mr Lerner's claim commenced on 12 November 2007 and His Honour reserved on 18 December 2007. At the commencement of the trial both liability and quantum were in issue but at the end of the second week of the trial quantum was agreed between the parties in the sum of \$6,000,000.

The Plaintiff led evidence that the Defendant knew of the particular propensities of Murray River Red Gums to drop branches and in particular for the branches when falling to fall with a pendulum motion so that they landed a considerable distance from directly underneath where they were situated.

His Honour found that Parks Victoria had breached its duty of care to the Plaintiff in that it knew of this propensity and had failed to provide adequate staff training and/or warnings.

In his decision Judge McInerney said it was:

“somewhat scandalous that a state department charged....to manage reserves where large numbers of public frequent should.... do nothing whatsoever to educate their staff.... or take steps recommended in its own policy or guidelines.”

He further said:

“the evidence before me is that the manner in which (Parks Victoria) conducted its operations was that the Murray River reserve was at such a low operational level... that there were no resources allocated (for education and training of staff).

Given the demonstrated catastrophic risk of injury... and the evidence of (Parks Victoria) knowledge of death and injury caused by such risks, I find such lack of action reprehensible”.

His Honour in his judgement distinguished an earlier Victorian decision of *Department of Natural Resources & Energy v Harper* 2000 1 VR 133 and recognised the way in which the High Court in recent decisions and in particular *Vairy v Wyong Shire Council* 2005 223 CLR 422 said that the shirt calculus was to be applied to incidents of this nature.

The Court rejected defence allegations of *Volenti* and contributory negligence.

There was no appeal lodged to His Honour’s judgement.