



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

Case: S ECI 2020 04230
No. S ECI Filed on: 11/11/2020 11:06 AM

BETWEEN

JORDAN WILKINSON

Plaintiff

and

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)

Defendant

WRIT

Date of Document:	11 November 2020	Solicitors Code: 564
Filed on behalf of:	The Plaintiff	DX: N/A
Prepared by:	Maurice Blackburn Pty Limited Level 21, 380 La Trobe Street St Melbourne VIC 3000	Telephone: (03) 9605 2700 Ref: 3052948/AWW Email: awatson@mauriceblackburn.com.au

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by –

- (a) filing a "Notice of Appearance" in the Prothonotary's office, Level 2, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

*THE PROPER TIME TO FILE AN APPEARANCE is as follows –

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

FILED

PROTHONOTARY

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

- 1. Place of trial – Melbourne.
- 2. Mode of trial – Judge.
- 3. This writ was filed for the plaintiff by Maurice Blackburn Lawyers, 21/380 Latrobe Street, Melbourne Victoria 3000 as solicitors for the plaintiff.
- 4. The address of the plaintiff is as follows:

First Plaintiff: 13 Chantelle Court, Kangaroo Flat VIC 3555
- 5. The address for service of the plaintiff is c/- Maurice Blackburn Lawyers, 21/380 Latrobe Street, Melbourne Victoria 3000.
- 6. The email address for service of the plaintiff is AWatson@mauriceblackburn.com.au
- 7. The address of the defendant is as follows: Level 12, 2 Market St, Sydney, NSW 2000

STATEMENT OF CLAIM

Date of Document:	11 November 2020	Solicitors Code: 564
Filed on behalf of:	The Plaintiff	DX: N/A
Prepared by:	Maurice Blackburn Pty Limited	Telephone: (03) 9605 2700
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A. PARTIES AND GROUP MEMBERS

A.1. The Plaintiff

1. The Plaintiff:

- (a) is a natural person;
- (b) was from at least 2014 to 2016 a casual courier driver employed by Salway Transport Services Pty Ltd (ABN 59 091 005 944);
- (c) was and is a member of Australian Super Pty Ltd, being a superannuation fund into which his employer was liable to pay and did pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGA Payments**);
- (d) by reason of the superannuation in (c) has held total and permanent disability cover and death cover at all times since 2007; and
- (e) was and is a 'consumer' within the meaning of section 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

A.2. Representative proceeding

2. The Plaintiff commences this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) (**SC Act**) on his own behalf and on behalf of all persons who, subject to paragraph 3 below:

- (a) at any time since 1 June 2006 until the date of commencement of this proceeding (**Period**):
 - (i) purchased a motor vehicle or motorcycle (**Vehicle**) from a motor vehicle dealer (**Dealer**) who was an authorised representative of Allianz for the purpose of arranging insurance for customers of the Dealer in connection with customers' purchases of Vehicles;
 - (ii) purchased the said Vehicle using loan finance arranged by the Dealer (**Finance**); and
 - (iii) in conjunction with the purchase in (ii) – purchased any of:

- A. **Loan Protection Insurance** (also referred to as “repayment insurance” or “consumer credit insurance”) (**CCI**);
- B. **Motor Equity Insurance** (also referred to as “guaranteed asset protection insurance”, “GAP insurance”, “shortfall insurance”, “purchase price insurance” or “value protect insurance”);
- C. **Extended Motor Warranty** (also referred to as “mechanical insurance”, “Motor Vehicle Warranty” or “extended warranty insurance”); or
- D. **Tyre and Rim Insurance**;

(the products in (A) to (D) being together and severally **Add-On Insurance**) offered by the Defendant (**Allianz**) on its own behalf or on behalf of Allianz Life Insurance Limited A.C.N 076 033 782 (**Allianz Life**) or OnePath Life Limited A.C.N 009 657 176 (**OnePath**);

Particulars

- i. *Loan Protection Insurance (or CCI) purported to insure the consumer against circumstances where they might be unable to meet financial obligations associated with finance obtained to purchase a vehicle, and could include “Trauma and Death” cover.*
 - ii. *Motor Equity Insurance 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.*
 - iii. *Extended Motor Warranty 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.*
 - iv. *Tyre and Rim Insurance purported to insure against the risk of accidental damage to the wheels or tyres of a vehicle.*
 - v. *The terms and conditions upon which each of the said Add-On Insurance products was issued from time to time were set out in the Product Disclosure Statements (**PDS**) and policy cover sheets issued in respect of each of them.*
 - vi. *Further particulars may be provided after discovery.*
- (b) by reason of the purchases in (a) – made payments to Allianz (directly or indirectly) for the Add-On Insurance (**Premiums**);

- (c) were and are 'consumers' within the meaning of section 12BC of the ASIC Act;
- (d) in the case of persons who purchased Add-On Insurance on a day prior to 6 years before the date of filing of this Statement of Claim (being the **General relation-back day**) – did not prior to the General relation-back day discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraph 69 below;
- (e) were not at the time of the purchases in (a), 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 the Defendant; or
 - (ii) a judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria; and
- (f) have suffered loss or damage by reason of the contravening conduct of the Defendant as pleaded in this Statement of Claim;

(the persons satisfying the criteria in (a) to (d) and (f) being the **Group Members**).

3. Persons whose claims are governed by the law of the Northern Territory (**NT Claimants**) are a Group Member if:
 - (a) sub-paragraphs 2(a) – 2(c) and (f) apply; and
 - (b) in the case of NT Claimants who purchased Add-On Insurance on a day prior to 3 years before the date of filing of this Statement of Claim (being the **NT relation-back day**) – did not prior to the NT relation-back day discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraph 69 below.
4. As at the date of the commencement of this proceeding there are seven or more Group Members.

A.3. Allianz

5. At all material times, Allianz:
 - (a) was and is a corporation and capable of being sued;

- (b) was and is a person and a corporation within the meaning of the ASIC Act;
- (c) carried on and carries on the business of insurance throughout Australia; and
- (d) was and is the holder of an Australian Financial Services License (**AFSL**) (No 234708) (**Allianz AFSL**).

A.4. Underwriters

6. Allianz Life at all material times:

- (a) was and is a corporation;
- (b) carried on and carries on a business of, inter alia, underwriting policies of insurance in respect of trauma and death including in connection with CCI;
- (c) was and is part of the same corporate group as Allianz; and
- (d) was and is the holder of Australian Financial Services License No 296559.

7. OnePath at all material times:

- (a) was and is a corporation;
- (b) carried on and carries on a business of, inter alia, underwriting policies of insurance in respect of trauma and death including in connection with CCI; and
- (c) was and is the holder of Australian Financial Services Licence No 238341.

B. REGULATORY CONTEXT

B.1. Allianz relationships

8. At all material times during the Period, Allianz:

- (a) offered the Add-On Insurance for purchase by consumers including the Plaintiff and Group Members;
- (b) in respect of any "Trauma and Death" cover included in CCI and underwritten by Allianz Life – offered and administered the said cover as agent for Allianz Life;

Particulars

So far as the Plaintiff is able to say prior to discovery, the agency was disclosed in the covering letter enclosing the policy schedule and policy documents. Examples of covering letters may be inspected by appointment at the offices of the Plaintiff's solicitors.

- (c) in respect of any "Trauma and Death" cover included in CCI and underwritten by OnePath – offered and administered the said cover as agent for OnePath;

Particulars

So far as the Plaintiff is able to say prior to discovery, the agency was disclosed in the covering letter enclosing the policy schedule and policy documents. Examples of covering letters may be inspected by appointment at the offices of the Plaintiff's solicitors.

- 9. At all material times during the Period, Allianz operated the sales system pleaded at paragraphs 16 to 23 below (**Allianz Sales System**) to sell the Add-On Insurance to the Plaintiff and Group Members by appointing the Dealers (under **Dealer Agreements**) as:
 - (a) its authorised representatives, within the meaning of sections 761A and 916A(1) of the Corporations Act; further or alternatively
 - (b) its agents.
- 10. At all material times, Allianz was, in trade or commerce, by itself and by the Dealers as its authorised representatives or agents:
 - (a) engaged in the supply of financial services to customers within the meaning of section 12BAB of the ASIC Act, being the sale of the Add-On Insurance; and
 - (b) providing a financial service, being the supply of the Add-On Insurance, within the meaning of sections 766A and 766C of the Corporations Act.

B.2. Add-On Insurance – Key Characteristics

- 11. Each of the Add-On Insurance products was a financial product within the meaning of:
 - (a) section 12BAA of the ASIC Act; further or alternatively
 - (b) sections 763A and 763C of the Corporations Act.

12. At all material times, the Add-On Insurance products:
- (a) were complex financial instruments for protecting against the risks identified in the policy terms for each product; and
 - (b) had numerous and important exclusions, exceptions and limits to the protection offered, which significantly limited the circumstances in which the policies would respond;

Particulars

- i. Exclusions in the Allianz Loan Protection Insurance included that:*
- a. consumers who were self-employed or non-permanent employees were ineligible to apply for involuntary unemployment cover;*
 - b. consumers who were not actively employed in a paid permanent occupation for not less than 20 hours per week were ineligible to apply for disability cover or involuntary unemployment cover;*
 - c. consumers who were aged over 64 years of age during the period of insurance were ineligible to apply for any cover;*
 - d. consumers who had pre-existing injuries or illnesses had exclusions attached to their disability cover and trauma and death cover.*

An example of an Allianz Loan Protection Insurance “Product Disclosure Statement and Policy Document” dated 1 January 2014, provided to customers in or around December 2015, may be inspected by appointment at the offices of the Plaintiff’s solicitors. Further particulars of Loan Protection Insurance exclusions may be provided following discovery.

- ii. Exclusions in the Allianz Motor Equity Insurance included that:*
- a. Allianz would not pay any claim arising directly or indirectly out of or in any way connected with any loss where the consumer had not received a total loss payment under their comprehensive motor vehicle insurance covering their vehicle;*
 - b. Further, any claim in (a) was also dependent on the comprehensive insurer paying the market or agreed value of the vehicle and if the comprehensive insurer rejected the claim, then Allianz would also reject the claim;*
 - c. If instead of the total loss payment the consumer’s comprehensive insurer provided the consumer with a replacement vehicle, then Allianz “may” cover the replacement vehicle under the consumer’s existing policy, but cannot endorse a replacement vehicle onto an existing policy if certain events had occurred in which case the consumer’s policy would be cancelled and any unused premium would be refunded on a pro-rata basis less any applicable*

administrative costs, cancellation fees and any government taxes or duties;

- d. An example of an Allianz Motor Equity Insurance “Product Disclosure Statement and Policy Document” dated 25 February 2014 and provided to customers in or around October 2016 may be inspected by appointment at the offices of the Plaintiff’s solicitors.*
 - e. The Plaintiff further refers to ASIC reports 470 dated February 2016 at p 11 and 492 dated September 2016 at p 42.*
 - f. Further particulars of Motor Equity Insurance exclusions may be provided following discovery.*
- iii. Exclusions in Allianz Tyre & Rim Insurance included that:*
- a. Allianz would not provide cover for tyres that had been repaired, except for puncture repair; and*
 - b. Allianz would not provide cover for retread tyres.*
- An example of an Allianz Tyre & Rim “Product Disclosure Statement and Policy Document” dated 1 July 2014 and provided to a customer on or around 1 December 2015 may be inspected by appointment at the offices of the Plaintiff’s solicitors. Further particulars of Tyre & Rim Insurance exclusions may be provided following discovery.*
- (c) had a low “**Claims Loss Ratio**”, indicating that:
- (i) a relatively low proportion of claims (by value) that were made under Add-On Insurance policies were indemnified by the insurer; and
 - (ii) the policies were commensurately likely to be of reduced or no value to the insureds.

Particulars

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.

B.3. Key Statutory Obligations

AFSL obligations

13. At all material times, Allianz as the holder of the Allianz AFSL was, in relation to the

supply by it of the Add-On Insurance products, required by:

- (a) section 912A of the Corporations Act to:
 - (i) do all things necessary to ensure that the Add-On Insurance products were provided efficiently, honestly and fairly to the customers;
 - (ii) 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 Dealers, in the provision of the Add-On Insurance products as part of the financial services business of Allianz;
 - (iii) take reasonable steps to ensure the Dealers complied with the financial services laws; and
 - (iv) ensure that the Dealers were adequately trained to provide the Add-On Insurance products (including by complying with section 912D) and were competent to provide the Add-On Insurance products;

- (b) section 961 of the Corporations Act to take reasonable steps to ensure that if personal advice was provided by Dealers to clients, then the Dealers:
 - (i) in accordance with section 961B of the Corporations Act – acted in the best interests of the clients in relation to the advice;
 - (ii) in accordance with section 961G of the Corporations Act – only provided the advice to the clients if it would be reasonable to conclude that the advice was appropriate to the client;
 - (iii) in accordance with section 961H of the Corporations Act – warned the clients if it was reasonably apparent to the Dealer that information relating to the objectives, financial situation and needs of the client on which the advice was based was incomplete or inaccurate;
 - (iv) in accordance with section 961J of the Corporations Act – gave priority to the interests of the clients over any other interest.

Code of Practice

14. The Insurance Industry Codes of Practice (**Codes**) issued by the Insurance Council of Australia were at all material times and are:
- (a) applicable industry codes within the meaning of section 51ACA of the *Competition and Consumer Act 2010* (Cth); and
 - (b) binding on Allianz in respect of the supply of Add-On Insurance.

Particulars

The relevant Codes are dated 2006, 2010, 2012 and 2014. Copies of the said Codes may be inspected by appointment at the offices of the Plaintiff's solicitors.

15. At all material times the Codes required that Allianz, in connection with the supply of (*inter alia*) Add-On Insurance products:
- (a) under all versions of the Codes:
 - (i) require the Dealers, as authorised representatives, to conduct their sales practices in an honest, efficient, fair and transparent manner;
 - (ii) only permit the Dealers, as authorised representatives, to perform functions that matched their expertise;
 - (iii) train the Dealers, as authorised representatives, to carry out their sales tasks and functions competently; and
 - (iv) require the 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;

Particulars

- i. 2006 and 2010 Codes: clauses 2.4(1), 2.4(4), 2.4(5), 2.4(3);*
 - ii. 2012 Code: clauses 2.4(1), 2.4(4), 2.4(5), 2.4(3);*
 - iii. 2014 Code: clauses 4.4, 5.1(b), 5.1(a), 5.3.*
- (b) under the 2006, 2010 and 2012 Codes:
 - (i) train the 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

- (ii) measure the effectiveness of the said training by monitoring the performance of the Dealers; and
- (iii) require additional or remedial training to address any identified deficiencies; and

Particulars

- i. 2006 and 2010 Codes: clauses 2.4(6), 2.4(8)(a), 2.4(8)(b);*
- ii. 2012 Code: clauses 2.4(6), 2.4(8)(a), 2.4(8)(b).*

(c) under the 2014 Code:

- (i) provide the 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;
- (ii) measure the effectiveness of training in (i) by monitoring the performance of authorised representatives' services; and
- (iii) correct any shortcoming identified as a result of (ii).

Particulars

Clauses 5.1(a), 5.1(c), 5.1(d).

C. SALES OF ADD-ON INSURANCE

C.1. The Allianz Sales System

16. At all material times, Allianz operated the Allianz Sales System pursuant to which, *inter alia*:

- (a) Allianz provided training and instruction to the Dealers on how to promote and sell the Add-On Insurance to customers;

- (b) Dealers were paid commissions by Allianz calculated by reference to:
 - (i) the promotion and sale of the Add-On Insurance products (**Product Commissions**); further or alternatively
 - (ii) the sale of specified volumes of Add-On Insurance products (**Volume Commissions**);
- (c) Allianz operated an electronic sales system (**Allianz Platform**) by which:
 - (i) Dealers were able to access the Allianz Platform to arrange or obtain Add-On Insurance for customers;
 - (ii) Dealers could calculate their potential commission on each sale of Add-On Insurance; and
 - (iii) Allianz could monitor the volumes of sales of Add-On Insurance arranged by each Dealer;
- (d) Dealers in fact used the Allianz Platform as described in (c)(i) and (ii) above; and
- (e) Dealers pursuant to the Dealer Agreements, further or alternatively as agents for Allianz, sold or arranged the sale of Add-On Insurance to customers, including the Plaintiff and Group Members.

17. At all material times, Allianz:

- (a) by itself, by operating the Allianz Sales System; and
- (b) by the Dealers as its authorised representatives or agents;

engaged in conduct that was intended to influence customers, including the Plaintiff and Group Members, to acquire Add-On Insurance within the meaning of section 766B(1) of the Corporations Act.

Particulars

- i. *Allianz's intention is to be inferred from the nature of the Allianz Sales System as a mechanism for marketing and selling Add-On Insurance to customers.*

ii. Further particulars may be provided after discovery.

18. At all material times, the officers of Allianz (within the meaning of the Corporations Act) with responsibility for:

- (a) approving the terms of Dealer Agreements;
- (b) approving the terms of Allianz documents provided to Dealers for use in connection with arranging Add-On Insurance for customers of the Dealers; further or alternatively
- (c) training and supervising Dealers in relation to arranging Add-On Insurance for customers of the Dealers;

(being the **Allianz responsible officers**) were or ought reasonably to have been aware that:

- (i) the customers to whom the Dealers would or were likely to sell the Add-On Insurance attended the Dealers' businesses for the purpose of purchasing a vehicle and not for the purpose of purchasing Add-On Insurance;
- (ii) many of the said customers would need to obtain finance to purchase a vehicle;
- (iii) in arranging the Finance for a vehicle, the Dealers would obtain the following personal financial information:
 - A. the customers' income, assets and liabilities;
 - B. whether the customers were employees with a regular income; and
 - C. the fact that some customers, as employees, were also therefore:
 - (1) members of superannuation funds; and
 - (2) likely to have income protection, total and permanent disability insurance and trauma and death insurance through the said memberships; and
 - D. the fact that some customers were unemployed or self-employed;

(the information in (iii) being the **Personal Circumstances Information**).

Particulars

- i. *Allianz's state of mind is to be inferred from the following matters:*
 - A) *Allianz's business arrangements with the Dealers, including the establishment of the Dealer Agreements and the operation of the Allianz Sales System;*
 - B) *Allianz's purported compliance with its obligations in respect of the sale of Add-On Insurance products pleaded in paragraphs 13 and 15 above;*
 - C) *the circumstance that the process of negotiating and purchasing motor vehicles from Dealers is a matter of common experience;*
 - D) *the circumstance that, as authorised representatives or agents of Allianz, the knowledge of the Dealers as to the characteristics of their customers is imputed to Allianz as principal;*
- ii. *Further particulars may be provided after discovery.*

19. At all material times the Allianz responsible officers knew or ought reasonably to have known that, notwithstanding any terms of the Dealer Agreements, the Dealers in the circumstances set out in paragraph 18 were likely to:

- (a) refer to Add-On Insurance in terms that could reasonably be regarded as recommending the said insurance to the customer or expressing an opinion as to the necessity for, value of or desirability of the insurance for the customer; or alternatively
- (b) add one or more Add-On Insurance products to the customer's Finance documents without drawing the addition to the customer's attention adequately or at all, and by omission represent to the customer that the insurance was necessary, valuable or desirable;
- (c) in the premises in (a) or, alternatively, (b) – make a recommendation or a statement of opinion that could reasonably be regarded as intending to influence the customer in making a decision in relation to the Add-On Insurance, within the meaning of section 766B(1) of the Corporations Act; and
- (d) engage in the conduct in (c) in circumstances where a reasonable person might expect the Dealers to have considered one or more of the following matters:

- (i) the customer's objectives;
- (ii) the customer's financial situation; and
- (iii) the customer's needs;

within the meaning of section 766B(3) of the Corporations Act.

Particulars

The Plaintiff refers to and repeats the particulars under paragraph 18 above.

20. At all material times the Allianz responsible officers knew or ought to have known that, by reason of the Product Commissions and/or the Volume Commissions, the Dealers had a financial incentive to:
- (a) sell as many of the Add-On Insurance products as possible, irrespective of whether the insurance was suitable for the customers' needs;
 - (b) emphasise to customers the advantages of the Add-On Insurance, rather than providing fair and balanced information to customers about the advantages and disadvantages of the Add-On Insurance or about alternative products that were available and likely to be suitable;
 - (c) convey to customers the impression that purchasing one or more of the Add-On Insurance products was necessary or desirable in order for the customers to obtain Finance for the purchase of the Vehicle they were considering buying;
 - (d) add one or more Add-On Insurance products to the customers' Finance documents without drawing the addition to the attention of the customer adequately or at all;
 - (e) not afford the customers any or any sufficient opportunity to obtain independent advice as to whether Add-On Insurance was suitable for the customers, having regard to the customers' personal circumstances;
 - (f) not encourage customers to review and consider the PDS and/or the Financial Services Guide (**FSG**) in respect of the Add-On Insurance;
 - (g) not provide the customers with the PDS or FSG in respect of the Add-On Insurance products at all, alternatively with sufficient opportunity for the

customers to review, consider and take advice about the PDS or FSG; further or alternatively

- (h) not disclose the terms by which the Product Commissions or the Volume Commissions were calculated.

Particulars

Allianz's state of mind is to be inferred from the design of the Product Commissions and Volume Commissions. The Plaintiff otherwise refers to and repeats the particulars under paragraph 18.

C.2. Sales System deficiencies

21. At all material times, it was the case that:

- (a) the purchase of Add-On Insurance was not a condition of obtaining Finance for the purchase of a Vehicle;
- (b) the terms of the Add-On Insurance were not able to be negotiated by customers, including the Plaintiff and the Group Members;
- (c) the purchase of the Add-On Insurance was added to the customer's Finance documents at a late stage of the dealings between the Dealer and the customer and, in particular, after the customer had otherwise agreed to purchase the Vehicle;
- (d) Dealers frequently added Add-On Insurance to the customer's Finance documents without drawing the addition to the attention of the customer;
- (e) customers for whom Add-On Insurance was included in the Finance were likely to pay more for the insurance than if the insurance was not included in the Finance;

Particulars

Consumers paid interest and other charges in respect of the Add-On Insurance that was included in the Finance, which charges were capitalised into the total value of the Finance.

- (f) CCI and Motor Equity Insurance offered coverage that:
 - (i) overlapped or was likely to overlap with other insurance coverage

already held by consumers and in particular, the Plaintiff and employed Group Members;

- (ii) was or may be unnecessary or largely unnecessary; further or alternatively
- (iii) was likely to be available by means of other insurance policies for a lower price;

Particulars

- i. If consumers were employees, at least some cover under CCI overlapped or was likely to overlap with cover the consumers already held under insurance policies through their superannuation funds.*
 - ii. If consumers also had CCI, at least some cover under Motor Equity Insurance overlapped or was likely to overlap with cover under their CCI policies. For example, if the amount outstanding under the consumer's Finance contract was paid out due to a trauma and death benefit claim under their CCI policy, the consumer's Motor Equity Insurance would become unnecessary.*
 - iii. At least some cover under CCI was or may be unnecessary for some consumers given their Personal Circumstances Information. For example, consumers who were not in permanent employment may have been ineligible to claim under their CCI policies.*
 - iv. The maximum amount likely to be paid in the event of unemployment under the CCI policy often exceeded the cost of the premiums.*
 - v. Motor Equity Insurance was unnecessary for consumers in circumstances where the market value of the Vehicle did not reduce at a faster rate than the amount outstanding under the Finance contract, such that there was no 'gap' claimable under the insurance policy.*
 - vi. Motor Equity Insurance became void and therefore was unnecessary for consumers in circumstances where the comprehensive insurance for their Vehicle had ended or been cancelled without replacement.*
 - vii. Dealers sold most CCI and Motor Equity Insurance as single premium policies such that consumers would incur interest charges, increasing the cost of the insurance.*
 - viii. Further particulars may be provided after discovery.*
- (g) cover provided by the Extended Motor Warranty was or may be unnecessary or largely unnecessary, given the provisions of the *Trade Practices Act 1974* (Cth) (**TPA**) or, after 1 January 2011, the *Australian Consumer Law* (**ACL**); and

Particulars

Consumers already had the benefit of guarantees under the TPA and ACL, which required the dealer and manufacturer to meet the cost of repairs if the Vehicle was not of an acceptable quality. This position was further exacerbated if the Vehicle was a new Vehicle, given the usual manufacturer's warranties.

- (h) offering Add-On Insurance products immediately after the sale of the Vehicle (a high value product):
 - (i) presented the cost of the insurance as relatively minor compared to the price of the Vehicle, thereby distorting customers' perceptions of the cost of the Add-On Insurance product; and
 - (ii) created the impression that the Add-On Insurance products offered value for money in their own right.

22. During the Period Allianz failed to disclose or adequately disclose, in documentation to be provided to customers in connection with the Add-On Insurance (**Allianz product information**) that:

- (a) Add-On Insurance featured a low "Claims Loss Ratio", indicating that:
 - (i) a relatively low proportion of claims (by value) that were made under Add-On Insurance policies were indemnified by the insurer; and
 - (ii) the policies were commensurately likely to be of reduced or no value to the insureds;

Particulars

The Plaintiff repeats the particulars under subparagraph 12(c) above.

- (b) the purchase of Add-On Insurance was not a condition of obtaining Finance for the purchase of a Vehicle;
- (c) by reason of the Product Commissions and/or the Volume Commissions, Dealers had a financial incentive to sell as many Add-On Insurance products as possible;

Particulars

- i. *Because Product Commissions were paid to Dealers in respect of each Add-On Insurance product sold, Dealers received a greater amount of Product Commissions the more Add-On Insurance products they sold;*
 - ii. *Because Volume Commissions were paid to Dealers when they reached certain volumes of sales of Add-On Insurance products, Dealers had a financial incentive to sell high volumes of these Add-On Insurance products.*
- (d) customers for whom Add-On Insurance was included in the Finance were likely to pay more for the insurance than if the insurance was not included in the Finance;

Particulars

The Plaintiff repeats the particulars under subparagraph 21(e) above.

- (e) CCI and Motor Equity Insurance offered coverage that:
- (i) overlapped or was likely to overlap with other insurance coverage already held by the customer particularly those who were employed and received SGA payments;
 - (ii) was or may be unnecessary or largely unnecessary; further or alternatively
 - (iii) was likely to be available by means of other insurance policies for a lower price;

Particulars

The Plaintiff repeats the particulars under subparagraph 21(f) above.

- (f) cover provided by the Extended Motor Warranty was or may be unnecessary or largely unnecessary, given the provisions of the TPA or ACL as the case may be; and

Particulars

The Plaintiff repeats the particulars under subparagraph 21(g) above.

- (g) the matters identified in (a) and (d) to (f) meant there was a substantial

likelihood that prospective purchasers would be better off financially by declining to purchase the Add-On Insurance;

(the matters in (a) to (g) being together and severally the **Allianz non-disclosures**).

Particulars

- i. The Allianz product information included, for each Add-On Insurance product:*
 - A. the policy cover sheet and schedule;*
 - B. the PDS and/or Endorsement and/or Supplementary PDS; and*
 - C. the FSG.*
- ii. Further particulars may be provided after discovery.*

23. Further or in the alternative, during the Period Allianz failed to have or implement any or any adequate system for:

- (a) training Dealers' personnel to ensure adequate disclosure to customers of the matters the subject of the Allianz non-disclosures (**Cautionary Matters**);
- (b) monitoring compliance by Dealers' personnel with Allianz's protocols or guidelines for interactions with customers in respect of Add-On Insurance; further or alternatively
- (c) identifying and correcting Dealers' non-compliance with Allianz's protocols or guidelines for interactions with customers in respect of Add-On Insurance.

24. In the premises set out in:

- (a) paragraph 22; further or alternatively
- (b) paragraph 23;

Allianz:

- (i) failed to take any or any adequate step to ensure the Dealers did not engage in conduct as described in paragraphs 19 and 20; further or alternatively
- (ii) in the premises set out in paragraphs 18 to 20 inclusive – acquiesced in

the conduct of the Dealers as described in paragraphs 19 and 20.

D. PLAINTIFF'S PURCHASES ON 11 JULY 2015

25. At times presently not known to the Plaintiff, Melbourne's Cheapest Cars Pty Ltd (A.C.N 086 996 036) (**MCCPL**) entered into a Dealer Agreement with Allianz (**MCCPL Agreement**).
26. At all material times MCCPL while dealing with the Plaintiff was, by reason of the MCCPL Agreement:
- (a) an authorised representative of Allianz within the meaning of sections 761A and 916A(1) of the Corporations Act; further or alternatively
 - (b) an agent of Allianz.
27. On or about 11 July 2015 the Plaintiff and his wife:
- (a) attended the vehicle dealership operated by MCCPL for the purpose of purchasing a vehicle of a sufficient size to carry five (5) people;
 - (b) offered to purchase from MCCPL a used 2012 Ford Falcon XR6 sedan (**Falcon**); and
 - (c) requested that MCCPL arrange a loan to facilitate the said purchase.

Particulars

- i. The Plaintiff does not recall the name of the car salesman at MCCPL with whom he and his wife had this conversation.*
 - ii. Further particulars may be provided after discovery.*
28. For the purpose of assisting the Plaintiff to obtain the loan referred to in the preceding paragraph, MCCPL, acting as a credit representative of the credit provider, obtained the following Personal Circumstances Information from the Plaintiff:
- (a) that the Plaintiff was employed;
 - (b) the Plaintiff's most recent payslips from his employer;
 - (c) details of the Plaintiff's personal financial circumstances including that:

- (i) he was living in rented accommodation with his wife;
- (ii) he did not have any assets other than the contents of his home, his superannuation and his current car;
- (iii) he had an existing personal loan with the National Australia Bank and no credit cards;

(Plaintiff's Personal Circumstances Information).

29. By reason of having obtained the Plaintiff's Personal Circumstances Information, MCCPL knew or ought to have known that:

- (a) the Plaintiff was a member of a superannuation fund; and accordingly
- (b) it was likely that the Plaintiff would have total and permanent disability insurance and trauma and death insurance associated with the said membership, that covered some or most of the risks covered by the Add-On Insurance products.

Particulars

- i. MCCPL's state of mind is to be inferred from of the fact that it knew:*
 - A. the Plaintiff was an employee; and*
 - B. the legal requirement for the Plaintiff's employer to make the SGA payments, since that requirement also applied to MCCPL in respect of its own employees. Further, as an employer obliged to make SGA payments, MCCPL ought to have known that superannuation funds include insurance benefits.*
- ii. Further particulars may be provided after discovery.*

30. On or about 11 July 2015:

- (a) MCCPL submitted some or all of the Plaintiff's Personal Circumstances Information to Australian and New Zealand Banking Group Limited (**ANZ**) trading as '*Esanda – the Credit Provider*' (**Esanda**);
- (b) MCCPL informed the Plaintiff that because he was obtaining a loan to purchase the Falcon, he also needed to purchase comprehensive car insurance, which the Plaintiff then agreed to do;

Particulars

Conversation between the Plaintiff, his wife and Mr Savvas Ambelidis from MCCPL.

- (c) MCCPL also obtained the Plaintiff's bank account details and arranged for a direct debit to that account to pay for the purchase of the comprehensive car insurance;
- (d) Esanda approved a loan to the Plaintiff to, among other things, purchase the Falcon (**Esanda Loan**);

Particulars

- i. Esanda Loan Contract dated 11 July 2015:*
 - a. Contract number: 320294562;*
 - b. Credit assessment number: 77157 01;*
- ii. Further particulars may be provided after discovery.*

- (e) MCCPL, after the Esanda Loan had been approved, informed the Plaintiff of:
 - (i) the total amount being borrowed from Esanda;
 - (ii) the fortnightly repayment amounts;
 - (iii) the interest rate; and
 - (iv) the cost of the comprehensive insurance.

Particulars

Conversation between the Plaintiff, his wife and Mr Ambelidis.

- (f) MCCPL did not inform the Plaintiff that the Finance was also being used to purchase for the Plaintiff:
 - (i) CCI; and
 - (ii) Motor Equity Insurance;

offered by Allianz and badged as "Esanda Insurance" (**Plaintiff's Add-On Insurance Products**);

- (g) MCCPL then presented documents to the Plaintiff to sign to effect the purchase of the Vehicle and the Finance (**paperwork**); and
- (h) the Plaintiff signed the paperwork in the belief that it contained the items which had been discussed in paragraphs 27(b) and 30(b), (c) and (e) above.

Particulars

The paperwork signed by the Plaintiff included:

- i. The Esanda Loan contract dated 11 July 2015;*
- ii. A document styled "Customer Declaration" dated 11 July 2015;*
- iii. Direct debit for comprehensive car insurance;*
- iv. A document styled "Declaration and privacy consents by applicant(s)" dated 11 July 2015;*
- v. A document styled "Esanda Representative – Applicant Statement (NCCP)" dated 11 July 2015;*
- vi. Further particulars may be provided after discovery.*

31. By executing the Esanda Loan contract, the Plaintiff:
- (a) directed Esanda to pay MCCPL the amount of \$19,453.30 to purchase the Falcon;
 - (b) directed Esanda to pay Allianz the amounts of \$2,341.22 and \$745 for the purchase of the Plaintiff's Add-On Insurance Products;
 - (c) directed Esanda to pay itself a \$350 establishment fee and to pay the "relevant government authority" \$6.80 for the registration of Esanda's mortgage over the Falcon; and
 - (d) became liable to repay these amounts to Esanda in fortnightly repayments of \$252.87 for 5 years with an annual interest of rate of 14.9909% and an estimate of \$9,676.48 accruing in interest charges and \$657.10 in other credit fees and charges.
32. In the premises set out in paragraphs 28 and 29, and by:
- (a) requiring the Plaintiff to purchase the comprehensive insurance; and
 - (b) presenting the paperwork with the Plaintiff's Add-On Insurance included;

MCCPL:

- (i) made a recommendation or a statement of opinion that could reasonably be regarded as intending to influence the Plaintiff in making a decision in relation to the Plaintiff's Add-On Insurance Products, within the meaning of section 766B(1) of the Corporations Act; and
- (ii) engaged in the conduct in (i) in circumstances where a reasonable person might expect MCCPL to have considered one or more of the following matters:
 - A. the Plaintiff's objectives;
 - B. the Plaintiff's financial situation; and
 - C. the Plaintiff's needs;

within the meaning of section 766B(3) of the Corporations Act.

33. In selling to the Plaintiff the Plaintiff's Add-On Insurance Products, MCCPL:

- (a) was acting within the scope of its apparent authority as authorised representative of Allianz;
- (b) was effecting the ordinary role of a Dealer within the Allianz Sales System;
- (c) advised the Plaintiff to purchase the Plaintiff's Add-On Insurance Products despite the fact it was not reasonable to conclude that the advice was appropriate to the Plaintiff;

Particulars

The advice was not appropriate to the Plaintiff as he:

- a. did not seek to purchase the Plaintiff's Add-On Insurance;*
- b. already had the benefit of the insurance attached to his membership of his superannuation fund;*
- c. was 26 years old and had little to no need for the trauma and death component of the CCI product, in particular as he had no substantial liabilities other than the Esanda Loan that his superannuation fund's insurance would likely cover; and*
- d. was a casual employee of Salway Transport Services Pty Ltd and was therefore likely to be ineligible for the CCI disability cover and*

involuntary unemployment cover.

- (d) failed to warn the Plaintiff about the Cautionary Matters; and
- (e) did not give priority to the interests of the Plaintiff over any other interest.

Particulars

MCCPL prioritised its own commercial interests to earn commissions, over the Plaintiff's interest in not incurring the cost of insurance he did not want or need.

E. PURCHASES OF ADD-ON INSURANCE PRODUCTS BY GROUP MEMBERS

34. Each of the Group Members during the Period purchased a Vehicle from a Dealer who:
- (a) had entered into a Dealer Agreement with Allianz;
 - (b) was an authorised representative of Allianz; further or alternatively
 - (c) was an agent of Allianz.
35. In connection with each purchase referred to in the preceding paragraph, each Group Member purchased one or more Add-On Insurance products and:
- (a) paid or became liable to pay the Premiums; and
 - (b) paid other charges associated with the Add-On Insurance products, such as GST and stamp duty.

Particulars

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

36. Each of the Group Members:
- (a) financed the purchase of the Add-On Insurance using Finance in respect of which their Dealer acted as the credit assistance provider, alternatively as the agent of the credit provider; and accordingly

Particulars

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- (b) paid interest and other charges in respect of the financing of the Add-On Insurance, which charges were capitalised into the total value of the Finance.

Particulars

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- 37. In obtaining the Finance, some or all of the Group Members provided to the Dealers the Personal Circumstances Information, including whether they were employees, unemployed or self-employed.

Particulars

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- 38. By reason of having obtained the Personal Circumstances Information for each Group Member referred to in paragraph 37, each Dealer knew or ought to have known that:

- (a) in the case of employees:
 - (i) because the Group Member was an employee – the Group Member was a member of a superannuation fund and entitled to SGA payments; and accordingly
 - (ii) it was likely that the Group Member would have income protection insurance, total and permanent disability insurance and/or trauma and death insurance that covered some or most of the risks covered by the Add-On Insurance products;

Particulars

- i. *The Dealers' state of mind is to be inferred from the fact that they knew the Group Members were employees and the legal requirement for the Group Members' employers to make the SGA payments. This was also a legal obligation owed by the Dealers to their employees.*
- ii. *Further as employers obliged to make SGA payments to their own employees, the Dealers should have known that superannuation policies*

include insurance benefits.

iii. Further particulars may be provided after discovery.

- (b) in the case of the Group Members who were unemployed or self-employed – the Group Member was unlikely to be entitled to claim involuntary unemployment cover under CCI.

39. In the premises of paragraphs 37 and 38, and by the sale to the Group Members of the Add-On Insurance products, each Dealer in respect of each Group Member's acquisition of Add-On Insurance products:

- (a) made a recommendation or a statement of opinion which could reasonably be regarded as intending to influence the Group Member in making a decision in relation to the Add-On Insurance products within the meaning of section 766B(1) of the Corporations Act; and
- (b) engaged in the conduct in (a) in circumstances where a reasonable person might expect the Dealers to have considered one or more of the following matters:
 - (i) the Group Member's objectives;
 - (ii) the Group Member's financial situation; and
 - (iii) the Group Member's needs;

within the meaning of section 766B(3) of the Corporations Act.

40. In selling the Add-On Insurance to the Group Members, each Dealer:

- (a) was acting within the scope of its apparent authority as authorised representative of Allianz;
- (b) was effecting the ordinary role of a Dealer within the Allianz Sales System;
- (c) advised each Group Member to purchase the Add-On Insurance despite the fact it was not reasonable to conclude that the advice was appropriate to the Group Members;
- (d) failed to warn the Group Members about the Cautionary Matters; and

- (e) did not give priority to the interests of the Group Members over any other interest, and in particular the interest of the Dealer in earning the Product Commissions or the Volume Commissions.

Particulars

- i. The Dealers prioritised their own commercial interests to earn commissions over those of the Group Members not to have insurance that did not meet their needs.*
- ii. Further particulars may be provided after discovery.*

F. PERSONAL ADVICE CONTRAVENTIONS

41. In the premises set out in paragraphs 32 to 33 and 39 to 40, the Dealers (including MCCPL) contravened sections 961B and 961J of the Corporations Act.
42. Further and in the alternative, by reason of the matters set out in paragraphs 22 to 24, Allianz:
- (a) failed to take reasonable steps to ensure that the Dealers (including MCCPL) complied with sections 961B and 961J of the Corporations Act; and
- (b) in the premises, contravened section 961L of the Corporations Act.
43. By reason of the conduct pleaded in paragraphs 41 and/or 42 (**Allianz Personal Advice Contraventions**) the Plaintiff and Group Members:
- (a) acquired Add-On Insurance Products as aforesaid; and thereby
- (b) suffered loss or damage.

Particulars of loss

- i. Payment by the Plaintiff and Group Members of the Premiums and interest and other charges paid or incurred with respect to those Premiums.*
- ii. In the alternative, the difference between the amount paid by Group Members for the Add-On Insurance products and their true value (if any).*
- iii. Further particulars of loss and damage for the Plaintiff may be provided after discovery. Particulars relating to individual Group Members may be provided after discovery or otherwise as the Court may direct.*

44. Pursuant to section 961M(2)(b) of the Corporations Act, Allianz is liable to pay compensation for any loss or damage suffered by the Plaintiff or Group Members as a result of the Allianz Personal Advice Contraventions.
45. Pursuant to section 961M(4) of the Corporations Act, the Plaintiff and Group Members seek recovery of the profits made by Allianz resulting from the Allianz Personal Advice Contraventions, as part of the damage they suffered.

G. MISLEADING CONDUCT

G.1. Material non-disclosures

46. In the premises where:
 - (a) Allianz was required to comply with the statutory obligations pleaded at paragraphs 13 and 15;
 - (b) customers (including the Plaintiff and Group Members) approached or were likely to approach the Dealers:
 - (i) for the purpose of purchasing the Vehicles; and
 - (ii) not for the purpose of purchasing Add-On Insurance;
 - (c) the Add-On Insurance was or was likely to be offered to customers after the customers had agreed to purchase the Vehicles;
 - (d) each Dealer, in respect of the customer's purchase of Add-On Insurance, dealt with the customer within the Dealer's apparent authority as an authorised representative or agent of Allianz;
 - (e) the customer was requested by the Dealer to provide, and did provide, the Personal Circumstances Information for the purpose of obtaining the Finance; further or alternatively
 - (f) the Dealer represented to the customer, expressly or by implication, that the Add-On Insurance was necessary, or alternatively was recommended, in respect of the customer's Finance;

it was reasonable for customers to expect that Allianz:

- (i) by the Dealers; further or alternatively
- (ii) in Allianz documentation to be provided to customers prior to them making the application for insurance, or prior to the expiry of any cooling-off period in respect of the insurance (being the Allianz product information as defined);

would adequately disclose to customers the Cautionary Matters.

47. At all material times, the Allianz responsible officers ought reasonably to have known that, in the absence of disclosure of the Cautionary Matters, there was a material risk that customers of the Dealers:

- (a) would or might purchase Add-On Insurance based on incomplete information;
- (b) would not or might not be able to make an informed decision as to whether Add-On Insurance was suitable for them;
- (c) would or might purchase Add-On Insurance that was not suitable for them; and
- (d) in the premises – would or might incur costs that:
 - (i) an informed person would not have incurred; and
 - (ii) were not necessary or prudent having regard to the personal financial circumstances of the customers.

48. During the Period:

- (a) the Allianz responsible officers took no or no adequate step to:
 - (i) ensure the Dealers adequately disclosed; further or alternatively
 - (ii) ensure the Allianz product information adequately disclosed;

the Cautionary Matters to customers;

Particulars

The Plaintiff refers to and repeats paragraphs 22 and 23.

- (b) the Allianz responsible officers took no or no adequate step to halt Allianz from continuing to operate the Allianz Sales System; and
- (c) Allianz continued to:
 - (i) operate the Allianz Sales System; and
 - (ii) supply Add-On Insurance products through the Allianz Sales System.

49. In the premises set out in paragraphs 46 to 48, Allianz:

- (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive customers including the Plaintiff and Group Members; and
- (b) in the premises, contravened:
 - (i) section 1041H of the Corporations Act; further or alternatively
 - (ii) section 12DA of the ASIC Act;

(together and severally the **Allianz Misleading Conduct Contraventions**).

G.2. Misleading representations by Dealers as agents for Allianz

50. Further and in the alternative, in the premises set out in paragraphs 32 to 33 and 39 to 40, the Dealers:

- (a) represented to customers including the Plaintiff and Group Members that or to the effect that:
 - (i) there were no Cautionary Matters applicable to the customer that a reasonable person would expect to be disclosed but had not been disclosed; further or alternatively
 - (ii) the Add-On Insurance had material value to the customer, such that a prudent person would rationally purchase the insurance;

(together and severally **False Reassurance Representations**) and

- (b) in the premises in (a) – made a false or misleading representation:
 - (i) in connection with the supply, or possible supply, of financial services, being the sale of the Add-On Insurance products; and

- (ii) concerning the services being of a particular standard, quality or value within the meaning of section 12DB(1)(a) of the ASIC Act.

Particulars

The False Reassurance Representations are to be implied from the conduct of the Dealers described in paragraphs set out in paragraphs 32 to 33 and 39 to 40 inclusive.

- 51. The Dealers, in engaging in the conduct pleaded in paragraph 50 above, engaged in conduct within the scope of their actual or apparent authority as authorised representatives or agents of Allianz, within the meaning of section 12GH(2)(a) of the ASIC Act.
- 52. By reason of the matters pleaded in paragraph 51 above and section 12GH(2) of the ASIC Act, Allianz is taken, for the purposes of Division 2 of the ASIC Act, to have engaged in the conduct pleaded in paragraph 50 above.
- 53. In the premises, Allianz 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 concerning the services being of a particular standard, quality or value within the meaning of section 12DB(1)(a) of the ASIC Act.
- 54. In the premises set out in the preceding paragraph, Allianz contravened section 12DB of the ASIC Act (the **Allianz False Reassurance Contraventions**).

G.3. False or misleading representations – Preconditions Subgroup

- 55. Further and in the alternative, during the Period, the Dealers stated to some of the Group Members (**Preconditions Subgroup**) that or to the effect that the Add-On Insurance was a precondition to the Finance (**False Precondition Representation**).

Particulars

Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

- 56. The Dealers, in engaging in the conduct pleaded in paragraph 55 above, engaged in conduct within the scope of their actual or apparent authority as authorised representatives or agents of Allianz, within the meaning of:

- (a) section 769B(1)(a) of the Corporations Act; and
- (b) section 12GH(2)(a) of the ASIC Act.

57. By reason of the matters pleaded in:

- (a) paragraph 56(a) and s 769B(1) of the Corporations Act, Allianz is taken, for the purposes of Chapter 7 of the Corporations Act, to have made the False Precondition Representation to the Preconditions Subgroup; and
- (b) paragraph 56(b) and section 12GH(2) of the ASIC Act, Allianz is taken, for the purposes of Division 2 of the ASIC Act, to have made the False Precondition Representation to the Preconditions Subgroup.

58. In the premises set out in the preceding paragraph, by making the False Precondition Representation to the Preconditions Subgroup, Allianz in connection with the supply or possible supply of financial services (being the sale of the Add-On Insurance) made a false or misleading representation:

- (a) concerning the need for those services, within the meaning of section 12DB(1)(h) of the ASIC Act (being section 12DB(1)(f) prior to 1 January 2011); further or alternatively
- (b) concerning the services being of a particular quality or value, within the meaning of section 12DB(1)(a) of the ASIC Act.

59. In the premises set out in the preceding paragraph, Allianz contravened:

- (a) section 12DA of the ASIC Act;
- (b) section 12DB of the ASIC Act; further or alternatively
- (c) section 1041H of the Corporations Act

(the **Allianz False Precondition Contraventions**).

G.4. Loss and Damage

60. By reason of:

- (a) the Allianz Misleading Conduct Contraventions,

- (b) the Allianz False Reassurance Contraventions, further or alternatively
- (c) the Allianz False Precondition Contravention,

the Plaintiff and the Group Members:

- (i) acquired Add-On Insurance products as aforesaid; and thereby
- (ii) suffered loss or damage.

Particulars of loss

The Plaintiff refers to and repeats the particulars under paragraph 43 above.

H. UNCONSCIONABLE CONDUCT

61. At all material times, it was the case that:

- (a) Allianz operated, and encouraged Dealers to participate in, the Allianz Sales System;
- (b) the Allianz responsible officers knew or ought reasonably to have known the matters set out in paragraph 47 above;
- (c) the Allianz responsible officers knew or expected, or ought reasonably to have known or expected that:
 - (i) the Dealers appointed as authorised representatives included Dealers of mid- and low-priced Vehicles; and
 - (ii) the Vehicles referred to in (i) were likely to be attractive to buyers on mid- and low incomes;

Particulars

The knowledge is to be inferred from the officers' supervision of the Allianz Sales System including the issuing of authorisations to Dealers trading in used motor vehicles to access the Allianz Platform.

The officers ought reasonably to have known the said matters because Allianz's records relating to:

- a. *the Dealers authorised to use the Allianz Platform; and*
- b. *the Vehicles being purchased by the insureds under the Add-On*

Insurance;

indicated the matters in (c)(i) and (ii).

- (d) the Allianz responsible officers knew or expected, or ought reasonably to have known or expected that the buyers referred to in the preceding paragraph (**Target Customers**) were likely to be, or would include a substantial proportion who were likely to be, persons who:
- (i) were seeking to purchase a moderately-priced Vehicle;
 - (ii) had approached the Dealer –
 - A. for the purpose of purchasing a Vehicle, alternatively a Vehicle and Finance;
 - B. not for the purpose of purchasing Add-On Insurance; and
 - C. without having planned for or investigated Add-On Insurance;

Particulars

- i. The knowledge is to be inferred from the officers' supervision of the training given to Dealers in respect of transactions with customers preceding the sale of Add-On Insurance products, and from regulatory reports into the Add-On Insurance industry including the following reports:*
- A. ACCC, "Consumer Credit Insurance Review, Final Report" dated July 1998 and the CCI reviews identified in Appendix A to that report;*
 - B. ASIC Report 256, "Consumer credit insurance: A review of sales practices by authorised deposit-taking institutions" dated October 2011;*
 - C. ASIC Report 470, "Buying add-on insurance in car yards: Why it can be hard to say no", dated February 2016;*
 - D. ASIC Report 471, "The sale of life insurance through car dealers: Taking consumers for a ride", dated February 2016;*
 - E. ASIC Report 492, "A market that is failing consumers: The sale of add-on insurance through car dealers", dated September 2016; and*
 - F. Productivity Commission Inquiry Report, "Competition in the Australian Financial System", dated 29 June 2018 (see chapter 15),*
- being reports that were widely publicised among the insurers of Add-*

On Insurance.

- ii. *The officers ought reasonably to have known the said matters because of the reports referred to in (i) hereof, which reports were widely publicised in the insurance industry and related to matters within the officers' responsibilities within Allianz.*
 - iii. *Further particulars may be provided following discovery.*
- (e) the Allianz responsible officers knew or expected, or ought reasonably to have known or expected that the Target Customers were likely to be, or would include a substantial proportion who were likely to be:
- (i) unfamiliar with complex insurance products; further or alternatively
 - (ii) unfamiliar with Add-On Insurance;

Particulars

The Plaintiff refers to and repeats the particulars under (d) above.

- (f) the Allianz responsible officers knew or expected, or ought reasonably to have known or expected that the Target Customers were likely to be, or would include a substantial proportion who were likely to be, persons who were invited to purchase Add-On Insurance:
- (i) after having agreed to purchase a Vehicle from the Dealer;
 - (ii) in the premises in (i) – after having made an emotional investment in the purchase of the Vehicle, such that the customer was less likely to abandon the purchase of the Vehicle in the face of the additional cost of Add-On Insurance than if the said insurance had been notified or offered to the customer at an earlier stage of his or her dealings with the Dealer;

Particulars

The Plaintiff refers to and repeats the particulars under (d) above.

- (g) the Allianz responsible officers knew or expected, or ought reasonably to have known or expected that the Target Customers were, by reason of the matters set out in (a) to (f) inclusive above:
- (i) at risk of making decisions based on inaccurate understandings or

incomplete information as to the necessity or effects of Add-On Insurance;

- (ii) at risk of being pressured by Dealers' recommendations, or by the emotional commitment referred to in (f)(ii) above;
- (iii) in the premises in (i) and (ii) – vulnerable to misleading or pressuring conduct from Dealers in relation to Add-On Insurance;

Particulars

The Plaintiff refers to and repeats the particulars under (d) above.

- (h) the bargaining position of the Target Customers and Allianz was grossly unequal in that:
 - (i) the Target Customers had the characteristics at (d) to (g) above; and
 - (ii) Allianz was part of the Allianz Group, being a multinational insurance group with insurance expertise and financial and human resources that far exceeded the expertise or resources of the likely Target Customers;

Particulars

The Plaintiff refers to and repeats the particulars under (d) above.

- (i) the Add-On Insurance products had the features referred to in one or more of paragraphs 12 and 22(d) to (g) above;
- (j) it was not reasonably necessary, in order to protect the legitimate interests of Allianz, for the Add-On Insurance products:
 - (i) to have the features referred to in paragraphs 12 and 22(d) to (g) above;
or
 - (ii) to be sold using sales techniques with the features of the Allianz Sales System;
- (k) Allianz used unfair tactics in offering the Add-On Insurance products to the Target Customers, in that the Allianz responsible officers knew or ought to have known that:

- (i) the Claims Loss Ratio was low, indicating that the Add-On Insurance products may have no or no material value to the Target Customers;
 - (ii) some of the Target Customers were or were likely to be employees and therefore members of superannuation funds, and accordingly, likely to hold insurance that covered some or most of the risks insured by the Add-On Insurance; further or alternatively
- (l) Allianz used unfair tactics in offering the Add-On Insurance products to the Target Customers, in that:
- (i) the Allianz responsible officers knew or expected, or ought reasonably to have known or expected, the matters set out in paragraphs 12 and 22(d) to (g) above;
 - (ii) the Allianz product information reflected the Allianz non-disclosures, and did not include or adequately include the Cautionary Matters;
 - (iii) the Add-On Insurance was or was likely to be offered by Dealers to customers after the customer had agreed to purchase the Vehicle and the Finance.

62. In the circumstances set out in paragraph 61(a) to (l), together and in any combination, Allianz by:

- (a) offering the Add-On Insurance using the Allianz Sales System; and
- (b) supplying Add-On Insurance products through the Allianz Sales System;

engaged in conduct that:

- (i) exploited customers' need for Finance for the purchase of their new Vehicle;
- (ii) exploited customers' likely lack of familiarity with complex insurance products, alternatively Add-On Insurance;
- (iii) exploited customers' likely distraction by, attraction to and excitement about the prospect of making a major purchase, namely the purchase of a new Vehicle;

- (iv) exploited the subtle or innocuous inclusion of an additional and relatively (compared to the price of the Vehicle) minor cost of Add-On Insurance;
- (v) exploited the Allianz Misleading Conduct Contraventions;
- (vi) exploited the Allianz False Reassurance Representations Contraventions;
- (vii) in respect of the Preconditions Subgroup – exploited the Allianz False Precondition Contraventions.

63. In the premises set out in the preceding paragraph, Allianz:

- (a) failed to observe the standards of candid disclosure that customers were entitled to expect from an insurer;
- (b) failed to give priority to the interests of the customers dealing with its authorised representatives or agents in respect of the potential purchase of insurance products;
- (c) exposed the said customers to avoidable costs that were not or were not likely to be in the financial interests of the customers; and
- (d) in the premises – engaged in conduct that was, in some or all of the circumstances described in the two preceding paragraphs, unconscionable within the meaning of section 12CB(1) of the ASIC Act (**Allianz Unconscionable Conduct Contraventions**).

64. By reason of the Allianz Unconscionable Conduct Contraventions the Plaintiff and the Group Members:

- (a) acquired Add-On Insurance products as aforesaid; and thereby
- (b) suffered loss or damage.

Particulars of loss

The Plaintiff refers to and repeats the particulars under paragraph 43 above.

65. The Plaintiff on his own behalf and on behalf of the Group Members claims compensation pursuant to section 12GF(1) and/or 12GM(1) of the ASIC Act.

I. MONEY HAD AND RECEIVED

66. Further or alternatively, by reason of:

- (a) the Allianz Personal Advice Contraventions;
- (b) the Allianz Misleading Conduct Contraventions;
- (c) the Allianz False Reassurance Contraventions; further or alternatively
- (d) for the Preconditions Subgroup – the Allianz False Precondition Contraventions;

the Plaintiff and Group Members (or the Preconditions Subgroup as the case may be) were not at any stage prior to purchasing the Add-On Insurance informed, sufficiently or at all, of one or more of the following matters:

- (i) that they had purchased the Add-On Insurance;
- (ii) that it was not a precondition to Finance that they purchase the Add-On Insurance;
- (iii) that the Add-On Insurance had no or no material financial value; further or alternatively
- (iv) that the Add-On Insurance products were not suitable for the Plaintiff and Group Members.

67. Prior to purchasing the Add-On Insurance products, the Plaintiff and Group Members did not know one or more of the matters pleaded in paragraph 66 above.

68. Each of the matters pleaded in paragraph 66 constituted material information that was relevant to the decision of the Plaintiff and Group Members whether to:

- (a) proceed with the entry into the Finance on terms which included financing the Add-On Insurance products; and/or
- (b) purchase the Add-On Insurance products.

69. By reason of the matters pleaded in paragraphs 66 to 68, the Plaintiff and Group Members purchased the Add-On Insurance products, and thereafter paid the Premiums, because of one or more of the following mistaken beliefs:

- (a) that they had not purchased the Add-On Insurance products;
- (b) that it was a precondition to Finance that they purchase the Add-On Insurance products;
- (c) that the Add-On Insurance products had material financial value; further or alternatively
- (d) that the Add-On Insurance products were suitable for them.

70. The Group Members did not on a day prior to:

- (a) in the case of NT Claimants – three years prior to the commencement of this proceeding;
- (b) in the case of General Claimants – six years prior to the commencement of this proceeding;

discover, and could not with reasonable diligence have discovered, the mistake as pleaded paragraph 69.

71. By reason of the Contraventions pleaded in paragraph 66, Allianz:

- (a) induced the matters pleaded in paragraphs 66, 67, 69, and/or 70 above;
- (b) concealed the matters pleaded in paragraph 66 above;
- (c) further or alternatively:
 - (i) was aware that circumstances existed which indicated that the Plaintiff and mistaken Group Members were acquiring their respective policies under the mistaken beliefs; and
 - (ii) chose to leave the Plaintiff and the mistaken Group Members under the mistaken beliefs in acquiring or agreeing to be issued with their respective policies.

72. By reason of the matters pleaded in paragraphs 69 and 71 above:

- (a) the Plaintiff and the Group Members are entitled, at their election, to rescind the contracts for the acquisition of the Add-On Insurance products;
- (b) the contracts for the acquisition of the Add-On Insurance products are void;

further or alternatively,

(c) the terms of the said contracts requiring payment of the Premiums are void.

73. By reason of the matters pleaded in paragraphs 66 to 71 and/or 72:

(a) Allianz has been unjustly enriched by the receipt of the Premiums at the expense of the Plaintiff and the Group Members; and

(b) it would be unconscionable for Allianz to retain the Premiums.

74. By reason of the matters pleaded in paragraphs 66 to 71 and/or 72, the Premiums are monies had and received by the Allianz to the use of the Plaintiff and the Group Members, and Allianz is obliged to repay those sums to the Plaintiff and the Group Members.

J. COMMON QUESTIONS OF LAW OR FACT

75. The questions of law or fact common to the claims of the Plaintiff and the Group Members are:

(the Regulatory regime)

(a) Was Allianz required to comply with the statutory obligations set out in paragraphs 13 and/or 15 in respect of supplies of Add-On Insurance by it or by the Dealers?

(the Add-On Insurance products)

(b) Did the Add-On Insurance have the features pleaded in paragraph 12(a) and 12(b)?

(c) Did some of the elements of the cover provided by CCI overlap with cover provided by other insurance products, namely income protection insurance, trauma and death insurance, and/or total and permanent disability insurance?

(d) Did the cover provided by Motor Equity Insurance overlap with other insurance products, namely comprehensive vehicle insurance with new for old replacement?

- (e) Was the cover provided by the Extended Motor Warranty unnecessary, or potentially unnecessary, for Group Members, given the provisions of the TPA, or after 1 January 2011, the ACL?
- (f) What if any features of the Extended Motor Warranty 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?
- (g) Did any one or more (and if so, which) of the Add-On Insurance products have no, or no material, financial value to persons in the position of the Plaintiff and Group Members?

(Allianz Sales System)

- (h) Did Allianz operate a system for the sale of Add-On Insurance products with any or all of the features pleaded at paragraphs 16 to 24?

(Allianz Personal Advice Contraventions)

- (i) Did Allianz by the conduct alleged contravene section 961L of the Corporations Act?
- (j) In relation to Dealers:
 - (i) Did conduct by a Dealer as alleged in paragraphs 28, 29, 32, 33, 37, 38 to 40 above contravene sections 961B and 961J of the Corporations Act?
 - (ii) Is Allianz by reason of the conduct alleged liable pursuant to section 961M(2)(b) of the Corporations Act for Dealers' contraventions of sections 961B and 961J of the Corporations Act?
- (k) What if any profits did Allianz make as result of the Allianz Personal Advice Contraventions?

(Allianz Misleading Conduct Contraventions)

- (l) Did any one or more of the matters in paragraph 22 constitute material information about the Add-On Insurance products that:
 - (i) was relevant to the decision of the Plaintiff and Group Members about

whether to proceed with the purchase of the Add-On Insurance products;
and

- (ii) 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 46 and 47?
- (m) 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 section 1041H(1) of the Corporations Act?
- (n) Did Allianz engage in misleading or deceptive conduct or conduct that was likely to mislead or deceive in contravention of section 12DB of the ASIC Act?

(Allianz False Reassurance Contraventions)

- (o) If a Dealer made the False Reassurance Representation, did the Dealer or Allianz contravene:
 - (i) section 12DB of the ASIC Act?
 - (ii) section 12DA of the ASIC Act?
 - (iii) section 1041H of the Corporations Act?

(Allianz False Precondition Contraventions)

- (p) If a Dealer made the False Precondition Representation, did the Dealer or Allianz contravene section 12DB of the ASIC Act?

(Unconscionable Conduct Contraventions)

- (q) Did Allianz by any or all of the conduct pleaded at paragraph 61 engage in unconscionable conduct in contravention of section 12CB(1) of the ASIC Act?

(Mistake/unjust enrichment)

- (r) Did any one or more of more of the beliefs pleaded at paragraph 69 amount to a mistake on the part of the Plaintiff or any Group Member holding the beliefs while purchasing Add-On Insurance?

- (s) Did Allianz:
 - (i) induce the matters pleaded in paragraphs 66, 67, 69, and/or 70 above?
 - (ii) conceal the matters pleaded in paragraph 66 above?
- (t) Was Allianz aware that circumstances existed which indicated that the Plaintiff and mistaken Group Members were acquiring their respective policies under the mistaken beliefs?
- (u) Did Allianz choose to leave the Plaintiff and the mistaken Group Members under the mistaken beliefs in acquiring or agreeing to be issued with their respective policies?
- (v) If yes to any of (r) to (u):
 - (i) are the Plaintiff and mistaken Group Members entitled, at their election, to rescind the contracts for the acquisition of the Add-On Insurance products?
 - (ii) are the contracts for the acquisition of the Add-On Insurance products void?
 - (iii) are the terms of the said contracts requiring payment of the Premiums void?
- (w) Are the Premiums monies had and received by Allianz to the use of the Plaintiff and the Group Members, and is Allianz obliged to repay those sums to the Plaintiff and the Group Members?

(Loss and Damage)

- (x) 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?
- (y) What if any profits did Allianz make as result of the Personal Advice Contraventions which can be recovered by the Plaintiff and Group Members pursuant to section 961M(4) of the Corporations Act?

K. RELIEF

76. The Plaintiff claims on his own behalf and on behalf of the Group Members:

- (a) An order under section 48 of the *Limitation of Actions Act 1936* (SA) that any Group Member who has a claim for monies had and received by the Defendant 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) An order under section 38 of the *Limitation of Actions Act 2005* (WA) that any Group Member who has a claim for monies had and received by the Defendant to the use of the Group Member, that is governed by the law of Western 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.
- (c) Damages and/or compensation pursuant to:
 - (i) section 12GF(1) and 12GM(1) of the ASIC Act, alternatively
 - (ii) sections 991A(2) and 1041I(1) of the Corporations Act.
- (d) Compensation for the damage suffered pursuant to section 961M(2) and (4) of the Corporations Act (including profits resulting from Allianz's contraventions).
- (e) In respect of the claims in mistake:
 - (i) A declaration that the Plaintiff and mistaken Group Members are entitled, at their individual election, to rescission of the contracts for the Add-On Insurance products; further or alternatively
 - (ii) Judgment in the full amount of the Premiums mistakenly paid for the Add-On Insurance products.
- (f) Judgment pursuant to section 33Z(1) of the SC Act.
- (g) Interest.
- (h) Costs.

- (i) Pursuant to section 33ZJ of the SC Act, an order that the Group Members reimburse the Plaintiff, in such proportions as the Court may deem appropriate, any costs incurred by the Plaintiff and not recovered pursuant to (h) hereof.
- (j) Such further order as the Court may deem appropriate.

Dated: 11 November 2020

L W L Armstrong

R Francois

D J Fahey

Maurice Blackburn Lawyers

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Maurice Blackburn Lawyers

Solicitors for the Plaintiff