

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
COMMERCIAL LIST



No. S ECI 2020 02853

Case: S ECI 2020 02853
Filed on: 14/09/2020 12:52 PM

BETWEEN

TRACY-ANN FULLER

Plaintiff

and

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850) and another

Defendants

AMENDED STATEMENT OF CLAIM

(Filed pursuant to the Order of Justice Nichols made on 4 September 2020)

Date of Document:	7 July 14 September 2020	Solicitors Code:	40411
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A. PARTIES AND GROUP MEMBERS

The Plaintiff and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) (the **SC Act**) by the Plaintiff on her own behalf and on behalf of all persons, who, subject to paragraph 1A below:
 - a. at any time during the period from 1 June 2006 to 7 July 2020 inclusive (the **Relevant Period**) purchased one or more of the add-on insurance products referred to in paragraph 8 of this Statement of Claim (**Add-On Insurance Products**) at or around the time they purchased a motor vehicle or motor cycle (**vehicle**) from a vehicle dealer (**Dealer**);
 - b. in conjunction with that purchase were issued one or more Add-On Insurance Products by the First Defendant (**Allianz**), or Allianz and the Second Defendant (**Allianz Life**);
 - c. became liable to pay, or paid (directly or indirectly), a premium to either of Allianz or Allianz and Allianz Life for the Add-On Insurance Products;
 - d. ~~in the case of persons whose claims are governed by the law of the Northern Territory and who purchased Add-On Insurance Products on a day prior to 3 years before the date of filing of this Statement of Claim (**Northern Territory Claimant**), did not discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraph 64 and 65 below, prior to that date more than 3 years before the date of filing this Statement of Claim;~~
 - e. ~~in the case of persons who are not Northern Territory Claimants and who purchased the Add-On Insurance Products prior to 7 July 2014 on a day prior to 6 years before the date of the filing of this Statement of Claim, did not discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraphs 64 and 65 below, prior to 7 July 2014 that date more than 6 years before the date of filing this Statement of Claim; and~~
 - f. were not, and are not, any of the following:
 - i. a director, an officer, or a close associate (as defined in section 9 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of any of the Defendants; or

- ii. a judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria; and
- g. have suffered loss or damage by reason of the contravening conduct of the Respondents as pleaded in this Amended Statement of Claim.

(Group Members).

- 1A. A person whose claim is governed by the law of the Northern Territory (**Northern Territory Claimant**) is a Group Member if:
- a. sub-paragraphs 1(a) – (c), (f) and (g) above apply; and
 - b. in the case of Northern Territory Claimants who purchased Add-On Insurance Products prior to 7 July 2017, the person did not discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraphs 64 and 65 below, prior to 7 July 2017.
2. As at the date of the commencement of this proceeding, there are seven or more Group Members.
3. The Plaintiff and certain Group Members financed the purchase of one or more Add-On Insurance Products through loans (**Finance**) that they obtained in conjunction with the purchase of their respective vehicles (**Financed Group Members**).
4. By means of the conduct of certain of the Dealers, it was represented to certain of the Financed Group Members that purchase of one or more Add-On Insurance Products was necessary for them to obtain Finance (**Express Representation Group Members**).
5. The Plaintiff:
- a. Attended AHG Lansvale Holden on 14 December 2015 and purchased a Holden Trax LTZ for \$27,938.99.
 - b. Purchased the following Add-On Insurance Products from Allianz:
 - i. Loan Insurance for \$3,734.06 (including \$217.12 GST), policy number 108E161456FPI;
 - ii. Motor Equity Insurance for \$1,595.00 (including \$133.03 GST), policy number 108E469944MEI; and

- iii. Tyre and Rim Insurance for \$480.00 (including \$40.03 GST), policy number 108E108705TRI.
- c. The First Plaintiff also purchased Trauma and Death Cover (as part of the Loan Insurance) from Allianz Life.
- d. The First Plaintiff financed the cost of the Add-On Insurance Products premiums and associated charges with a loan from St George Bank.
- e. The First Plaintiff's loan:
 - i. amount was \$34,391.35;
 - ii. interest rate was 9.35% p.a.;
 - iii. term was 60 months;
 - iv. repayments were made weekly; and
 - v. total interest charges were \$8,729.41.

The Defendants

6. At all material times, Allianz:
 - a. was a corporation and capable of being sued;
 - b. was a person and a corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - c. carried on the business of insurance throughout Australia; and
 - d. was the holder of an Australian Financial Services License (**AFSL**) (No 234708) (**Allianz AFSL**).
7. At all material times, the Second Defendant (**Allianz Life**):
 - a. was a corporation and capable of being sued;
 - b. was a person and a corporation within the meaning of the ASIC Act;
 - c. was part of the same corporate group as Allianz;
 - d. carried on the business of insurance throughout Australia;

- e. was the holder of an Australian Financial Services License (No 296559) (**Allianz Life AFSL**); and
- f. acted as the insurer for the “Trauma and Death Cover” component of the Loan Insurance (**Trauma and Death Cover**) issued to certain Group Members.

B. THE ADD-ON INSURANCE PRODUCTS

Nature of Add-On Insurance Products and regulatory regime

8. At all material times the following Add-On Insurance Products were issued:

a. by Allianz and Allianz Life:

- i. Loan Protection Insurance (**Loan Insurance**) (also referred to as “repayment insurance” or “consumer credit insurance”), which was a consumer credit insurance product which purported to insure the consumer against circumstances where they might be unable to meet financial obligations associated with Finance obtained to purchase a vehicle;

Particulars

1. The terms and conditions upon which Loan Insurance was issued were set out in the relevant Product Disclosure Statements (**PDS**) and policy cover sheets.
2. Further particulars may be provided after discovery and evidence.

b. by Allianz:

- i. Motor Equity Insurance (also referred to as “guaranteed asset protection insurance”, “GAP insurance”, “shortfall insurance”, “purchase price insurance” or “value protect insurance”), which purported to insure the consumer against a potential shortfall in the amount they owed under a Finance contract for a vehicle purchase and the amount of the comprehensive insurance payout on the vehicle in the event that the vehicle was written-off;

Particulars

1. The terms and conditions upon which Motor Equity Insurance was issued were set out in the relevant PDS and policy cover sheets.
 2. Further particulars may be provided after discovery and evidence.
- ii. Extended Motor Warranty (**Extended Warranty**), which purported to cover the cost of repairs and replacement of parts of a vehicle beyond the original

manufacturer's warranty period or the standard warranty period for used cars;
and

Particulars

1. The terms and conditions upon which Extended Warranty was issued were set out in the relevant PDS and policy cover sheets.
2. Further particulars may be provided after discovery and evidence.
- iii. Tyre and Rim Insurance, which purported to insure against the risk of accidental damage to the wheels or tyres of a vehicle.

Particulars

1. The terms and conditions upon which Tyre and Rim Insurance was issued were set out in the relevant PDS and policy cover sheets.
 2. Further particulars may be provided after discovery and evidence.
9. Each of the Add-On Insurance Products was a financial product within the meaning of section 12BAA of the ASIC Act and sections 763A and 763C of the Corporations Act.
 10. By reason of the matters pleaded in paragraphs 1.b, 1.c and 6 to 8, at all material times:
 - a. Allianz was, in trade or commerce, engaged in the supply of financial services to the Plaintiff and the Group Members within the meaning of section 12BAB of the ASIC Act; and
 - b. Allianz provided a financial service within the meaning of sections 766A and 766C of the Corporations Act.
 11. At all material times, Allianz, as the holder of the Allianz AFSL was required to comply with the general obligations imposed upon financial services licensees by section 912A of the Corporations Act.
 12. In relation to the sale by Allianz of the Add-On Insurance Products, section 912A required Allianz to:
 - a. do all things necessary to ensure that the financial services covered by the Allianz license were provided efficiently, honestly and fairly;
 - b. have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by Allianz, as licensee or by a representative of Allianz in the provision of the financial services as part of the financial services business of the licensee or the representative;

- c. take reasonable steps to ensure its representatives complied with the financial services laws; and
 - d. ensure that its representatives were adequately trained to provide financial services (including by complying with s 912D) and were competent, to provide financial services.
13. Allianz, as licensee, and the Dealers, as authorised representatives, engaged in conduct that was intended to influence persons to acquire Add-On Insurance Products.
14. The Insurance Industry Codes of Practice (2006), (2010), (2012) and (2014) were binding on Allianz at all material times.
15. The Insurance Industry Codes are applicable industry codes within the meaning of section 51ACA of the *Competition and Consumer Act 2010* (Cth).
16. Allianz was required by the terms of the Insurance Industry Codes of Practice to:
 - a. (with respect to all codes pleaded in paragraph 14):
 - i. require Dealers as authorised representatives to conduct their sales practices in an honest, fair and transparent manner;
 - ii. only permit Dealers as authorised representatives to perform functions that matched their expertise;
 - iii. train Dealers as authorised representatives to carry out their sales tasks and functions competently; and
 - iv. require Dealers as authorised representatives to inform the Plaintiff and Group Members of the service they have been asked to provide and the identity of the insurer;
 - b. (with respect to the 2006, 2010 and 2012 Codes), train Dealers as authorised representatives on the principles of general insurance and any relevant consumer protection law, product knowledge and the requirements of the Insurance Industry Code of Conduct and to measure the effectiveness of training by monitoring the performance of the Dealers and requiring additional or remedial training to address any identified deficiencies; and
 - c. (with respect to the 2014 Code) provide Dealers as authorised representatives with or require them to receive appropriate education and training to provide their services competently and to deal with consumers professionally, including training on the

code, measure the effectiveness of training by monitoring the performance of authorised representatives' services and to correct any identified performance shortcoming.

17. In the premises of paragraphs 11 to 16, in marketing and selling the Add-On Insurance Products to prospective purchasers, including the Plaintiff and Group Members, Allianz was required to:
- a. ensure that the Dealers as authorised representatives were adequately trained and that the effectiveness of such training was monitored;
 - b. ensure that systems existed for regulating any conflict of interest that existed between the Dealers and the Plaintiff and Group Members;
 - c. provide fair and balanced general advice to the Plaintiff and Group Members of the features of the Add-On Insurance Products including general advice as to:
 - i. the key features of Add-On Insurance Products (including their advantages and disadvantages); and
 - ii. general alternatives to acquiring Add-On Insurance Products.

Claims Loss Ratio of Add-On Insurance Products

18. The "Claims Loss Ratio" (**Claims Loss Ratio**) of insurance products (including the Add-On Insurance Products at issue in these proceedings), is accepted within the insurance industry as an indicator of the value, or potential value, of the product to the insured.

Particulars

1. The Claims Loss Ratio is the ratio of claim payments received by policyholders to the premiums paid. It represents the proportion of premium returned to the policyholders in the form of claim payments. Because it represents the primary measure of what policy holders receive back from the insurer compared with what they pay the insurer, it is a primary indicator of consumer value by allowing a comparison of the premiums paid compared with the benefits received.
19. A low Claims Loss Ratio is an indicator that the product may not have material financial value for the customer.
20. At all material times, the Claims Loss Ratio of the Add-On Insurance Products was:
- a. low; and/or

- b. significantly lower, or in the alternative, lower, than the Claims Loss Ratio for other consumer-orientated general insurance products, including other vehicle related insurance, such as comprehensive vehicle insurance.

Allianz's System for the Sale of Add-On Insurance Products

21. From a date not known to the Plaintiff, Allianz designed, implemented and operated a system for the sale of Add-On Insurance Products which comprised at least the following elements:
- a. the sale of the Add-On Insurance Products to prospective purchasers (which included the Plaintiff and the Group Members) by Dealers on behalf of Allianz (as pleaded in paragraphs 22 to 25);
 - b. a structure for the payment of substantial commissions and incentives designed to motivate and incentivise the Dealers to promote and sell Allianz's Add-On Insurance Products (as pleaded in paragraphs 26 to 29);
 - c. the provision of instruction, direction and training to the Dealers regarding the most effective techniques for promoting and selling the Add-On Insurance Products (as pleaded in paragraph 32); and
 - d. the provision of an electronic sales system to record sales made and commissions earned (as pleaded in paragraph 33),

(the **Allianz Sales System**).

Dealers as authorised representatives of Allianz

22. From a date not known to the Plaintiff, each type of Add-On Insurance Product was sold through Dealers.
23. Each of the Add-On Insurance Products were sold by Dealers as:
- a. authorised representatives of Allianz within the meaning of section 761A of the Corporations Act; and/or
 - b. as agents of Allianz.
24. Allianz acted as agent for Allianz Life in respect of the issuing of Trauma and Death Cover portion of the Loan Insurance Add-On Insurance Product to the Plaintiff and certain Group Members.
25. In providing information to prospective purchasers about the Add-On Insurance Products, Allianz and the Dealers as authorised representatives were not permitted to give personal

advice (within the meaning of s 766B(3) of the Corporations Act) concerning the suitability of Add-On Insurance Products to prospective purchasers and were only permitted by the terms of the Allianz AFSL and the Allianz Life AFSL to give general advice within the meaning of s 766B(4).

Commissions and Incentives

26. From a date not known to the Plaintiff, each Dealer was compensated by one or both of the Defendants for their role in promoting and selling the Add-On Insurance Products. This was done through the payment of commissions, with different rates of commission attaching to the different Add-On Insurance Products (**Product Commissions**).
27. From a date not known to the Plaintiff, each Dealer was paid by one or both of the Defendants additional commissions to the Product Commissions through an incentive scheme for the sale of certain volumes of Add-On Insurance Products (**Volume Commissions**).
28. At all material times, the Dealers earned very thin margins on the vehicles they sold and therefore the income generated by the Product Commissions and Volume Commissions represented a significant source of profits for the Dealers.
29. At all material times the commission arrangements pleaded at paragraphs 26 to 27 above were put in place by Allianz in order to incentivise Dealers to sell as many of the Add-On Insurance Products as possible.
30. Because the commission arrangements pleaded at paragraphs 26 to 27 above incentivised Dealers to sell as many Add-On Insurance Products as possible, those arrangements:
 - i. provided an incentive for Dealers to sell Add-On Insurance Products to consumers irrespective of whether they were suitable for a consumer's needs and to emphasise the advantages of the Add-On Insurance Products rather than providing fair and balanced information to prospective purchasers about the advantages and disadvantages of the Add-On Insurance Products as well as other alternative products that were available; and
 - ii. thereby created a conflict of interest or potential conflict of interest between the financial interest of the Dealers in selling as many of the Add-On Insurance Products to consumers as possible in order to earn substantial commissions and the interests of prospective purchasers in obtaining all material information about the Add-On Insurance Products and in only acquiring products that were suitable for them and value for money.

31. In the premises of paragraphs 26 to 30 above, the commission arrangements made it likely that Dealers would engage in sales techniques designed to persuade prospective purchasers to purchase the Add-On Insurance Products including by:
- a. emphasising to prospective purchasers the benefits of the Add-On Insurance Products rather than providing a fair and balanced explanation of the advantages and disadvantages of the Add-On Insurance Products;
 - b. conveying to prospective purchasers the impression that acquisition of one or more of the Add-On Insurance Products was necessary in order for them to obtain Finance for the purchase of the vehicle they were considering buying; and/or
 - c. failing to disclose to potential purchasers of Add-On Insurance Products all material information about the Add-On Insurance Products that would indicate to potential purchasers that the Add-On Insurance Product(s) they were considering were not suitable for them or would not represent value for money for them.

Training for Dealers

32. From a date not known to the Plaintiff, Allianz developed and provided training and instruction to the Dealers on how to promote and sell the Add-On Insurance Products to the Dealers' customers using different sales techniques.

Electronic Sales System

33. From a date not known to the Plaintiff, Allianz had in place an electronic sales system which could monitor the levels of sales of Add-On Insurance Products by the Dealers and through which the Dealers could ascertain their potential commission on each sale.

C. PURCHASE OF ADD-ON INSURANCE PRODUCTS

34. The Plaintiff and the Group Members purchased a vehicle from a Dealer which was an authorised representative of Allianz.

Particulars

1. The Plaintiff refers to and repeats paragraph 5.
 2. Particulars of the purchase by Group Members will be provided at an appropriate stage in the Proceedings.
35. In conjunction with the purchase of that vehicle from a Dealer who was an authorised representative of the Defendants, the Plaintiff and Group Members purchased one or more Add-On Insurance Products:

- a. paying premiums (directly or indirectly) or becoming liable to pay premiums to one or both of the Defendants (the **Premiums**); and
- b. paying other charges associated with the Add-On Insurance Products, such as GST and stamp duty.

Particulars

1. The Plaintiff refers to and repeats paragraph 5.
 2. Particulars of the purchase by Group Members will be provided at an appropriate stage in the Proceedings.
36. The Plaintiff and the Financed Group Members financed the payment of the Add-On Insurance Product through Finance that they obtained in conjunction with the purchase of their respective vehicles.

Particulars

1. The Plaintiff refers to and repeats paragraph 5.
 2. Particulars of the Finance of the Financed Group Members will be provided at an appropriate stage in the Proceedings.
37. The Plaintiff and Financed Group Members paid interest and other charges incurred in connection with financing the purchase of their respective Add-On Insurance Products and associated charges by means of the Finance, meaning that those charges were capitalised into the total value of the Finance.

Particulars

1. The Plaintiff refers to and repeats paragraph 5.
2. Particulars of the Finance of the Financed Group Members will be provided at an appropriate stage in the Proceedings.

D. MISLEADING OR DECEPTIVE CONDUCT

Material non-disclosures

38. The Allianz Sale System involved the sale of the Add-On Insurance Products by the Dealers to the Plaintiff and Group Members in one or more of the following circumstances, where:
- a. Allianz was aware of, and bound by, the obligations pleaded paragraphs 11 – 17 above;
 - b. the terms of each of the Add-On Insurance Products could not be negotiated by the Plaintiff and the Group Members;

- c. the Plaintiff and Group Members were offered Add-On Insurance Products in circumstances where they had gone to the dealership for the purposes of buying a vehicle and not for the purposes of buying Add-On Insurance Products;
- d. the Add-On Insurance Products were complex financial instruments for protecting against certain risks and had numerous and important exclusions, exceptions and limits to the protection offered, which were difficult to understand and which significantly limited the circumstances in which the policies would respond;
- e. Dealers were incentivised to sell the Add-On Insurance Products to prospective purchasers in circumstances pleaded in paragraph 25 above where the Dealers were not permitted to provide personal advice to prospective purchasers about the suitability of the Add-On Insurance Products in light of their own personal circumstances;
- f. prospective purchasers were making a decision at the dealership as to whether to buy the Add-On Insurance Products, in the absence of independent advice as to whether the Add-On Insurance Products were suitable for them, having regard to their own personal circumstances and were dependent upon the Dealers to provide them with accurate, complete and reliable information about the Add-On Insurance Products;
- g. Add-On Insurance Products would or may have no material financial value to the Plaintiff and Group Members including because of the existence of the low Claims Loss Ratio for the Add-On Insurance Products;
- h. Loan Insurance and Motor Equity Insurance offered coverage that may have overlapped with other insurance coverage already held by the Plaintiff and Group Members, in that the cover provided by Motor Equity Insurance was effectively provided by comprehensive insurance with new for old replacement, and some of the coverage provided by Loan Insurance was effectively provided by life insurance and total and permanent disability insurance;
- i. the Loan Insurance and Motor Equity Insurance offered coverage which could potentially have been obtained by means of other insurance policies for a lower price, being the insurance referred to in paragraph 38.h;
- j. the cover provided by the Extended Warranty referred to in paragraph 8.b.ii was unnecessary, or in the alternative, may have been unnecessary, given the provisions of the *Trade Practices Act 1974* (Cth) (**TPA**) or, after 1 January 2011, the *Australian Consumer Law* (**ACL**);

- k. the matters identified in paragraphs 38.g to 38.j above meant that there was a substantial likelihood that prospective purchasers would be better off financially by declining to purchase any of the Add-On Insurance Products;
 - l. the Plaintiff and Group Members were subject to a sales process which was structured in a way that prompted the Plaintiff and Group Members to disengage through decision fatigue, information overload, complex product offerings and multiple options of product combinations, constraining the Plaintiff and Group Members' ability to make an informed purchasing decision;
 - m. the price of Add-On Insurance Products was anchored to the price of the vehicle purchased by the Plaintiff or a Group Member and/or to the terms of Finance, thereby distorting the Plaintiff's and Group Members' perception of the cost of the Add-On Insurance Products; and
 - n. one or more of the following occurred:
 - i. the Dealers used sales techniques that conveyed the impression that the purchase of one or more of the Add-On Insurance Products was necessary in order for finance for the purchase of the vehicle to be obtained;
 - ii. the Plaintiff and Group Members were not encouraged to review and consider the PDS and/or the Financial Services Guide (**FSG**) in respect of the Add-On Insurance Products;
 - iii. the Plaintiff and Group Members were not given sufficient time to review the PDS and/or FSG in respect of the Add-On Insurance Products;
 - iv. the Plaintiff and Group Members were given the PDS and/or FSG in respect of the Add-On Insurance Products at an inappropriate stage in the selling process; and/or
 - v. the Plaintiff and Group Members were not given the PDS and/or FSG in respect of the Add-On Insurance Products.
39. Having regard to the matters pleaded in paragraph 38.a to 38.n above, Allianz knew or ought to have known that, in the absence of full and complete disclosure to the Plaintiff and Group Members of all material information concerning the advantages and disadvantages of the Add-On Insurance Products and a proper opportunity to consider whether the acquisition of the Add-On Insurance Products was in their best interests, there was a substantial risk that the Plaintiff and Group Members:

- i. would be considering purchasing the Add-On Insurance Products based on incomplete information and therefore could not make an informed decision whether the Products were suitable for them; and/or
- ii. would act contrary to their financial interests and purchase Add-On Insurance Products that were not suitable for them and/or in circumstances in which they would have been better off financially by declining to purchase the Add-On Insurance Products.

40. In the premises of paragraphs 11, 12, 14, 15, 16, 17, 38 and 39 above, the Plaintiff and Group Members had a reasonable expectation that Allianz and/or the Dealers would disclose to them all material information of which they were aware, or ought to have been aware, concerning the decision of whether or not to purchase the Add-On Insurance Products.

41. Allianz failed to disclose or cause the Dealers to disclose or adequately disclose to the Plaintiff and the Group Members one or more of the following facts and circumstances that constituted material information of which they were aware, or ought to have been aware, concerning the decision of whether or not to purchase the Add-On Insurance Products:

- a. that the Add-On Insurance Products were optional to purchase;
- b. that acquisition of one or more of the Add-On Insurance Products was not a condition of obtaining finance for the purchase of the vehicle;
- c. that the purchase of one or more Add-On Insurance Products was included in the contractual documentation they were about to sign;
- d. that the Add-On Insurance Products would have no material financial value for them including because of the existence of the low Claims Loss Ratio for the Add-On Insurance Products;
- e. that the Add-On Insurance Products may not be suitable for them;
- f. that it was likely that they had incomplete information about whether the Add-On Insurance Product(s) they were considering purchasing were suitable for them or would represent value for money for them;
- g. that the Add-On Insurance Products were complex financial instruments for protecting against certain risks and had numerous and important exclusions, exceptions and limits to the protection offered which significantly limited the circumstances in which the policies would respond;

- h. that Loan Insurance and Motor Equity Insurance offered coverage that may overlap with other insurance coverage already held by the Plaintiff and Group Members;
 - i. that the Loan Insurance and Motor Equity Insurance offered coverage which could potentially be obtained by means of other insurance policies for a lower price;
 - j. that the cover provided by the Extended Warranty referred to in paragraph 8.b.ii was unnecessary, or in the alternative, may be unnecessary, given the provisions of the TPA or, after 1 January 2011, the ACL;
 - k. in the alternative to paragraph 41.j, that there were only limited features of the Extended Warranty which provided benefits beyond the existing statutory obligations of the manufacturer or seller of the vehicle pursuant to the provisions of the TPA or, after 1 January 2011, the ACL, and what those limited features were;
 - l. that the Dealers were financially incentivised and encouraged, by one or both of the Defendants, to sell as many Add-On Insurance Products as possible to them by means of the Product Commissions and Volume Commissions;
 - m. in the alternative to 41.l, the total quantum of the Product Commissions and Volume Commissions paid to the Dealers;
 - n. that, in respect of the Financed Group Members, given the Finance, they would pay interest charges on the amounts borrowed to pay the Premiums and associated charges, and therefore pay a greater amount for those Add-On Insurance Products than they would pay if they did not finance the Premiums and associated charges; and/or
 - o. there was a substantial risk that they could not determine, in the absence of independent financial advice or a proper opportunity to consider the terms of the Add-On Insurance Products and their own financial circumstances, whether it was in their best interests to acquire the Add-On Insurance Product(s) under consideration.
42. By reason of the matters pleaded in paragraph 41, prior to purchasing the Add-On Insurance Products, the Plaintiff and the Group Members did not know:
- a. one or more of the matters pleaded in paragraph 41 above, each of which constituted material information that would have been relevant to the decision of the Plaintiff and Group Members whether to proceed with the purchase of Add-On Insurance Products; and

- b. that they were making a decision whether to purchase the Add-On Insurance Products based on incomplete information.

Express Representation Group Members

43. By means of the conduct of certain of the Dealers, it was represented to the Express Representation Group Members that it was necessary to purchase one or more Add-On Insurance Products in order to obtain Finance approval (**Express Representation**).
44. Contrary to the Express Representation, this was not necessary to obtain Finance or any other kind of approval.

Section 1041E Corporations Act

45. In selling the Add-On Insurance Products to the Plaintiff and Group Members, Allianz (including through the Dealers acting as authorised representatives and/or agents of it) failed to disclose material information that was relevant to the Plaintiff's and Group Members' decision whether to purchase the Add-On Insurance Products, being the matters pleaded in paragraph 41.
46. By selling the Add-On Insurance Products in circumstances where Allianz (including through the Dealers acting as authorised representatives and/or agents of it) did not disclose or cause the Dealers to disclose the matters identified in paragraph 41, Allianz made a statement and/or disseminated information that was:
 - a. materially misleading; and
 - b. likely to induce the Plaintiff and Group Members, being persons in this jurisdiction as defined in s 9 of the Corporations Act, to acquire Add-On Insurance Products.
47. When Allianz sold the Add-On Insurance Products (including through the Dealers acting as authorised representatives and/or agents of it) it ought reasonably to have known that it was making a statement and/or disseminating information that was materially misleading, because it was aware, or ought to have been aware, of the matters that were not disclosed to the Plaintiff or Group Members, as pleaded in paragraph 41.

Particulars

1. Allianz's state of mind is to be inferred from the following matters:
 - a. Allianz's knowledge of its obligations in respect of the sale of Add-On Insurance Products pleaded in paragraphs 11 –17 above;

- b. The knowledge of the Dealers as authorised representatives and/or agents of Allianz as to what the Dealers told the Plaintiff and Group Members, and did not tell the Plaintiff and Group Members, is imputed to Allianz as principal;
 - c. Allianz was and is an expert in the design and development of insurance policies;
 - d. Allianz designed and developed the Add-On Insurance Products and was at all material times aware of:
 - i. the circumstances of coverage of the Add-On Insurance Products, as well as the limitations and exceptions to that coverage;
 - ii. the coverage provided by other insurance products offered by the Defendants or other insurance providers;
 - iii. the prices of the other insurance products offered by the Defendants or other insurance providers;
 - iv. the matters pleaded in paragraphs 18 to 20;
 - e. the elements of the Allianz Sale System; and
 - f. the matters pleaded in paragraph 30.
2. Further particulars may be provided by way of evidence or after discovery at an appropriate stage in the Proceedings.
48. Further or alternatively, when Allianz sold Add-On Insurance Products to the Plaintiff and Group Members, Allianz (including through the Dealers acting as authorised representatives and/or agents of it) did not care whether it made a statement or disseminated information which was true or false.

Particulars

- 1. The Plaintiff refers to and repeats paragraphs 39 and 47.
- 2. Further particulars may be provided by way of evidence or after discovery at an appropriate stage in the Proceedings

Section 12DB ASIC Act

49. By selling the Add-On Insurance Products without disclosing the matters pleaded in paragraph 41, Allianz (including through the Dealers acting as authorised representatives and/or agents of it) made a false or misleading representation in connection with the supply, or possible supply, of financial services, being the sale of the Add-On Insurance Products:
- a. concerning the need for those services, within the meaning of s 12DB(1)(h) of the ASIC Act (s 12DB(1)(f) prior to 1 January 2011);

- b. concerning the services being of a particular standard, quality or value within the meaning of s 12DB(1)(a) of the ASIC Act; and/or
- d. on and from 1 January 2011, concerning a requirement to pay for a contractual right that a person has under a law of the Commonwealth, a State or Territory within the meaning of s 12DB(1)(j)(ii) of the ASIC Act.

Particulars

1. In failing to disclose the matters pleaded in paragraph 41, Allianz failed to disclose:
 - a. features of the Add-On Insurance Products that were material to the Plaintiff's and Group Members' need (or otherwise) for those products. Accordingly, in failing to disclose the matters pleaded in paragraph 41, Allianz made a false or misleading representation in connection with the sale of the Add-On Insurance Products concerning the Plaintiff's and Group Members' need for, and the benefits of, those services.
 - b. the matters referred to in paragraphs 41.d to 41.k above, accordingly, Allianz made a false or misleading representation in connection with the sale of the Add-On Insurance Products concerning the standard, quality or value of the services.
 - c. the matters referred to in paragraph 41.j and 41.k above, and therefore made a false or misleading representation in connection with the sale of the Add-On Insurance Products concerning a requirement to pay for a contractual right that a person has under a law of the Commonwealth, a State or Territory.
2. Further particulars may be provided by way of evidence or after discovery at an appropriate stage in the Proceedings.

Contraventions

Section 12DA, 12DF ASIC Act and 1041H Corporations Act

50. By reason of the matters pleaded in paragraphs 5 to 10 and 38 to 42 and/or 43 to 44, Allianz:
 - a. engaged in conduct in trade or commerce in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of section 12DA(1) of the ASIC Act;
 - b. engaged in conduct in trade or commerce that was liable to mislead the public as to the nature, characteristics and the suitability for their purpose of financial services in contravention of section 12DF(1) of the ASIC Act; and

- c. engaged in conduct in this jurisdiction in relation to a financial product or a financial service that was misleading or deceptive or was likely to mislead or deceive in contravention of section 1041H(1) of the Corporations Act.

Section 1041E Corporations Act

- 51. By reason of the matters pleaded in paragraphs 9 and 45 to 48, Allianz contravened section 1041E of the Corporations Act.

Section 12DB ASIC Act

- 52. By reason of the matters pleaded in paragraphs 10 and 49, Allianz contravened section 12DB of the ASIC Act.

Loss and Damage

- 53. Had:
 - a. the Plaintiff and Group Members known:
 - i. the matters pleaded in paragraph 41; or
 - ii. that there was material information that had not been disclosed to them about the Add-On Insurance Products that was relevant to their decision to purchase the Products; or
 - iii. that they were not in a position to make an informed decision about whether to purchase the Add-On Insurance Products; or
 - b. the Express Representation Group Members known of the matters pleaded in paragraph 44,

the Plaintiff and Group Members would not have purchased the Add-On Insurance Products that they purchased.

- 54. By reason of the matters pleaded in one or more of paragraphs 50, and/or 51, and/or 52 together with 34 to 37 and 53, the Plaintiff and the Group Members have suffered loss or damage:
 - a. by the conduct of Allianz in contravention of sections 12DA(1), 12DB and 12DF(1) of the ASIC Act, and claim damages pursuant to section 12GF(1) of the ASIC Act; and

- b. by the conduct of Allianz in contravention of sections 1041E and 1041H(1) of the Corporations Act, and claim damages pursuant to section 1041I(1) of the Corporations Act.

Particulars

1. The loss or damage suffered by the Plaintiff and Group Members comprises:
 - a. in respect of the Plaintiff and Group Members, the Premiums together with other costs (such as GST and stamp duty) incurred in respect of the Add-On Insurance Products; and
 - b. in respect of the Plaintiff and Financed Group Members, the additional interest paid on the Finance arising from the financing of the Premiums and the associated costs.
 2. In the alternative, the difference between the amount they paid for the Add-On Insurance Products and their true value (if any).
 3. Further particulars of loss and damage may be provided after discovery and evidence.
55. Pursuant to section 917E of the Corporations Act and/or the unwritten general law, Allianz is liable for any loss or damage suffered by the Plaintiff or Group Members as a result of Dealers' conduct.

E. UNCONSCIONABLE CONDUCT

56. The Allianz Sale System involved the sale of the Add-On Insurance Products to the Plaintiff and the Group Members in one or more of the following circumstances:
- a. the circumstances referred to in paragraph 38;
 - b. where the Add-On Insurance Products were sold without the purchasers being informed, either sufficiently or at all, of the matters pleaded in paragraph 41;
 - c. where the Add-On Insurance Products had the features referred to in one or more of paragraphs 18 to 20, 41.d, 41.g, 41.h, 41.i, 41.j and 41.k;
 - d. where it was not reasonably necessary for the Add-On Insurance Products to have the features referred to in one or more of paragraphs 18 to 20, 41.d, 41.g, 41.h, 41.i, 41.j and 41.k in order to protect the legitimate interests of one or both of the Defendants; and
 - e. where the commissions paid to the Dealers referred to in paragraphs 26 to 27 were disproportionate to the complexity of, and costs involved in, the sales service provided by the Dealers to Allianz in selling the Add-On Insurance Products to the Plaintiff and Group Members.

57. By reason of the matters pleaded in paragraphs 21 to 33 and 56, the purpose or effect of the Allianz Sales System was to encourage or require Dealers to adopt a sales process predominantly focused on generating sales of Add-On Insurance Products for Dealers and one or both of the Defendants by emphasising the benefits of the Add-On Insurance Products, distracting from the true value of the Add-On Insurance Products to the Plaintiff and Group Members (if any), and not disclosing the matters pleaded in paragraph 41 above.
58. At all material times, Allianz was aware of the following matters:
- a. the circumstances in paragraph 38;
 - b. the Add-On Insurance Products were optional to purchase and purchasers of vehicles were not obliged to purchase the Products in order to obtain Finance;
 - c. Dealers were incentivised by one or more of the Defendants to sell as many Add-On Insurance Products to consumers as possible and that in doing so, such Dealers were likely to emphasise the benefits of Add-On Insurance Products to prospective purchasers, convey the impression that acquisition of one or more of the Add-On Insurance Products was necessary for them to obtain Finance and not disclose to prospective purchasers the matters pleaded in paragraph 41 above;
 - d. Allianz had not put in place any adequate systems to ensure that prospective purchasers were provided with all material information about the Add-On Insurance Products, including the matters pleaded in paragraph 41, and there was therefore a substantial risk that prospective purchasers would acquire Add-On Insurance Products that would have no material financial value for them or in the alternative which were not suitable for their needs;
 - e. the premiums for some of the Add-On Insurance Products offered to the Plaintiff and Group Members were far greater than premiums for similar products offered by other insurers through different sales channels; and
 - f. at or about the date of release of the reports referred to below, the contents of the reports:
 - i. report titled "Report 470 – Buying add-on insurance in car yards: Why it can be hard to say no" dated 29 February 2016;
 - ii. report titled "Report 471: the sale of life insurance through car dealers – Taking consumers for a ride" dated 29 February 2016; and

- iii. report titled "Report 492 – A market that is failing consumers: The sale of add-on insurance through car dealers" dated 12 September 2016.

Particulars

1. The Plaintiff refers to and repeats the particulars to paragraph 47.
 2. Further particulars will be provided with the Plaintiff's expert evidence after further discovery.
59. By reason of the matters pleaded in paragraphs 5 to 10 and 56 to 58, Allianz engaged in conduct in trade or commerce that was, in all the circumstances, unconscionable in contravention of section 12CB(1) of the ASIC Act in that:
- a. the bargaining position of the Plaintiff and the Group Members, on the one hand, and Allianz and/or the Dealers, on the other, was unequal;
 - b. the Add-On Insurance Products had features which were not necessary for the protection of the legitimate interests of one or both of the Defendants;
 - c. the Plaintiff and Group Members were not able to review the Add-On Insurance Product PDS and/or FSG sufficiently to be able to understand their contents, or at all;
 - d. Allianz and/or the Dealers used unfair tactics against the Plaintiff and the Group Members in the sale of the Add-On Insurance Products;
 - e. equivalent or superior products to Loan Insurance or Motor Equity Insurance could have been acquired by customers through another service provider for a substantially lower premium, by acquiring, life insurance, total and permanent disability insurance or comprehensive car insurance with new for old replacement;
 - f. Allianz failed to comply with the obligations referred to in paragraphs 12, 16 and 17;
 - g. Allianz and/or the Dealers failed to disclose, either sufficiently or at all, the matters pleaded in paragraph 41;
 - h. one or both of the Defendants were not willing to negotiate with the Plaintiff and the Group Members any terms of the Add-On Insurance Products; and
 - i. Allianz did not act in good faith towards the Plaintiff and Group Members.
60. Further or in the alternative, by reason of the matters pleaded in paragraphs 5 to 10 and 56 to 58, Allianz engaged in conduct that was in all the circumstances unconscionable in contravention of section 991A(1) of the Corporations Act.

61. Had Allianz and/or the Dealers not engaged in the conduct pleaded to in paragraphs 59 and/or 60 above, the Plaintiff and Group Members would not have purchased the Add-On Insurance Products they purchased.
62. By reason of the matters pleaded in paragraphs 59 and/or 60 above and 61, the Plaintiff and the Group Members have suffered loss or damage:
 - a. by the conduct of Allianz in contravention of section 12CB(1) of the ASIC Act, and claim damages pursuant to section 12GF(1) of the ASIC Act; and
 - b. further or alternatively, because Allianz contravened section 991A(1) of the Corporations Act, and seek recovery of the amount of loss or damage pursuant to section 991A(2) of the Corporations Act.

Particulars

1. The Plaintiff refers to and repeats the particulars to paragraph 54.
 2. Further particulars may be provided by way of evidence or after further discovery at an appropriate stage in the Proceedings.
63. Pursuant to section 917E of the Corporations Act and/or the unwritten general law, Allianz is liable for any loss or damage suffered by the Plaintiff or Group Members as a result of Dealers' conduct.

F. MISTAKE

64. By reason of the matters pleaded in paragraphs 41 and 42, the Plaintiff and the Group Members purchased the Add-On Insurance Products and paid the Premiums under one or more of the following causative beliefs:
- a. that they had not purchased the Add-On Insurance Products;
 - b. that it was necessary to purchase the Add-On Insurance Products;
 - c. that the Add-On Insurance Products had material financial value;
 - d. that the Add-On Insurance Products were suitable for the Plaintiff or the Group Members; and/or
 - e. that at the time of making the decision to acquire the Add-On Insurance Products, they had received from the Dealer and Allianz all material information, including some or all of the matters pleaded at paragraph 41, that was relevant to their decision whether to invest in the Add-On Insurance Products.

65. Further, or in the alternative, by reason of the matters pleaded in 43 to 44, the Express Representation Group Members purchased the Add-On Insurance Products and paid the Premiums under the causative belief that it was necessary to purchase the Add-On Insurance Products for them to obtain Finance.
66. Each of the beliefs pleaded in paragraph 64 and 65 was mistaken.
67. The Plaintiff and the Group Members paid one or both of the Defendants the Premiums by reason of one or more of the mistakes pleaded in paragraphs 64 and/or 65.
68. By reason of the matters pleaded in paragraphs 64 to 67, one or both of the Defendants have been unjustly enriched by the receipt of the Premiums at the expense of the Plaintiff and the Group Members and it would be unconscionable for one or both of the Defendants to retain the Premiums.
69. By reason of the matters pleaded in paragraphs 64 to 67, the Premiums are monies had and received by one or both of the Defendants to the use of the Plaintiff and the Group Members, and one or both of the Defendants are obliged to repay those sums to the Plaintiff and the Group Members.

G. COMMON QUESTIONS OF LAW OR FACT

The Add-On Insurance Products and regulatory regime

70. Were the terms of the Add-On Insurance Products able to be negotiated by the Plaintiff and Group Members and if so, what terms?
71. Were the Add-On Insurance Products complex financial instruments for protecting against certain risks and which had numerous and important exclusions, exceptions and limits to the protection offered, and were difficult to understand, and which significantly limited the circumstances in which the policies would respond?
72. Was the cover provided by the Extended Warranty unnecessary, or potentially unnecessary, to the Plaintiff and Group Members, given the provisions of the TPA, or after 1 January 2011, the ACL?
73. Were there only limited features of the Extended Warranty which provided benefits beyond the existing statutory obligations of the manufacturer or seller of the vehicle pursuant to the provisions of the TPA, or after 1 January 2011, the ACL, and, if so, what were those limited features?

74. Did some of the elements of the cover provided by Loan Insurance overlap with cover provided by other insurance products, namely life insurance and trauma and disability insurance?
75. Did the cover provided by Motor Equity Insurance overlap with other insurance products, namely comprehensive vehicle insurance with new for old replacement?
76. Was the insurance cover provided by the alternative policies referred to in the questions in paragraphs 74 and 75 less expensive than the cover provided by the relevant Add On Insurance Products?
77. Is the Claims Loss Ratio of an insurance product accepted within the insurance industry as an indicator of the value, or potential value, of a product to the insured?
78. Is the low Claims Loss Ratio an indicator that an insurance product may not have material value to a customer?
79. At all material times, was the Claims Loss Ratio of each of the Add-On Insurance Products:
 - a. low; and/or
 - b. significantly lower, or lower, than the Claims Loss Ratio for other consumer-orientated general insurance products?
80. Did any one or more of the Add-On Insurance Products have no, or no material, financial value, and if so, which one(s)?
81. If the propositions in one or more of the questions in paragraphs 71, 72, 73, 74, 75, 80 and/or 78 and 79 are accepted, were those features of the Add-On Insurance Products necessary in order to protect the legitimate interests of one or both of the Defendants?
82. If a purchaser of Add-On Insurance Products financed their purchase by way of an interest-charging loan, would the purchaser have paid a greater amount for those Add-On Insurance Products than they would have paid if they had purchased the same Add-On Insurance Products for the same price without such borrowing?
83. Was it necessary for the Plaintiff and Financed Group Members to buy one or more Add-On Insurance Products to obtain Finance, or for any other reason?
84. Was Allianz subject to the duties as set out in paragraph 17?

Allianz Sale System

85. Did Allianz design, implement and operate a system for the sale of Add-On Insurance Products comprising at least the following elements (**Allianz Sale System**):
- a. the sale of the Add-On Insurance Products to prospective purchasers (which included the Plaintiff and the Group Members) by Dealers on behalf of Allianz with the features referred to in paragraphs 22 to 25;
 - b. a structure for the payment of substantial commissions and incentives designed to motivate and incentivise the Dealers to promote and sell Allianz's Add-On Insurance Products with the features referred to in paragraphs 26 to 27;
 - c. the provision of instruction, direction and training to the Dealers regarding the most effective techniques for promoting and selling the Add-On Insurance Products with features referred to in paragraph 32; and
 - d. the provision of an electronic sales system to record sales made and commissions earned with the features referred to in paragraph 33?
86. At all material times was the income generated by the commissions and incentive scheme referred to in paragraph 85.b a significant source of profits for Dealers?
87. Were the commissions paid to the Dealers referred to in paragraph 85.b disproportionate to the complexity of, and costs involved in, the sales service provided by the Dealers to Allianz in selling the Add-On Insurance Products to the Plaintiff and Group Members?
88. Did the Allianz Sales System involve the sale of Add-On Insurance Products to customers in one or more of the circumstances in paragraph 56?
89. At all material times, was the purpose or effect of the Allianz Sale System as pleaded at paragraphs 29 to 31 and 57?
90. To what extent was Allianz aware or ought they have been aware of any of the matters pleaded in paragraph 58?

The sale of the Add-On Insurance Products to the Plaintiff and Group Members

91. Was the purpose of the Plaintiff and Group Members in visiting the Dealers to buy a vehicle, and not to buy the Add-On Insurance Products?
92. Were the Plaintiff and Group Members dependent upon the Dealers to provide them with accurate, complete and reliable information about the Add-On Insurance Products?

93. Was the sales process at the Dealers structured in a way that prompted the Plaintiff and Group Members to disengage through decision fatigue, information overload, complex product offerings and multiple options of product combinations, constraining the Plaintiff and Group Members' ability to make an informed purchasing decision?
94. In respect of the Plaintiff and Financed Group Members, was the price of Add-On Insurance Products anchored to the price of the vehicle and/or to the terms of Finance, thereby distorting the Plaintiff's and Financed Group Members' perception of the cost of the Add-On Insurance Products?
95. Did any one or more of the matters in paragraph 41 constitute material information about the Add-On Insurance Products that:
- a. would have been relevant to the decision of the Plaintiff and Group Members about whether to proceed with the purchase of the Add-On Insurance Products; and
 - b. was required to be disclosed by Allianz and/or the Dealers to prospective purchasers of those Add-On Insurance Products by reason of the matters in paragraphs 38 to 42?
96. Was Allianz aware of the failure to disclose any one or more of the matters in paragraph 41, or did it not care whether those matters were disclosed?

Mistake/unjust enrichment

97. Would Group Members who purchased one or more of the Add-On Insurance Products have been mistaken, if at the time of acquiring the Product(s) they held one or more of the beliefs pleaded at paragraph 64?

Contraventions

98. In light of the preceding questions:
- a. Did Allianz engage in misleading or deceptive conduct or conduct that was likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act?
 - b. Did Allianz engage in conduct that was liable to mislead the public as to the nature, characteristics and the suitability for their purpose of financial services in contravention of s 12DF(1) of the ASIC Act?
 - c. Did Allianz engage in conduct in this jurisdiction in relation to a financial product or a financial service that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act?

- d. Did Allianz contravene s 1041E of the Corporations Act?
- e. Did Allianz contravene s 12DB of the ASIC Act?
- f. Did Allianz engage in unconscionable conduct in contravention of s 12CB(1) of the ASIC Act?
- g. Did Allianz engage in unconscionable conduct in contravention of s 991A(1) of the Corporations Act?

Loss and Damage

99. What are the principles governing the quantification of loss or damage (if any) suffered by the Plaintiff and Group Members by reason of any contraventions as alleged in the Statement of Claim which have been established?

H. RELIEF

100. The Plaintiff claims on her own behalf and on behalf of the Group Members:
- a. An order under s 48 of the *Limitation of Actions Act 1936* (SA) that any Group Member who has a claim for monies had and received by one or both of the Defendants to the use of the Group Member that is governed by the law of South Australia and that accrued before the date 6 years before the date of the filing of this Statement of Claim be granted an extension of time until the date of the filing of this Statement of Claim.
 - b. Damages pursuant to section 12GF(1) of the ASIC Act, sections 991A(2) and 1041I(1) of the Corporations Act.
 - c. Further or alternatively, judgment in the full amount of the Premiums mistakenly paid for the Add-On Insurance Products.
 - d. Judgment pursuant to s 33Z(1) of the *Supreme Court Act 1986* (Vic) including as to the Plaintiff and Group Members' proportionate share of the costs of the proceedings, payable from judgment given for the Plaintiff and Group Members.
 - e. Interest.
 - f. Costs.
 - g. Such further order as the Court determines is appropriate.

Dated the 6th day of July 2020 ~~14 September 2020~~



Johnson Winter & Slattery
Solicitors for the Plaintiff

~~This pleading was prepared by Wendy Harris QC, Christopher Withers and Robert Clark. This amended~~
pleading was prepared by Wendy Harris QC, Christopher Withers and Anna Batrouney.

SCHEDULE OF PARTIES

TRACY ANN-FULLER

Plaintiff

and

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)

First Defendant

ALLIANZ AUSTRALIA LIFE INSURANCE LIMITED (ACN 076 033 782)

Second Defendant