



IN THE SUPREME COURT OF VICTORIA AT BALLARAT  
COMMON LAW DIVISION  
MAJOR TORTS LIST

No S CI 05027 of 2016

Case: S CI 2016 05027  
Filed on: 28/06/2019 02:15 PM

B E T W E E N:

**MICHAEL KARL SCHMID**

Plaintiff

-and-

**ROGER JAMES SKIMMING and OTHERS**  
(in accordance with the Schedule)

Defendants

**REPLY AND DEFENCE TO AMENDED DEFENCE AND COUNTERCLAIM  
OF THE FOURTH DEFENDANT**

(Filed pursuant to the Order of Judicial Registrar Clayton of 6 June 2019)

Date of document:	28 June 2019	Solicitor's Code:	102650
Filed on behalf of:	The Plaintiff	DX:	28001
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To the fourth defendant's (**Agrison**) amended defence and counterclaim to the third amended statement of claim dated 5 June 2019, the plaintiff says as follows:

**REPLY**

1. In answer to paragraph 46, he:
  - (a) admits the allegations in sub paragraph (a);
  - (b) admits the allegations in sub paragraph (b);
  - (c) does not admit the allegations in sub paragraph (c)(i);
  - (d) denies the allegations in sub paragraph (c)(ii);
  - (e) says that the claims made by the plaintiff and group members against Agrison pursuant to the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act* 2010

(Cth))(ACL) are not apportionable claims within the meaning of s24AE and s24AF of the *Wrongs Act 1958* (Vic);

### Particulars

- (i) Under s24AE, Wrongs Act, an apportionable claim means a claim to which Part IVAA applies. Section 24AF(1)(a) relevantly provides that Part IVAA applies to:

*a claim for economic loss or damage to property in an action for damages (whether in tort, contract, under statute or otherwise) arising from a failure to take reasonable care.*

- (ii) The plaintiff's claim against Agrison pursuant to the ACL does not arise from a failure to take reasonable care.
- (f) says further that if Agrison and the Third Party, Harley Industrial Pty Ltd, are liable under Division 1 of Part 3-5 of the ACL for the same loss or damage, they are jointly and severally liable.

### Particulars

Section 144, ACL.

- (g) denies the allegations in sub paragraph (d).

2. In answer to paragraph 47, he:

- (a) does not admit the allegations in sub paragraphs (a) and (b);
- (b) denies the allegations in sub paragraph (c), (d), (e), (f), (g), (h) and (i);
- (c) does not admit the allegations in sub paragraph (j); and
- (d) denies the allegations in sub paragraphs (k), (l) & (m).

### DEFENCE TO COUNTERCLAIM

3. The plaintiff denies Agrison is entitled to the relief sought and otherwise denies the allegations in paragraph 48.

**G D Dalton**

**A Fraatz**

DATED 28 June 2019

*Maddens*  
.....  
Maddens Lawyers  
Solicitors for the Plaintiff

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Plaintiff

-and-

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**(in accordance with the Schedule)**

Defendants

**SCHEDULE OF PARTIES**

**MICHAEL KARL SCHMID**

Plaintiff

**ROGER JAMES SKIMMING**

First Defendant

**MAUREEN LYNETTE JOHNS**

Second Defendant

**AUTO & GENERAL INSURANCE COMPANY LIMITED**  
**(ACN 111 586 353)**

Third Defendant

**EL MINING SOLUTIONS PTY LTD (ACN 151 983 603)**

Fourth Defendant

**EL MINING SOLUTIONS PTY LTD (ACN 151 983 603)**

Plaintiff by Counterclaim

**MICHAEL KARL SCHMID**

Defendant by Counterclaim

**HARLEY INDUSTRIAL PTY LTD (ACN 115 230 905)**

Third Party