

FILED

26 JUL 2018

D.E.



REPLY

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court of Sydney
Case number	2017/00353017

TITLE OF PROCEEDINGS

Plaintiff	Kimley Lloyd Whisson
Defendant	Subaru (Aust) Pty Limited ABN 95 000 312 792

FILING DETAILS

Filed for	Kimley Lloyd Whisson, Plaintiff
Filed in relation to	Defendant's Defence to Further Amended Statement of Claim
Legal representative	Damian Scattini, Quinn Emanuel Urquhart & Sullivan LLP
Legal representative reference	07435-00001
Contact name and telephone	Damian Scattini, 02 9146 3888
Contact email	Damianscattini@quinnemanuel.com

PLEADINGS AND PARTICULARS

In this Reply, capitalised terms have the same meaning as defined in the Plaintiff's Further Amended Statement of Claim filed 7 May 2018 (**FASOC**), unless otherwise indicated.

- 1 In reply to subparagraphs 7(d) and (e) of the Defence, the Plaintiff:
 - (a) says that that long term exposure to repeated high temperature cycling in the presence of moisture contributes to the degradation of ammonium nitrate used as a propellant in Takata Airbags;
 - (b) says that long term exposure to persistent high absolute humidity and high temperatures contribute to the degradation of the propellant in Takata Airbags;

(c) says that ammonium nitrate used as a propellant in Takata Airbags will inevitably degrade due to temperature cycling;

(d) says further that:

- (i) the absorption of moisture accelerates the rate at which the ammonium nitrate propellant will degrade;
- (ii) moisture from any source may be absorbed by the ammonium nitrate propellant;
- (iii) any moisture that is absorbed will contribute to the degradation of the ammonium nitrate propellant;
- (iv) degradation of the ammonium nitrate is not dependant on long term exposure to persistent high absolute humidity and high temperatures;
- (v) says that the ammonium nitrate used as a propellant in Takata Airbags degrades with the presence of a desiccant;

(e) otherwise denies the allegations therein.

2 In reply to subparagraph 33(c) of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) says that the Defendant's non-compliance was not only because of an act, default or omission of, or representation made by, Takata, and as such the Defendant cannot rely on section 271(2)(a) of the ACL;

Particulars

The Defendant manufactured the Defective Vehicles, and imported the Defective Vehicles, as pleaded in subparagraphs 4(d) and 4(e) of the FASOC, respectively, and carried out the conduct alleged in subparagraphs 12(a), 12(b) and 12(c) of the FASOC. In those circumstances, the Defendant ought to have had the capacity to assess the design and quality of the airbags of the Defective Vehicles.

The Plaintiff reserves the right to plead further matters following discovery and evidence.

3 In reply to subparagraph 33(d)(ii) of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) without limiting the forgoing denial, says further that to the extent that the Defendant offered or offers a Group Member a replacement airbag or inflator

which uses ammonium nitrate as a propellant, such replacement would not remedy the characteristics of the Defective Vehicle pleaded at subparagraphs 10(c)(i) and (ii) of the FASOC and the Defendant has not remedied its failure to comply with the guarantee in section 54 of the ACL.

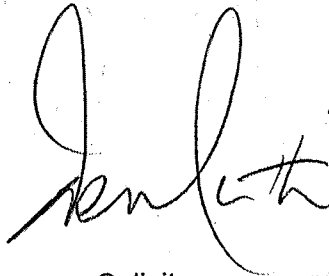
4 In reply to paragraphs 55 to 62 of the Defence, the Plaintiff

- (a) denies the allegations therein;
- (b) says that the Defendant has not pleaded any action of Takata giving rise to a cause of action of the Plaintiff against Takata; and
- (c) says further that the Defendant cannot rely on section 87CB of the TPA and/or and 87CB of the *Competition and Consumer Act 2010* (Cth).

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in this reply has reasonable prospects of success.

Signature



Capacity

Solicitor on record

Date of signature

26 July 2018

AFFIDAVIT VERIFYING

Name Kimley Lloyd Whisson
 Address 25 Modillion Avenue, Shelley WA 6148
 Occupation Retired
 Date 24 July 2018

I say on oath:

- 1 I am the Plaintiff.
- 2 I believe that the allegations of fact contained in the reply are true.
- 3 I believe that the allegations of fact that are denied in the reply are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the reply are true.

SWORN at Shelley, WA

Signature of deponent

Name of witness

Address of witness

Capacity of witness



Peter Edward Sadler

110 Quinn Emanuel, Level 41, 108 St Georges Ter, Perth WA 6000

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 ~~#I have known the deponent for at least 12 months.~~ [OR, delete whichever option is inapplicable]
 #I have confirmed the deponent's identity using the following identification document:

Drivers licence 1530612

Identification document relied on (may be original or certified copy) †

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]