

PLEADINGS - A VIEW FROM THE BENCH¹

JUSTICE H G FRYBERG²

1. Thank you Mr Chairman. I should explain why it is that I come to sully your morning at this ridiculous hour. I was ambushed. I was sitting in civil jurisdiction a few months ago in a case in which Holyoak appeared. As I am wont to do I offered counsel a few helpful and encouraging remarks about the pleadings. Shortly afterwards the case settled. A day or two later Holyoak rang me and invited me to this forum to enlarge upon what I had said. I was trapped. I could not allege that I had nothing useful to say without destroying my own credibility and he was very flexible about the date. So here I am.
2. I propose to focus on pleadings at the trial stage. I do so because in most cases that is the first time that pleadings are considered by a judge. Occasionally they are the subject of attack or are otherwise examined in an application. That is not my topic today. Nor shall I devote time to an overall view of either the art or the rules of pleading. I am simply going to draw attention to a few chronic defects which ought not to appear in pleadings by the time an action is set down for trial. (Actually I shall be talking about the way the pleadings should be by the time of trial, but since you can't amend them without leave after the filing of a request for trial date, you actually need to get them correct by then.) After that, we will look at a particular example.
3. The publicity for this function included the rather threatening phrase "Get them right for trial or else!" Now it's well-known that I am really a pussy cat. But I should warn you that the times are a'changin'. Rule 5(4) of the *Uniform Civil Procedure Rules* provides that the court may impose appropriate sanctions if a party does not comply with the rules³. In recent times the Court of Appeal has also had to consider whether solicitors and even a barrister ought to pay the costs of proceedings⁴, and if you read those cases you might ponder the applicability of John Bradford's famous aphorism⁵ to yourselves. You need to get it right or you might end up on the receiving end of an application for costs.
4. I am not unaware of the commercial pressures faced by solicitors, particularly those acting for insurance companies who are required to submit competitive tenders for their work. I am however completely unmoved by pleas that these days insurance companies want supermarket service. Insurers which select their professional advisers solely on the basis of fee levels are plain stupid. Cutting prices means cutting corners and that inevitably leads to increased cost and delay. Those are the very things the *Uniform Civil Procedure Rules* are designed to minimise and the judges are intent upon applying the rules in this spirit. I have written elsewhere of the necessity for solicitors to prepare or obtain an advice on evidence⁶. If additional costs or delays result from a failure to take this step the person responsible for the failure is likely to have to pay them for all parties, possibly on an indemnity basis. That includes solicitors who fail to advise the step and insurance companies and others which reject the advice. Today however my topic is pleadings and to that topic I return.

¹ Breakfast address to the Australian Insurance Law Association 30 April 2003.

² Judge of the Supreme Court of Queensland.

³ See also r 167.

⁴ *Campbell v Jones* [2002] QCA 375; *Gitsham, Edwards & Jensen v Suncorp Metway Insurance Ltd* [2002] QCA 416; *Steindl Nominees Pty Ltd v Laghaifar* [2003] QCA 157.

⁵ "But for the grace of God, there goes John Bradford", said to have been spoken on seeing some criminals led to execution: Cohen and Cohen, *Penguin Dictionary of Quotations*, p 64.

⁶ *Campbell v Jones* [2002] QCA 332 at para [70].

5. Pleadings are usually not hard. It is true that drawing and settling a good pleading it is an art, and by definition some people will be better at it than others and some pleadings will be better than others. But there is no reason why anyone should draw bad pleadings.
6. The purpose of pleadings is well known. It was stated in relation to the rules made under the *Judicature Act* as early as 1876:

"The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules ... was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."⁷
7. Today it is not only the parties who need to know what the issues in the case are. It may come as a surprise to some, but it is also necessary for the judge (and if there is a jury, the jury) also to know. To find out, the judge reads the pleadings, if possible the night before the trial (or even earlier in a managed case). Too often this process produces, not a focused interest, but a furious irritation.
8. That is really silly. Your pleading provides an excellent opportunity to persuade the judge to your client's point of view. If you do it well there is every chance that the judge will enter the courtroom wondering why your opponent is fighting this case, or at least wondering how he or she will overcome one or two particular difficulties. I am indebted to James Douglas QC for the story of a statement of claim drawn by a Melbourne barrister in a workplace accident case. The opening paragraph read as follows: "Until 27 May 1998 the plaintiff was a carpenter with two arms." Imagine having to draw the defence! You get that effect with simple language and clear thought.
9. Another good way of giving credibility to your pleadings is to plead with convincing particularity. Devotees of Gilbert and Sullivan will recall from *The Mikado* how Pooh-Bah and others falsely described the execution of Nanki-Poo. When their perjury was exposed the recriminations began. Pooh-Bah sought to excuse his fictions as "merely corroborative detail, intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative." That really is what particulars do, though of course it is not their purpose.
10. Rule 160 requires particulars to be stated in the pleading. Only if that is inconvenient may they be stated in a separate document which must be filed and served with the pleading. These days, with word processors, why is it that particulars are so seldom pleaded in this way? In most cases they could easily be included after each paragraph or subparagraph of the pleading using a different (and smaller) font without interrupting the flow of the pleading. Instead, they often are not given at all. If they are given, they are often not filed. If I am lucky enough for them to have been filed, I find them included in a separate document which identifies them only by reference to an unfiled request for particulars, not by reference to the pleading which they are supposed to illuminate.
11. What is the usual response when I point out this deplorable situation? "They never asked for particulars/further and better particulars" or "Both sides knew what this allegation was all about." But the rules do not require particulars to be given only if the other side asks for them. They must be given in any event and it is a solicitor's duty to ensure that before a

⁷ *Thorp v Holdsworth* (1876) 3 Ch D 637 at p 639 per Jessel MR, cited with approval in *Banque Commerciale SA v Akhil Holdings Ltd* (1990) 169 CLR 279 at pp 287-8 per Brennan J.

request for trial date is filed all necessary particulars have been sought and given. There is usually no excuse for getting to trial without particulars being in order.

12. Another problem found far too often at trial is the number of non-admissions and denials, in both the defence and the reply, where the allegation is not really in issue. It is easy enough to understand that when pleadings are first drawn a number of issues are contentious and parties may not even know their position on some matters pleaded. By the time you are ready for trial it should be different. You should know clearly if you are denying a particular assertion and if so why your client believes it to be untrue. In all but the most exceptional cases you should be in a position to either admit or deny assertions. Your investigations should be complete, the witnesses proofed and the documents examined. It is imperative that the pleadings be revisited and updated before a request for trial date is filed. You have neither the time nor the right to carry out that process later. In most cases, by the time the judge gets to see the pleadings only the matters genuinely in issue should remain unadmitted.
13. Finally may I draw attention to what appears to be a widespread misunderstanding of the effect of r 166(4). That sub-rule requires a denial to be accompanied by a direct explanation for the party's belief that the allegation is untrue and a non-admission to be accompanied by a direct explanation for the party's belief that the allegation cannot be admitted. Note that it is the relevant belief which must be explained; it is implicit that an allegation cannot be denied unless the party believes it to be untrue. Second, note that the explanation must accompany the denial or non-admission, not be part of it. It matters that it be kept separate because it would be wrong for the opposing party to respond to the explanation in the next pleading. No one would think of pleading to a notice required by the rules to be inserted in a preceding pleading. The same is true of the explanation required by r 166(4). You are therefore not entitled to allege matters of substantive defence or reply only in the explanation.
14. The next course is, in the old schoolboy slang, the "eggs-ham-and-bacon". The pleadings included in your place settings are from an actual case. We do not have time to analyse all three pleadings in that case in detail, so I have had reproduced only the statement of claim and defence. I trust by now you are thoroughly familiar with their contents. I shall focus on the defence but I assure you that the statement of claim and the reply were also open to criticism. The dates and names have been changed to protect the guilty.

GO THROUGH DEFENCE

15. Ambrose Bierce defined digestion as "the conversion of victuals into virtues." "When the process is imperfect," he continued, "vices are evolved instead."⁸ Thank you for having me. Thank you for breakfast. God preserve you from indigestion and poor pleadings.

⁸ *The Enlarged Devils Dictionary*, Penguin, 1971.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: S1234 of 2000

Plaintiff: A

And

Defendant: B

STATEMENT OF CLAIM

This claim in this proceeding is made in reliance on the following facts:

1. At all material times:
 - (a) The Defendant carried on practice as a general practitioner at X Medical Centre, Queensland (“the medical centre”);
 - (b) The Defendant:-
 - (i) was a duly qualified medical practitioner practicing in the State of Queensland;
 - (ii) was a general practitioner.
2. On the 12th of December 1997:
 - (a) the Plaintiff attended at the medical centre in his capacity as a patient;
 - (b) the Plaintiff, in his capacity as patient, attended upon and consulted with the Defendant in his capacity as a general practitioner;

- (c) during the consultation the Plaintiff draw attention to a lump on his right cheek and asked the Defendant to look at and consider what it was (“the lump”);
- (d) the Defendant orally advised the Plaintiff that the lump was a sebaceous cyst and explained generally the pathology of that type of cyst;
- (e) the Plaintiff orally enquired of the Defendant as to whether he was sure it was not a cancer explaining that his father had died of cancer;
- (f) the Defendant maintained his diagnosis of a sebaceous cyst and assured the Plaintiff to the effect that he should not to worry about it because those types of cysts come and go.

3. On the 13th April 1997

- (a) the Plaintiff attended the medical centre in his capacity as a patient;
- (b) the Plaintiff, in his capacity as patient, attended upon and consulted with the Defendant in his capacity as a general practitioner;
- (c) during the consultation:-
 - (i) the Plaintiff again drew attention to the lump;
 - (ii) the Defendant orally advised the Plaintiff that the lump looked like it was infected;
 - (iii) the Defendant gave the Plaintiff a prescription of an antibiotic, Erythromycin;
 - (iv) the Defendant orally advised the Plaintiff to complete the course of antibiotics, return in seven day’s time and consideration would be given to excision of the lump by the Defendant;

4. The Plaintiff obtained the Erythromycin, took the antibiotics and returned to the medical centre to consult with the Defendant on the 20th of April 1997;

5. On the 20th April 1997:-

- (a) the Plaintiff attended at the medical centre in his capacity as a patient;
- (b) the Plaintiff, in his capacity as a patient, attended upon and consulted with the Defendant in his capacity as general practitioner;
- (c) during the consultation:-
 - (i) the Defendant examined the lump and noted that it caused the Plaintiff pain when it was pinched by him;
 - (ii) the Defendant orally advised the Plaintiff that the lump still looked infected and that a further course of antibiotics was necessary;

- (iii) the Defendant gave the Plaintiff a prescription for Augmentin;
- (iv) the Defendant orally advised the Plaintiff to finish the course of Augmentin and to also embark upon a repeat course of Augmentin in preparation for an excision of the cyst by the Defendant;
- (v) the Defendant orally advised the Plaintiff that he should return to the medical centre on the 22nd of May 1997 for excision of the lump by Doctor Arthur, and that a booking allowing sufficient time for that purpose would be made for that day.

6. The Plaintiff had the prescription for Augmentin filled and consumed the antibiotic Augmentin prescribed by Doctor Arthur.

7. On the 22nd of May 1997:

- (a) the Plaintiff attended at the medical centre in his capacity as a patient;
- (b) the Plaintiff, in his capacity as patient, attended upon and consulted with the Defendant, in his capacity as general practitioner;
- (c) during the consultation:-
 - (i) the Defendant examined the lump;
 - (ii) the Defendant orally informed the Plaintiff that the lump had now grown to be quite large and that while he could take it out, he did not consider his skills were good enough and it could lead to a scar;
 - (iii) the Defendant orally advised the Plaintiff to the effect that the cyst would go away and that the Plaintiff had more concerning problems elsewhere in his body to worry about than the lump;
 - (iv) the Plaintiff orally enquired of the Defendant as to whether he was sure the lump was not cancer;
 - (v) the Defendant orally advised the Plaintiff that it was not cancer;
 - (vi) the Defendant then discussed the condition of the Plaintiff's shoulder and prescribed Naprosyn.

8. On or about the 9th June 1997:-

- (a) the Plaintiff attended at the medical centre in his capacity as a patient;
- (b) the Plaintiff, in his capacity as a patient, attended upon and consulted with the Defendant in his capacity as a general practitioner;

- (c) the consultation was to enable the Defendant to review the Plaintiff and prepare a report for the purposes of benefits the Plaintiff was received from Centrelink;
- (d) the lump had grown bigger, had become darker in appearance and dark veins had become visible across the body of it;
- (e) the lump, and its appearance, was visible to anybody looking at the Plaintiff's face.

9. The Plaintiff attended upon the medical centre in his capacity as a patient, and consulted with the Defendant in his capacity as a general practitioner on or about the following further dates:-

- (a) 26 June 1997
- (b) 4 July 1997
- (c) 17 July 1997
- (d) 10 August 1997
- (e) 17 August 1997
- (f) 17 October 1997
- (g) 29 October 1997
- (h) 9 November 1997
- (i) 3 January 1998
- (j) 28 March 1998

10. During each of the consultations referred to in the last preceding paragraph;

- (a) the lump was readily observable;
- (b) it was readily observable that the lump had not diminished in size, and had grown larger, and that it had taken on the appearance described in paragraph 8(d) hereof; and
- (c) the Defendant did not alter his diagnosis that the lump was sebaceous cyst .

11. On or about the 3rd November 1998:-

- (a) the Plaintiff attended at the medical centre in his capacity as a patient;
- (b) the Plaintiff, in his capacity as patient, attended upon and consulted Doctor L;
- (c) during the consultation:-

- (i) Doctor L examined the lump;
 - (ii) Doctor L referred the Plaintiff to a plastic and reconstructive surgeon, Doctor I, to have the lump excised.
- 12. On or about the 16th of October 1998 the Plaintiff attended upon Doctor I for a preliminary consultation regarding the excision of the lump.
- 13. On or about the 23rd of October 1998:-
 - (a) the Plaintiff attended upon Doctor I for excision of the lump;
 - (b) the lump was removed;
 - (c) Doctor I caused the lump, or part of it, to be the subject of a biopsy.
- 14. Following this investigation by biopsy, merkel cell cancer was diagnosed on or about the 26th of October 1998.
- 15. At all material times from 12 December 1997 the lump was a merkel cell cancer.
- 16. The Plaintiff subsequently underwent radical surgery and has undergone and continues to undergo invasive radiotherapy treatment.
- 17. The Plaintiff's condition is more widespread and life threatening as a consequence of the delay in diagnosis.
- 18. The failure of the Defendant to diagnose the lump as a merkel cell cancer and to treat and give advice to the Plaintiff accordingly was negligent in that he:
 - (a) Failed to properly investigate the lump on the Plaintiff's right cheek;
 - (b) Failed to properly examine, by palpation, the lump on the Plaintiff's right cheek;
 - (c) Failed to appreciate the Plaintiff's concern about cancer, in circumstances where the Plaintiff made known to the Defendant a family history of cancer, and was a man of fair complexion;
 - (d) Failed to excise the lump at an early stage;
 - (e) Failed to refer the Plaintiff for specialist excision of the lump if the Defendant or the Plaintiff was uncomfortable with the Defendant performing the excision;
 - (f) Failed to perform or arrange a biopsy early in the presentation of the lump in a timely fashion or at all;
 - (g) Failed to revisit his diagnosis of sebaceous cyst in circumstances when the lump persisted for many months and grew in size, and otherwise did not confirm to the clinical presentation of a sebaceous cyst;

- (h) Failed to meet the standard of competence expected of a General Practitioner of Medicine;
- (i) Failed to refer the Plaintiff for appropriate specialist review of the lump, especially in view of its persistence and the Plaintiff's particular concerns as to whether or not it was a cancer.

19. In consequence of the said negligence, the Plaintiff sustained severe personal injury and has undergone pain and suffering and has been put to loss and expense and has suffered damages.

PARTICULARS OF INJURIES AND DISABILITIES

The Plaintiff suffered the following injuries:

- (a) Advancement of merkel cell cancer;
- (b) radical excision surgery;
- (c) Radical radiotherapy treatment;
- (d) Shock.

The Plaintiff suffered the following disabilities:

- (a) Pain, stiffness and restriction of movement in right side of neck;
- (b) Loss of sensation under right lower eyelid extending onto bridge of nose and upper part of cheek;
- (c) Loss of sensation in front of the right ear;
- (d) Deep seated aching in right jaw;
- (e) Persistent nose bleeds;
- (f) Right eyelid eversion;
- (g) Sensation of 'worms in under the skin' on right side of face and neck;
- (h) Tendency to bruise easily;
- (i) Susceptibility to metastatic spread of cancer;
- (j) Need for surgical raising of the right eyelid;
- (k) Need for regular specialist review to monitor condition;
- (l) Dryness of the mouth;
- (m) Susceptibility to recurrent thrush infections;

- (n) Dependence on others for nursing care;
- (o) Anxiety disorder due to general medical condition (DSM-IV293.89) accompanied by frequent panic attacks, which disorder is approximately 40% greater than it might otherwise have been had merkel cell cancer been diagnosed in, or before, May of 1997;
- (p) Major depressive disorder (DSM-IV293.83) which is approximately 40% greater than it might otherwise have been had the Plaintiff's merkel cell cancer been diagnosed in, or before, May 1997;
- (q) Reduced salivary function;
- (r) Skin lesions due to burning from radiotherapy on face and chest;
- (s) Constant lacrimation and irritation of right eye;
- (t) Black out episodes;
- (u) Dependence on others for transport;
- (v) Inability to work;
- (w) Injuries, conditions and symptoms otherwise described in the Statement of Loss and Damage filed by the Plaintiff in these proceedings pursuant to UCPR 547.

20. The Plaintiff has suffered loss and damage as a result of the negligence of the Defendant, and the personal injuries and disabilities he has suffered and he has suffered the loss of a better outcome, or the opportunity of a better outcome, had the merkel cell cancer been diagnosed earlier than it was.

PARTICULARS

- (a) The Plaintiff has endured and will continue to endure much pain and suffering and will continue to endure pain and inconvenience from hospitalisation and his enjoyment of some of the amenities of life have been lost and impaired and in the future will be lost or impaired claimed in a sum of not less than \$80,000.00, as detailed in the Statement of Loss and Damage of the Plaintiff filed in these proceedings.
- (b) The Plaintiff has required and will in the future require medical treatment and medication and thereby will incur future expenses of:-
 - (i) annual medication of not less than \$4,710.28;
 - (ii) future medication in the sum of not less than \$50,000.00;
 - (iii) attendances on his general practitioner at a cost of approximately \$42.55 each month;

- (iv) attendances upon Doctor D every three weeks at a cost of approximately \$28.40;
 - (v) attendances upon Doctor S, Oncologist, every two months at a cost of approximately \$33.40;
 - (vi) attendances upon Doctor K regarding his ear condition every six to eight weeks at a cost of approximately \$33.40;
 - (vii) attendances on Doctor M2 regarding eye drops once per month at a cost of approximately \$32.40;
 - (viii) the cost of future medical treatment claimed in the sum of not less than \$5,000.00 as detailed in the Statement of Loss and Damage of the Plaintiff filed in these proceedings;
 - (ix) travel expenses at approx \$40.00 per week for the remainder of the Plaintiff's life claimed in a global sum of not less than \$2,000.00 as detailed in the Statement of Loss and Damage of the Plaintiff filed in these proceedings;
 - (x) the cost of future treatment in a sum of not less than \$2,771.00, as detailed in the Statement of Loss and Damage filed by the Plaintiff in these proceedings;
- (c) the Plaintiff's life expectancy has been diminished for which he claims a sum of not less than \$50,000.00
 - (d) The Plaintiff claims for the services and care he would have provided his wife in the lost years arising from his diminished life expectancy claimed in a sum of not less than \$100,000.00
 - (e) The Plaintiff has required, and will in the future require, the provision of services and care gratuitously provided by others to satisfy needs created by the injury and disability he suffers and which he would not have suffered had he been diagnosed earlier than he was with merkel cell cancer, in a sum of not less than \$269,808.00 to the past and \$200,000.00 to the future, as detailed in the Statement of Loss and Damage of the Plaintiff filed in these proceedings.
 - (f) The Plaintiff has incurred cost and expense claimed in the sum of not less than \$1,225.55, as detailed in the Statement of Loss and Damage of the Plaintiff filed in these proceedings.

The Plaintiff claims the following relief

- (a) Damages for personal injuries, loss and damage suffered as a result of the negligence of the Defendant.

- (b) The interest on such damages pursuant to s.47 of the *Supreme Court Act 1995*.
- (c) Costs.

The Plaintiff does not elect for trial by jury.

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: S1234 of 2000

Plaintiff: A

And

Defendant: B

DEFENCE OF THE DEFENDANT

The defendant relies on the following facts in defence of the claim:

1. The defendant admits the allegations contained in paragraph 1 of the Amended Statement of Claim.
2. As to the allegations contained in paragraph 2 of the Amended Statement of Claim:
 - (a) The Defendant admits the allegations in sub-paragraphs (a), (b), (c) and (d).
 - (b) The Defendant denies the Plaintiff gave the history alleged in paragraph 2(e) of the Amended Statement of Claim, and says the reason for such denial is that the Defendant took a note of the history as it was given. It is the Defendant's practice to record in writing details of a patient's previous medical history and the patient's family medical history. The Defendant denies that he departed from this practice in the Plaintiff's case and the history recorded, is not that alleged by the Plaintiff.
 - (c) As to the allegations contained in sub-paragraph 2(f) of the Amended Statement of Claim, the Defendant:
 - (i) admits he maintained his diagnosis of a sebaceous cyst.

- (ii) Says his practice in discussing the pathology of sebaceous cyst with patients is to inform them that they become infected from time to time and these infections abate with appropriate treatment.
- (iii) Further says the Defendant's practice is to advise patients that these cysts do not disappear of their own accord.
- (iv) Denies he told the Plaintiff not to worry about the sebaceous cyst or that this type of cyst comes and goes and says the reason for such denial is that that is not the information he would have given the Plaintiff.

3. As to the allegations contained in paragraph 3 of the Amended Statement of Claim, the Defendant:

- (a) Admits the allegations contained in sub-paragraphs (a) and (b).
- (b) Denies the allegations contained in sub-paragraph (c) of the Plaintiff's Amended Statement of Claim and says that the reason for such denial is:
 - (i) The Plaintiff consulted the Defendant for medical assistance in respect of matters not relevant to these proceedings. The Defendant denies the Plaintiff drew attention to the "lump".
 - (ii) The Defendant denies he orally advised the Plaintiff that the lump looked like it was infected on the 13th April 1997.
 - (iii) The Defendant does not admit he ever gave to the Plaintiff a prescription for Erythromycin on the 13th April 1997 and cannot admit the truth or falsity of the allegations until such time as further disclosure of documents is completed at which time further admissions or denials may be made if appropriate.
 - (iv) The Defendant does not admit he prescribed antibiotics on the 13th April 1997 and denies that the Plaintiff was told by the Defendant that the Defendant would excise the lump on the Plaintiff's cheek.

4. As to the allegations contained in paragraph 4 of the amended Statement of Claim, the Defendant:

- (a) Admits that the Plaintiff consulted the Defendant at the Medical Centre on the 20th April 1997.
- (b) Otherwise does not admit the allegations in the paragraph and says the reason for such non admission is that these are matters solely within the knowledge of the Plaintiff.

5. As to the allegations contained in paragraph 5 of the amended Statement of Claim, the Defendant:

- (a) Admits that on the 20th April 1997 the Plaintiff, as a patient, consulted the Defendant as his general practitioner.

- (b) Admits the Defendant examined the lump and says he did so by examining it and palpating it to ascertain whether it was fluctuant.
- (c) Admits the Defendant advised the Plaintiff that the lump looked as if it was still infected.
- (d) It is unable to admit or deny the Defendant recommended or prescribed a further course of antibiotics until disclosure the action, and accordingly places the matter in issue until such disclosure has taken place.
- (e) Denies the Defendant told the Plaintiff he would excise the cyst and says the reason for such denial is that this is inconsistent with the Defendant's recollection and with appropriate practice.
- (f) Denies the Defendant told the Plaintiff he should return on the 22 May 1997 for excision of the lump and says the reason for such denial is that no such advice was given and the consultation on the 22 May 1997 was not related in any way to the matters the subject of this action.

6. As to the allegations contained in paragraph 6 of the amended Statement of Claim, the Defendant:

- (a) Does not admit he prescribed Augmentin as set out in paragraph 5 herein.
- (b) Does not admit the Plaintiff obtained and consumed any Augmentin as these are matters solely within the knowledge of the Plaintiff.

7. As to the allegations contained in paragraph 7 of the amended Statement of Claim, the Defendant:

- (a) Admits that on the 22 May 1997 the Plaintiff, as a patient, consulted the Defendant in his capacity as a general practitioner.
- (b) Denies the allegations concerning the consultation set out in paragraph 7(c), and says the reason for such denial is that the consultation involved other matters, and not the matters alleged in the amended Statement of Claim.
- (c) Says the Plaintiff consulted the Defendant on the 22 May 1997 with the complaint of neck pain in his right shoulder. He also complained of headaches and the Defendant arranged for a CT Scan to be performed. The Defendant measured the Plaintiff's blood pressure and recommended an anti-inflammatory drug for the Plaintiff's musculo skeletal pain.
- (d) The Defendant denies the Plaintiff made any complaint in respect of the lump on his right cheek at the consultation and further denies the Plaintiff and the Defendant discussed whether the lump might be cancerous. The reason for such denial is that the consultation involved the matters set out in sub-paragraph (c) of this Defence.

8. As to the allegations contained in paragraph 8 of the amended Statement of Claim:

- (a) The Defendant admits that on the 9 June 1997 the Plaintiff as a patient, consulted the Defendant in his capacity as a general practitioner.
 - (b) Admits that the purpose of the consultation was to enable the Defendant to review the Plaintiff and to prepare a report for the purposes of benefits the Plaintiff was receiving from Centrelink.
 - (c) Denies the allegations contained in paragraphs 8(d) and (e) of the amended Statement of Claim and says the reason for such denial is that the consultation was for purposes unrelated to those set out in the pleading.
 - (d) Says the consultation on the 9 June 1997 was for the purposes of preparing a Centrelink report.
 - (e) The Defendant otherwise denies the allegations contained in paragraph 8 of the amended Statement of Claim and says the reason for such denial is that the lump had grown bigger, had become darker in appearance and had dark veins visible across the body of it or that its appearance had changed in any remarkable way since the previous consultations on 20 April 1997 and 12 December 1997.
9. The Defendant admits the allegations contained in paragraph 9 of the amended Statement of Claim.
10. As to the allegations contained in paragraph 10 of the amended Statement of Claim, the Defendant:
- (a) Admits the lump was observable and had not diminished in size.
 - (b) Says the lump had not grown larger.
 - (c) Denies the lump had taken on the appearance described in paragraph 8(d) of the Plaintiff's amended Statement of Claim, and says the reason for such denial is the observations of the Defendant made at the time.
 - (d) Admits the Defendant did not alter his diagnosis that the lump was a sebaceous cyst.
 - (e) Says he was managing the lump on the Plaintiff's cheek by reviewing it generally and acting upon any specific complaints.
 - (f) Says he informed the Plaintiff that cysts of this kind did not disappear by themselves.
11. The Defendant does not admit the allegations contained in paragraph 11 of the amended Statement of Claim as these are matters within the knowledge of the Plaintiff.
12. The Defendant does not admit the allegations contained in paragraph 12 of the amended Statement of Claim as these are matters within the knowledge of the Plaintiff.
13. The Defendant does not admit the allegations contained in paragraph 13 of the amended Statement of Claim as these are matters within the knowledge of the Plaintiff.

14. The Defendant does not admit the allegations contained in paragraph 14 of the amended Statement of Claim as these are matters within the knowledge of the Plaintiff.
15. As to the allegations contained in paragraph 15 of the amended Statement of Claim the Defendant:
 - (a) Denies the lump was, at all material times after the 12 December 1997, was a merkel cell cancer and says the reason for such denial is that initially the lump was a sebaceous cyst.
 - (b) In the alternative, says that if the lump was a merkel cell cancer, it was reasonable and appropriate for the Defendant to diagnose the lump as a sebaceous cyst because of the shape, size, rate of growth, and appearance of the said lump.
16. The Defendant does not admit the allegations contained in paragraph 16 of the amended Statement of Claim as these are matters within the knowledge of the Plaintiff.
17. The Defendant denies the allegations contained in paragraph 17 of the amended Statement of Claim and says the reasons for such denial is that earlier treatment of the lump was not necessary or appropriate.
18. As to the allegations contained in paragraph 18 of the amended Statement of Claim, the Defendant denies he was negligent and says the reasons for such denial are that he at all times treated the Plaintiff appropriately, with proper skill and care, and that generally his attendances upon the Plaintiff met the standard of competence expected of a general practitioner of medicine.
19. As to the allegations contained in paragraph 19 of the amended Statement of Claim, the Defendant:
 - (a) Denies the Defendant was negligent as set out in paragraph 18 of this Defence.
 - (b) Denies the Plaintiff sustained severe personal injury and has undergone pain and suffering or other loss and damage as a result of any action or omission of the Defendant, and says that at all times the Defendant has acted properly.
20. As to the allegations contained in paragraph 20 of the amended Statement of Claim, the Defendant:
 - (a) Denies the Defendant was negligent as set out in paragraph 18 of this Defence.
 - (b) Denies the Plaintiff sustained severe personal injury and has undergone pain and suffering or other loss and damage as a result of any action or omission of the Defendant, and says that at all times the Defendant has acted properly.