

## REPLY

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court of Sydney
Case number	2018/00009565

FILED

27 JUL 2018



### TITLE OF PROCEEDINGS

Plaintiff **Jaydan Bond**

Defendant **Nissan Motor Co. (Australia) Pty. Ltd ABN 54 004 663  
146**

### FILING DETAILS

Filed for	<b>Jaydan Bond, Plaintiff</b>
Filed in relation to	Defendant's Defence to 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 Amended Statement of Claim filed 7 May 2018 (**ASOC**), unless otherwise indicated.

- 1 In reply to subparagraph 1(b)(i) of the Defence, the Plaintiff:
  - (a) admits, insofar as it is alleged, that Takata Airbags which do not contain a desiccant, or contain calcium sulphate as a desiccant, have the propensities referred to in subparagraph 7(a) of the ASOC;
  - (b) says that ammonium nitrate used as a propellant in Takata Airbags, whether containing a desiccant or not, will inevitably degrade due to temperature cycling;

(c) says further that all Takata Airbags which use ammonium nitrate as a propellant have the propensities referred to in paragraph 7(a) of the ASOC; and

(d) otherwise denies the allegations pleaded.

2 In reply to subparagraph 7(a)(i)(A)(I) of the Defence, the Plaintiff:

(a) admits, insofar as it is alleged, that long term exposure to high absolute humidity and fluctuating high temperatures contribute to the rate of degradation of ammonium nitrate used as a propellant in Takata Airbags;

(b) admits, insofar as it is alleged, that the ingress of moisture into the inflator and absorption of that moisture by the propellant can contribute to the rate of degradation of ammonium nitrate used as a 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) moisture from any source may be absorbed by the ammonium nitrate propellant;

(ii) any moisture that is absorbed will contribute to the degradation of the ammonium nitrate propellant;

(iii) degradation of the ammonium nitrate is not dependant on sustained exposure to high absolute humidity and fluctuating high temperatures;

(e) otherwise denies the allegations pleaded.

3 In reply to subparagraph 7(a)(i)(A)(II) of the Defence, the Plaintiff:

(a) admits, insofar as it is alleged, that there is a risk that the inflator may deploy in an accident with greater force than designed and have the propensities to act in a manner described in subparagraph 7(a) of the ASOC;

(b) says that the risk described in the proceeding paragraph arises because of the degradation of the ammonium nitrate propellant in the Takata Airbag;

(c) repeats the matters pleaded in paragraph 2 above;

(d) otherwise denies the allegations pleaded.

4 In reply to subparagraph 7(a)(i)(A)(V) of the Defence, the Plaintiff:

(a) repeats the matters pleaded in paragraph 2 above;

(b) repeats the matters pleaded in paragraph 3 above;

- (c) admits, insofar as it is alleged, that the climate to which a Defective Vehicle is exposed contributes to the degradation of ammonium nitrate used as a propellant in Takata Airbags contained in that vehicle;
- (d) says further that:
  - (i) the climate that the Defective Vehicle is exposed to is not the only factor that will affect the rate of degradation of the ammonium nitrate used as a propellant;
  - (ii) says that the propensities pleaded in subparagraph 7(a) of the ASOC begin at the time when the ammonium nitrate propellant begins to degrade;
- (e) otherwise denies the allegations pleaded.

5 In reply to paragraph 33(b) 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(e) and 4(f) of the ASOC, respectively, and carried out the conduct alleged in subparagraphs 12(a), 12(b) and 12(c) of the ASOC. 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.

6 In reply to paragraph 47B of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) without limiting the foregoing 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:
  - (i) such replacement would not remedy the characteristics of the Defective Vehicle pleaded at subparagraphs 10(c)(i) and (ii) of the ASOC;

- (ii) Group Members are not obliged to accept such replacement;
- (iii) If Group Members fail or failed to accept such replacement they have not failed and did not fail to mitigate their loss.

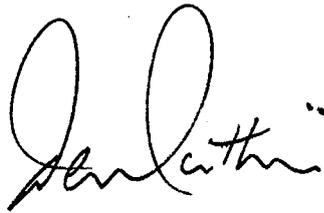
7 In reply to paragraphs 52 to 54 of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) says that the Defendant has not pleaded any action of Takata Corporation, TK Holdings Inc and Takata De Mexico, S.A. De C.V. giving rise to a cause of action of the Plaintiff against any or all of those parties; and
- (c) says further that the Defendant cannot rely on section 87CB of the TPA and/or section 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

27 July 2018

**AFFIDAVIT VERIFYING**

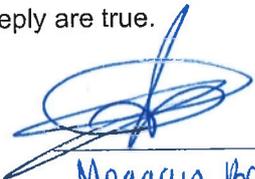
Name Jaydan Bond  
Address Unit 12, 378-382 French Avenue, Frenchville QLD 4701  
Occupation Senior Outdoor / Adventure Tour Guide  
Date 25 July 2018

I affirm:

- 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.

AFFIRMED at

Signature of deponent



Name of witness

Meagan Bertolatti

Address of witness

1115 111 Elizabeth Street, Sydney NSW 2000

Capacity of witness

SOLICITOR

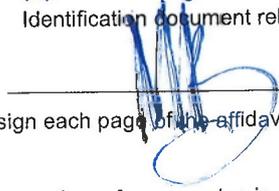
And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 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: 091 306 569

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.]