



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

Case: S ECI 2020 04789

Filed on: 21/04/2022 12:17 PM

S ECI 2020 04789

BETWEEN

BEECHAM MOTORS PTY LTD (ACN 010 580 551)

Plaintiff

and

GENERAL MOTORS HOLDEN AUSTRALIA NSC PTY LTD (ACN 603 486 933)

Defendant

**DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR FURTHER AND
BETTER PARTICULARS DATED 22 MARCH 2022**

Date of document: 21 April 2022
Filed on behalf of: the defendant
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The defendant provides the following further particulars of its defence in response to the plaintiff's request dated 22 March 2022.

1. Paragraph 11(b)

The alleged Business Efficacy Implied Term is contrary to the contractual scheme in the Agreement and the express terms of the Agreement in clauses 9.1(g), 10.4(d) and 24.

2. Paragraph 11C

Paragraph 11C denies that the alleged Custom Implied Term forms part of the Agreement, on the basis of the denial in paragraph 11A, and also for the reason pleaded in paragraph 11(b).

3. Paragraph 27(a)

The sums of compensation offered to the plaintiff and each Group Member (collectively, **Dealers**) are set out in the table below.

Group Member	Offer
Beecham Motors Pty Ltd (ACN 010 580 551) trading as Beecham Holden	\$843,750.00
Gaukroger Sales Pty Ltd (ACN 001 601 565) trading as Gaukroger Sales Holden	\$296,516.00
ERNBRO Pty Ltd (ACN 092 274 238) trading as Island Coast Holden	\$294,856.00
Nobes Motor Company Pty Ltd (ACN 609 550 576) trading as Swan Hill Holden	\$330,000.00
Heartland Motors Pty Ltd (ACN 096 561 385) trading as Heartland Holden Blacktown	\$1,346,250.00
Heartland Motors Pty Ltd (ACN 096 561 385) trading as Heartland Holden Penrith	\$1,035,000.00
Mid North Motor Company Pty Ltd (ACN 008 193 753) trading as Mid North Motor Company	\$161,250.00
Spencer Motors Pty Ltd (ACN 007 783 593) trading as Spencer Holden	\$187,500.00
City Motors (Port Lincoln) Pty Ltd (ACN 008 017 052) trading as City Motors	\$292,563.00
Silver City Motors Pty Ltd (ACN 127 505 855) trading as Silver City Holden	\$206,250.00
Augusta Motor Company Pty Ltd (ACN 008 172 629) trading as Port Augusta Holden	\$191,250.00

The offers made by the defendant to each of the Dealers comprised the following elements (if applicable):

- (a) an amount to compensate for the loss of profits from the sale of new vehicles, calculated by multiplying the Dealers' 2019 annual Holden new vehicle total sales volume amount by A\$1,500 per vehicle and then by 2.5, being the number of years until expiry of the Agreement and each of the Group Member Agreements on 31 December 2022;

- (b) 50% reimbursement of the unamortised portion of any approved major renovation or new build of any Holden new car facility from 1 April 2015 to 31 March 2020 (based on a 5 year straight line depreciation); and
- (c) a further amount to reflect any special circumstances unique to an individual Dealer that the defendant accepted as relevant.

B. Paragraph 27(b)

The allegation in this subparagraph is made on the basis that, while the defendant denies that the plaintiff or any Group Member has suffered loss by reason of any breach by the defendant of any express or implied term in the Agreement and Group Member Agreements, the offers made to the plaintiff and each Group Member were genuine estimates of any losses the plaintiff and each Group Member may have suffered.

C. Paragraph 27(d)

The total amounts of the liquidation allowances provided to the plaintiff and each Group Member are set out in the table below.

Group Member	Amount
Beecham Motors Pty Ltd (ACN 010 580 551) trading as Beecham Holden	\$1,074,999.86
Gaukroger Sales Pty Ltd (ACN 001 601 565) trading as Gaukroger Sales Holden	\$501,363.51
ERNBRO Pty Ltd (ACN 092 274 238) trading as Island Coast Holden	\$376,136.34
Nobes Motor Company Pty Ltd (ACN 609 550 576) trading as Swan Hill Holden	\$234,545.29
Heartland Motors Pty Ltd (ACN 096 561 385) trading as Heartland Holden Blacktown	\$621,590.86
Heartland Motors Pty Ltd (ACN 096 561 385) trading as Heartland Holden Penrith	\$570,454.47
Mid North Motor Company Pty Ltd (ACN 008 193 753) trading as Mid North Motor Company	\$270,454.50
Spencer Motors Pty Ltd (ACN 007 783 593) trading as Spencer Holden	\$289,999.90

Group Member	Amount
City Motors (Port Lincoln) Pty Ltd (ACN 008 017 052) trading as City Motors	\$388,636.35
Silver City Motors Pty Ltd (ACN 127 505 855) trading as Silver City Holden	\$283,409.07
Augusta Motor Company Pty Ltd (ACN 008 172 629) trading as Port Augusta Holden	\$243,409.05

The basis of the calculation of the liquidation allowances set out in the above table is explained in the document described in the particulars subjoined to paragraph 20(b) of the defence, which may be inspected at the offices of the solicitors for the defendant by prior appointment.

Dated: 21 April 2022


 Norton Rose Fulbright Australia
 Solicitors for the defendants