

## REPLY

### COURT DETAILS

Court Supreme Court of NSW  
Division Equity  
List Equity General  
Registry Supreme Court of Sydney  
Case number 2018/00009555

FILED

27 JUL 2018

N.A.



### TITLE OF PROCEEDINGS

Plaintiff Owen Brewster

Defendant BMW Australia Pty Ltd ACN 004 675 129

### FILING DETAILS

Filed for Owen Brewster, Plaintiff  
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 7(b) of the Defence, the Plaintiff:
- (a) admits, insofar as it is alleged, that the ammonium nitrate used as a propellant in Takata Airbags degrades without the presence of a desiccant;
  - (b) says that the ammonium nitrate used as a propellant in Takata Airbags degrades with the presence of a desiccant;
  - (c) says that the ammonium nitrate used as a propellant in Takata Airbags will inevitably degrade due to temperature cycling;
  - (d) admits, insofar as it is alleged, that the factors in subparagraphs 7(b)(iii)(A), (B), (C), (D) and (E) of the Defence can contribute to the rate of degradation of ammonium nitrate used as a propellant in Takata Airbags;

- (e) says that factors resulting in the ammonium nitrate propellant degrading are not otherwise limited to the factors identified in subparagraphs 7(b)(iii)(A) to (E) of the Defence;
- (f) admits that the degradation of ammonium nitrate used as a propellant in Takata Airbags acts as described in subparagraphs 7(b)(iv) and (v) of the Defence;
- (g) admits subparagraph 7(b)(ix) of the Defence, in so far as it alleges that the manufacturing issues identified in subparagraphs 7(b)(ix)(A) and 7(b)(ix)(B) of the Defence can contribute to the rate of degradation of ammonium nitrate used as a propellant in Takata Airbags;
- (h) otherwise denies the allegations in the paragraph.

2 In reply to subparagraph 7(c)(ii) of the Defence, the Plaintiff:

- (a) admits, insofar as it is alleged, that Takata Airbag Inflators have the potential to rupture during airbag deployment after 10 years;
- (b) says further that the propensities pleaded in subparagraph 7(a) of the ASOC begin at the time when the ammonium nitrate propellant begins to degrade;
- (c) otherwise denies the allegations pleaded.

3 In reply to subparagraphs 33(c) and (d), 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, and carried out the conduct alleged in subparagraphs 12(a), 12(b) and 12(c) of the ASOC. In those circumstances, the Defendant out 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.

4 In reply to paragraphs 61 to 63 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;
- (c) says further that the Defendant cannot rely on section 87CB of the TPA and/or 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 Owen Brewster  
 Address 47 Hardy Avenue, Park Avenue QLD 4701  
 Occupation Network Controller  
 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

*Owen Brewster*

Name of witness

*Meagan Bertolatti*

Address of witness

*47/5 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: 011899841*

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

Signature of witness

*[Signature]*

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.]