



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

COMMERCIAL COURT
GENERAL COMMERCIAL LIST

Case: S ECI 2020 02588

Filed on: 11/08/2022 02:31 PM

No. S ECI 2020 02588

B E T W E E N

Lynden and Geoffrey Iddles

Plaintiffs

-and-

**Fonterra Australia Pty Ltd (ABN 52 006 483 665)
& Ors according to the Schedule**

Defendants

FURTHER PARTICULARS TO THE AMENDED DEFENCE DATED 16 JUNE 2022

Date of document: 11 August 2022

Filed on behalf of: the Defendants

Prepared by:

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

Level 21

333 Collins Street

MELBOURNE 3000

Solicitor's Code: 54

Tel: 9229 9999

Fax: 9229 9900

Ref: 011914207

(Matthew Lees - mlees@abl.com.au)

In response to the Plaintiffs' Request for Further and Better Particulars dated 11 July 2022, the Defendants provide the following particulars to the Amended Defence dated 16 June 2022:

4 As to paragraph 4.51:

4.1 the \$5.66 kg/MS pleaded in (a), should say \$5.65 kg/MS. That figure is the sum of:

4.1.1 \$5.13 kg/MS, being the reported final farmgate milk price paid by Fonterra for the 2015/16 Season (not including the Autumn Offset Payments or the Additional 40c Payments) and calculated in FON.071.003.0001 in cell AE1247 in the worksheet "FA ByFarm POLO" (assuming payments made in accordance with the base rates under the Handbook, not any special incentives for particular suppliers, and applying volume charges and quality incentives with no quality deductions);

- 4.1.2 approximately \$0.22 kg/MS, being total Autumn Offset Payments of \$26,443,490.50 (being the sum of \$8,946,103.25 for “Autumn Offset Fat” and \$17,497,387.25 for “Autumn Offset Protein” as calculated in cells B11 and B12 of the worksheet “Sheet2” of FON.071.003.0132) divided by the total quantity of milk solids supplied to Fonterra in the 2015/16 Season of 118,044,885 kg (being the sum of 65,125,625 kg of fat and 52,919,260 kg of protein, as recorded in cell N1091 (with the applicable pivot table fields) in FON.071.002.0010); and
- 4.1.3 at least \$0.30 kg/MS being Additional 40c Payments of \$35,330,839.57 as pleaded in paragraph 4.65 (comprising Additional 40c Payments (excluding Retirement Payments) to Group Members of \$33,488,806.34,¹ being the sum of the amounts set out in columns Q and R in FON.071.002.0001, and Retirement Payments of \$1,842,033.23, being the sum of the amounts in column M of the worksheet “Retirement Pmt” in FON.071.003.0010) divided by the total quantity of milk solids supplied to Fonterra in the 2015/16 Season of 118,044,885 kg (as referred to in paragraph 4.1.2 above);
- 4.2 the \$5.36 kg/MS pleaded in (b), should say \$5.35 kg/MS. That figure is the sum of the \$5.13 kg/MS referred to in paragraph 4.1.1 above and the \$0.22 kg/MS referred to in paragraph 4.1.2 above;
- 4.3 the \$5.13 kg/MS pleaded in (c) is the same figure referred to in paragraph 4.1.1 above.
- 5 As to paragraph 4.56:
- 5.1 the \$2.50 kg/MS pleaded was the amount of the Autumn Offset Payments (comprising \$1.50 kg/MS for fat and \$3.76 kg/MS for protein) as set out in the announcements referred to in paragraph 4.56 and the particulars thereto;
- 5.2 the Autumn Offset Payments were paid to eligible Farmers on the dates the July and August 2016 milk pay fell due, being on or about 15 August 2016 and 15 September 2016, respectively;

¹ Further to paragraph 4.1.3, the total Additional 40c Payments (excluding Retirement Payments) to Group Members and Non-Group Members was \$35,387.293.86 (calculated in cell D822 of the worksheet “Sheet3” in FON.071.003.0460. The difference between that figure and the \$33,488,806.34 referred to in paragraph 4.1.3 represents an additional \$0.02 kg/MS.

- 5.2.1 the conditions for receipt of the payments were announced on 13 May 2016 [FON.200.003.0008]:
- 5.2.1.1 payments were available to all Farmers who supplied milk to the Defendants in May and June 2016;
 - 5.2.1.2 eligibility was restricted to existing Farmers who supply milk to the Defendants in those months, and new suppliers were not eligible to receive the payments;
 - 5.2.1.3 in order to receive the payments, Farmers must have been supplying the Defendants on the dates the July and August 2016 milk pay fell due, being on or about the 15th of the following month;
- 5.2.2 Farmers who ceased to supply Fonterra prior to the payments being made were not eligible by reason of the condition in paragraph 5.2.1.3 above;
- 5.2.3 as to Autumn Offset Payments made to Farmers supplying the Defendants on or before 5 May 2016:
- 5.2.3.1 such group of persons includes Group Members;
 - 5.2.3.2 the number of suppliers who received Autumn Offset Payments was approximately 1,008 (as listed in FON.071.003.0132);
 - 5.2.3.3 the amount of the aggregate Autumn Offset Payments made was \$26,443,490.50 (as referred to in paragraph 4.1.2 above);
- 5.2.4 the Defendants are not aware of any Farmers who received the Autumn Offset Payments who do not fall within the description in paragraph 5.2.3 above;
- 5.2.5 the Autumn Offset Payments were calculated based upon the volume(s) of milk supplied by eligible Farmers between 5 May 2016 and 30 June 2016;
- 5.2.6 the Autumn Offset Payments were included in the Defendants' weighted average FMP for the 2016/17 season, including in the calculation of the final closing weighted average FMP for 2016/17 of \$5.19 kg/MS in FON.071.003.0166 in cells AH1284 in the worksheet "FA ByFarm POLO";

5.2.7 the Defendants refer to paragraph 5.2.6 above;

5.2.8 the amount paid for the Autumn Offset Payments contributed 23.8 cents kg/MS to the calculation of the final closing weighted average FMP for 2016/17 in FON.071.003.0166 in cells AH1286 and AH1288 in the worksheet “FA ByFarm POLO”;

5.2.9 the Defendants refer to paragraph 5.2.6 above;

5.2.10 the Defendants refer to paragraph 5.2.6 above. The Defendants’ final closing weighted average FMP calculated for 2016/17, less the contribution calculated for Autumn Offset Payments, was \$4.96 kg/MS, which was not less than Murray Goulburn’s milk price for 2016/17 of \$4.95 kg/MS.

6 As to paragraph 4.61, the Defendants refer to:

6.1 paragraph 236 of Mr Conway’s statement and the documents referred to therein; and

6.2 paragraph 241 of Mr Watt’s statement and the documents referred to therein.

7 As to paragraph 4.63:

7.1 The Defendants object to paragraph 7.1 of the Plaintiffs’ request for further particulars, which is in the nature of an interrogatory.

Under cover of this objection, the Defendants refer to:

7.1.1 paragraphs 229 to 240 of Mr Watt’s statement and the documents referred to therein;

7.1.2 paragraphs 216 to 249 of Mr Conway’s statement and the documents referred to therein; and

7.1.3 paragraphs 66 to 81 of Mr Cronin’s statement and the documents referred to therein.

7.2 The Defendants object to paragraph 7.1 of the Plaintiffs’ request for further particulars, which is in the nature of an interrogatory.

Under cover of this objection, the Defendants refer to paragraph 234 of Mr Watt's statement and the documents referred to therein;

7.3 the Defendants refer to paragraph 7.1 above.

8 As to paragraph 4.64:

8.1 the \$54,120,803.58 comprises the Additional 40c Payments made by Fonterra to suppliers who supplied Fonterra during the 2017/18 Season as calculated in FON.071.003.0011, being the sum of the amounts in columns Q and R;

8.2 the \$1,842,033.23 is the same figure as referred to in paragraph 4.1.3 above.

9 As to paragraph 4.64, the Additional 40c Payment was not included in:

9.1 the Defendants' 2017/18 weighted average FMP; or

9.2 the weighted average FMP of the Defendants which was used to compare with Murray Goulburn's milk price for the 2017/18 season for the purposes of the MSAA Benchmark Price Term.

10 As to paragraph 4.65:

10.1 the \$35,330,839.23 comprises the same figure referred to in paragraph 4.1.3 above;²

10.2 the \$33,488,806 comprises the same figure referred to in paragraph 4.1.3 above.

11 As to paragraph 4.65, the suppliers who supplied Fonterra in the 2015/16 season include Group Members as well as other suppliers who have opted out of the Group, as identified in FON.071.002.0012.

12 As to paragraph 14.1(g):

12.1 the \$0.23 kg/MS pleaded in sub-paragraph (i) should say \$0.22 kg/MS. That figure is the \$0.22 kg/MS referred to in paragraph 4.1.2 above;

² Further, for the reasons explained in footnote 1 above, the total amount of the Additional 40c Payments made by Fonterra to suppliers who supplied Fonterra in the 2015/16 season was \$37,229,327.09 (being the sum of the \$35,387,293.86 and the \$1,842,033.23 referred to in footnote 1 above and paragraph 4.1.3 above respectively).

- 12.2 the \$0.30 kg/MS pleaded in sub-paragraph (ii) is the \$0.30 kg/MS referred to in paragraph 4.1.3 above;
- 12.3 the Defendants otherwise refer to paragraph 4.65 of the Amended Defence and the further particulars in paragraphs 10 and 11 above.
- 13 As to paragraph 15(b)(ii):
- 13.1 the \$4.41 kg/MS pleaded comprises the \$1.91 kg/MS price paid by the Defendants from 5 May 2016 to 30 June 2016 plus the additional \$2.50 kg/MS Autumn Offset Payments referred to in paragraph 5.1 above;
- 13.2 the \$2.66 kg/MS for fat pleaded comprises the \$1.16 kg/MS price paid for fat by the Defendants from 5 May 2016 to 30 June 2016 plus the additional \$1.50 kg/MS for fat as part of the Autumn Offset Payments referred to in paragraph 5.1 above;
- 13.3 the \$6.65 kg/MS for protein pleaded comprises the \$2.89 kg/MS price paid for protein by the Defendants from 5 May 2016 to 30 June 2016 plus the additional \$3.76 kg/MS for protein as part of the Autumn Offset Payments referred to in paragraph 5.1 above.
- 14 As to paragraph 21(c), the Defendants do not press any claim to set off accrued interest owing by the Plaintiffs to the Defendants arising from the Plaintiffs' Support Loan against any loss and damage found to have been suffered by the Plaintiffs in this proceeding.
- 15 As to paragraph 34(b)(iii):
- 15.1 the outstanding balance of the Support Loan, taking into account all repayments to date, is the amount of \$115,582.92 pleaded in paragraph 4.67 of the Amended Defence;
- 15.2 the Defendants otherwise do not press any claim to set off or otherwise calculate any loss and damage suffered by the Plaintiffs in this proceeding taking into account any accrued interest owing by the Plaintiffs to the Defendants arising from the Plaintiffs' Support Loan.

11 August 2022

A handwritten signature in blue ink, appearing to read "Arnold Bloch Leibler".

.....

Arnold Bloch Leibler

Solicitors for the Defendants