



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

Case: S ECI 2020 02853
Filed on: 14/10/2022 04:00 PM

No. S ECI 2020 02853

BETWEEN

TRACY-ANN FULLER and another

Plaintiffs

(according to the attached Schedule)

and

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

Defendants

(according to the attached Schedule)

AMENDED REPLY

(Filed pursuant to the orders of Justice Nichols made on 21 September 2022)

Date of Document: ~~7 December 2021~~ 14 October 2022

Filed on behalf of: The Plaintiffs

Prepared by: Joint Lawyers for the Plaintiffs

Johnson Winter & Slattery
Level 34, 55 Collins Street
MELBOURNE VIC 3000
Email: paul.buitendag@jws.com.au

Solicitors Code: 40411
DX: N/A
Tel: (03) 8611 1333
Ref: C6228

Maurice Blackburn Pty Limited
Level 21, 380 La Trobe Street St
Melbourne VIC 3000
Email: awatson@mauriceblackburn.com.au

Solicitors Code: 564
DX: N/A
Telephone: (03) 9605 2700
Ref: 3052948/AJW

-
1. The Plaintiffs join issue with the allegations in the Defence to the Amended Consolidated Statement of Claim (ACSOC), filed on ~~16 November 2021~~ 30 September 2022 (Defence), save insofar as the same consists of admissions, or are the subject of specific comment in this Amended Reply. Unless otherwise indicated, defined terms used in this Amended Reply have the meaning given in the ACSOC and Defence.
 2. In reply to paragraph 16 of the Defence, the Plaintiffs:
 - a. admit sub-paragraph (a) with respect to the Plaintiffs' AOIPs but otherwise do not admit the sub-paragraph;
 - b. admit sub-paragraph (b) with respect to the Loan Insurance purchased by the First

Plaintiff but otherwise do not admit the sub-paragraph; and

- c. admit sub-paragraph (c) with respect to the Loan Insurance purchased by the Second Plaintiff but otherwise do not admit the sub-paragraph.

3. In reply to paragraph 26 of the Defence, the Plaintiffs:

- a. admit sub-paragraph (a);
- b. in response to sub-paragraph (b):
 - i. say that from June 2006 to 30 June 2014, the General Insurance Code of Practice (as in force at the time) did not provide a customer, or anyone else, with any legal entitlement or right of action against the First Defendant other than that a customer may ask an insurer to address a matter, a customer may report his or her concerns to the Financial Ombudsman Service and/or a customer may access an insurer's complaints handling procedures under Section 6 of the General Insurance Code of Practice; and
 - ii. otherwise do not admit the sub-paragraph; and
- c. admit sub-paragraphs (c) to (e).

4. In reply to paragraph 28 of the Defence, the Plaintiffs:

- a. admit sub-paragraphs (b) to (g); and
- b. in response to sub-paragraph (h):
 - i. say that the matters pleaded in that sub-paragraph of the Defence is not a complete statement of the matters contained in clause 5.1 of the 2014 GICOP; and
 - ii. otherwise admit the sub-paragraph; and
- c. rely upon the clauses of the General Insurance Code of Practice as pleaded at sub-paragraphs (b) to (h) as if set out in full herein.

5. In reply to paragraph 42 of the Defence, the Plaintiffs admit sub-paragraph (b) but say that Dealers who obtained personal financial information from a customer in the course of arranging Finance thereby acquired knowledge which is properly attributable to them in their capacity as authorised representatives of Allianz, and thereby, to Allianz.

6. In reply to paragraph 45 of the Defence, the Plaintiffs admit sub-paragraph (a).
7. In reply to paragraph 47 of the Defence, the Plaintiffs:
 - a. in response to sub-paragraph (a):
 - i. admit that the First Plaintiff attended the Vehicle dealership operated by Lansvale Holden on 14 December 2015; and
 - ii. repeat paragraph 47(a) of the [ACSOC](#) but otherwise do not admit the sub-paragraph;
 - b. admit sub-paragraphs (b), (c) and (e); and
 - c. in response to sub-paragraph 47(d):
 - i. admit that the First Plaintiff requested that Lansvale Holden arrange a loan to facilitate the purchase of the Holden Trax LTZ;
 - ii. admit that the First Plaintiff entered into a loan agreement with St George Bank, being a division of Westpac Banking Corporation, on 14 December 2015; and
 - iii. otherwise deny the allegation in the sub-paragraph.
8. In reply to sub-paragraph 48(b)(ii) of the Defence, the Plaintiffs admit that the Fuller Loan Agreement Details recorded, amongst other things, the matters pleaded at paragraph 48(b)(ii)(A) to (E) of the Defence.
9. In reply to paragraph 49 of the Defence, the Plaintiffs:
 - a. in response to sub-paragraph (b):
 - i. do not admit sub-paragraphs (i), (ii) and (iv);
 - ii. admit sub-paragraph (iii) (but for the avoidance of doubt, do not admit that the steps referred to were in fact taken); and
 - iii. as to sub-paragraph (v):
 1. admit that the First Plaintiff's Loan Insurance Product Disclosure Statement and Policy Document contained the statements set out in paragraph 49(b)(v)(A) and (B) of the Defence;

Particulars

The Plaintiff's Loan Insurance Product Disclosure Statement and Policy Document, preparation date 1 October 2015.

2. say that the First Plaintiff was not provided with the Loan Insurance Product Disclosure Statement and Policy Document until 14 December 2015, after she signed the contractual documentation.

10. In reply to paragraph 50 of the Defence, the Plaintiffs:
 - a. admit sub-paragraph (b)(i);
 - b. in response to sub-paragraph (e):
 - i. admit that the First Plaintiff signed the document headed 'Finance Application' which contained the matters set out in sub-paragraph (i) and the statement set out in sub-paragraph 50(e)(ii) of the Defence;
 - ii. say that she was not given sufficient opportunity to review and consider the 'Finance Application' before signing it;
 - iii. refer to and repeat paragraph 78(g) of the [ACSOC](#);

Particulars

Finance Application – St George Bank, dated 14 December 2015.

- iv. otherwise do not admit the sub-paragraph;
- c. in response to sub-paragraph (f):
 - i. as to sub-paragraph (ii):
 1. admit that the First Plaintiff signed the Customer Compliance Declaration which bears the date of 12 December 2015 which confirmed that the FSG and PDS had been either read or provided to her (but for the avoidance of doubt, do not admit that the FSG or the PDS had in fact been read or provided to the First Plaintiff at the time that she signed that document and do not admit that the First Plaintiff did in fact sign the Customer Compliance Declaration on 12 December 2015); and
 2. refer to and repeat paragraph 9(a)(iii)(2) above;

- ii. admit sub-paragraph (iii), but say further that:
 1. the loan agreement signed by the First Plaintiff contained the following statement “*However, if this contract document says so, you must take out insurance over any secured property that is used as collateral such as a house or car*”; and
 2. the phrase “consumer credit insurance” was not defined in the loan agreement;
 - iii. admit sub-paragraph (iv) but refer to and repeat paragraph 9(a)(iii)(2) above;
 - iv. as to sub-paragraph (v):
 1. say that the First Plaintiff was not provided with the Tyre and Rim Insurance Product Disclosure Statement and Policy Document until 14 December 2015, after she signed the contractual documentation; and
 2. otherwise admit the sub-paragraph;
 - v. as to sub-paragraph (vi):
 1. say that the First Plaintiff was not provided with the Motor Equity Insurance Product Disclosure Statement and Policy Document until 14 December 2015, after she signed the contractual documentation; and
 2. otherwise admit the sub-paragraph.
11. In reply to paragraph 51 of the Defence, the Plaintiffs admit sub-paragraphs (b), (c), (e)(i) and (f).
 12. In reply to paragraph 54 of the Defence, the Plaintiffs admit sub-paragraph (a).
 13. In reply to paragraph 56(b) of the Defence, the Plaintiffs:
 - a. admit that the Second Plaintiff requested that MCCPL arrange a loan to finance the purchase of the Falcon;
 - b. admit that the Second Plaintiff entered into a loan agreement with Australia and New Zealand Banking Group Limited, trading as Esanda (Australian Credit Licence Number 234527); [and](#)

~~say that the Second Plaintiff's loan agreement did not contain the purchase of "Mechanical Breakdown Insurance";~~

~~e. say that the Second Plaintiff's loan agreement also provided for the purchase of Shortfall Insurance (otherwise known as Motor Equity Insurance); and~~

~~d.c.~~ otherwise deny the sub-paragraph.

14. In reply to paragraph 58, the Plaintiffs:

a. refer to and repeat paragraph 13 above;

b. in response to sub-paragraph (e):

i. as to sub-paragraph (i):

1. admit that the Second Plaintiff signed the Cheapest Cars Customer Declaration;

2. say that the Second Plaintiff was not given sufficient opportunity to review and consider the Cheapest Cars Customer Declaration before signing it; and

3. say further that the Extended Warranty Insurance product was circled in the Cheapest Cars Customer Declaration, despite that product not being included in the Second Plaintiff's loan agreement;

ii. admit sub-paragraph (ii) but say that the Second Plaintiff was not given sufficient opportunity to review and consider the loan agreement before signing it;

iii. admit sub-paragraph (iii), but say further that:

1. the loan agreement signed by the Second Plaintiff contained the following statement "*However, if this contract document says so, you must take out insurance over any mortgaged property that is used as security, such as a house or car*"; and

2. the phrase "consumer credit insurance" was not defined in the loan agreement; and

3. the Second Plaintiff was not given sufficient opportunity to review and consider the loan agreement before signing it.

15. In reply to paragraph 59 of the Defence, the Plaintiffs admit sub-paragraphs (a) and (b).
16. In reply to paragraph 60 of the Defence, the Plaintiffs:
 - a. in response to sub-paragraph (c):
 - i. as to sub-paragraphs (i) and (ii), admit the sub-paragraphs but refer to and repeat paragraph 14(b)(i) above;
 - ii. as to sub-paragraphs (iii) to (v):
 1. admit that the LPI PDS, MEI PDS and FSG contained the statements set out in sub-paragraphs (iii) to (v);
 2. say that the Second Plaintiff was not provided with the LPI PDS, the MEI PDS and/or the FSG; and
 3. say that, in the alternative to (2), in the event that the Second Plaintiff was provided with the LPI PDS, the MEI PDS and/or the FSG, the Second Plaintiff was not given sufficient opportunity to review and consider those documents before entering into his loan agreement.
17. In reply to sub-paragraph 68(c)(v)(A) of the Defence, the Plaintiffs admit the allegation in the subparagraph but refer to and repeat paragraphs 9(a)(iii)(2), 10(c)(iv)(1), 10(c)(v)(1) and 16(a)(ii)(2) and (3) above.
18. In reply to paragraph 75 of the Defence, the Plaintiffs:
 - a. in response to paragraph 75(g)(iii):
 - i. admit that the First Plaintiff's Loan Insurance Product Disclosure Statement and Policy Document contained the statements set out in paragraph 75(g)(iii) of the Defence;

Particulars

- i. The First Plaintiff's Loan Insurance Product Disclosure Statement and Policy Document, preparation date 1 October 2015.
- ii. refer to and repeat paragraph 9(a)(iii)(2) above; and
- iii. do not admit sub-paragraph 75(g)(iii) with respect to Group Members;

- b. In response to paragraph 75(g)(iv):
 - i. admit that the PDS in respect of the Second Plaintiff's Loan Insurance policy for which OnePath Life was the issuer of the Death and Trauma component contained the statements set out in paragraph 75(g)(iv) of the Defence;
 - ii. refer to and repeat paragraph 16(a)(ii)(2) and (3) above; and
 - iii. do not admit sub-paragraph 75(g)(iv) with respect to Group Members;
- c. in response to paragraph 75(i):
 - i. admit sub-paragraph (iii) but refer to and repeat paragraph 9(a)(iii)(2) above;
 - ii. admit sub-paragraph 75(iv) but refer to and repeat paragraphs 14(b)(i)(2) and 16(a)(ii)(2) and (3) above;
 - iii. do not admit sub-paragraph (v); and
 - iv. in relation to sub-paragraph (vi), admit that the First Plaintiff's and Second Plaintiff's Motor Equity Insurance Product Disclosure Statement and Policy Document stated "*You need to ensure the limits and level of cover are appropriate for you. If they are not, you may be underinsured and have to bear part of the loss yourself*", but otherwise do not admit the sub-paragraph;
- d. in response to paragraph 75(j):
 - i. do not admit sub-paragraph (i); and
 - ii. as to sub-paragraph (ii), refer to and repeat paragraphs 14(b) and 16 above;
- e. in response to paragraph 75(l):
 - i. admit sub-paragraph (l)(i)(A);
 - ii. as to sub-paragraph (l)(ii), refer to and repeat paragraphs 14(b) and 16 above; and
- f. otherwise deny the paragraph.

19. In reply to paragraph 78(h), the Plaintiffs:
- a. as to sub-paragraph (i):
- i. admit that:
1. the First Plaintiff's Motor Equity Insurance and Tyre & Rim Insurance Product Disclosure Statement and Policy Documents contained a statement that "*Where this policy has been arranged through an intermediary a commission is payable by us to them for arranging the insurance*";
 2. the Loan Insurance Product Disclosure Statement and Policy Document provided to the First Plaintiff contained a statement that "*Our agents receive a commission for arranging this insurance. In arranging this insurance an agent is acting as our agent and not as your agent. The aggregate commission payable to all agents is 20% of the total premium amount payable, excluding Stamp Duty and government charges*";
 3. say that the First Plaintiff was not provided with the Product Disclosure Statements and Policy Documents for the Add-On Insurance Products which she purchased until 14 December 2015, after she signed the contractual documentation;
 4. the Second Plaintiff's Loan Insurance Product Disclosure Statement and Policy Document contained a statement that "*our agent receives a commission for arranging this policy. It is 20% of the total premium amount payable, before Stamp Duty and government charges*";
 5. the Second Plaintiff's Motor Equity Insurance Product Disclosure Statement and Policy Document contained a statement that "*Where this policy has been arranged through an intermediary a commission is payable by us to them for arranging this insurance*";
 6. the Second Plaintiff's Prestige Motor Insurance Product Disclosure Statement and Policy Document contain a statement that "*Where this policy has been arranged through an intermediary a commission is payable by us to them for arranging the insurance*"; and
- ii. refer to and repeat paragraphs 9(a)(iii)(2), 10(c)(iv)(1), 10(c)(v)(1) and 16(a)(ii)(2)-(3) above.

- b. as to sub-paragraph (ii):
 - i. do not admit the allegation with respect to the First Plaintiff's FSG;
 - ii. admit that the Second Plaintiff's FSG contained the statement pleaded at sub-paragraph (ii) of the Defence; and
 - iii. refer to and repeat paragraphs 16(a)(ii)(2) and (3), 10(c)(i) and 9(a)(i) above;
- c. as to sub-paragraph (iii)(A):
 - i. admit that the First Plaintiff's loan agreement contained the statement "*We pay commission to Lansvale Holden For the introduction of this credit business*";
 - ii. [admitsay](#) that the document subsequently stated that "*B. These insurers pay commission for the introduction of insurance business*" and listed the percentage of premium amounts in respect of "consumer credit insurance" and "shortfall insurance";
 - iii. say that the loan agreement did not define the phrases "consumer credit insurance" or "shortfall insurance"; and
 - iv. say that the First Plaintiff was not given sufficient opportunity to review and consider the loan agreement before being asked to sign it;
- d. as to sub-paragraph (iii)(B):
 - i. admit that the Second Plaintiff's loan agreement contained the statement "*A commission may be paid by the Credit Provider to the Intermediary named on the first page for the introduction to the Credit Provider by the Intermediary of Credit Business*";
 - ii. admit that the percentage of premium amounts in respect of Consumer Credit Insurance payable as commission was recorded in Section G of the loan agreement but says that:
 - 1. such commission was payable by the Insurer, not the Credit Provider; and
 - 2. the loan agreement did not define the phrase "Consumer Credit Insurance";

- iii. say that the amount of commission that may be paid by the Credit Provider to the Intermediary was to be inserted on page 3 of the loan agreement in the field "Amount (if ascertainable)", which field in the loan agreement did not record any amount of commission; and
- iv. otherwise deny the sub-paragraph;
- e. admit sub-paragraphs (iv), (v) and (vi); and
- f. refer to and repeat paragraph 78(m) of the [ACSOC](#).

20. In reply to paragraphs 95(b), 95(d), 104(a) of the Defence, the Plaintiffs say that to the extent that the Plaintiffs' and Group Members' loss and damage was caused or contributed to by any failure of the Plaintiffs and Group Members to take reasonable care, or any failure to take steps alleged in paragraph 95(d) (which is denied in the case of the Plaintiffs and not admitted in the case of Group Members), this is irrelevant to the assessment of damages in relation to the Plaintiffs' and Group Members' causes of action based on s 1041E of the Corporations Act as well as the unconscionable conduct claims and the claims made under s 12DB and s 12DF of the ASIC Act.

21. In reply to paragraphs 151H and 151I of the Defence, the Plaintiffs say that any collateral benefit received by the Plaintiffs and Group Members, such as tax credits, tax deductions or other reductions in their tax liability, are not relevant to the calculation of their loss and damage pursuant to s 12GF(1) of the ASIC and ss 1041I(1) and 991A(2) of the Corporations Act.

22. [In reply to sub-paragraph 118\(a\) of the Defence, the Plaintiffs refer to and repeat paragraph 2 above and otherwise deny the sub-paragraph.](#)

23. [In reply to sub-paragraph 124\(b\) of the Defence, the Plaintiffs refer to and repeat paragraph 3 above and otherwise deny the sub-paragraph.](#)

24. [In reply to sub-paragraph 126 of the Defence, the Plaintiffs refer to and repeat paragraphs 4 and 23 above and otherwise deny the paragraph.](#)

25. [In reply to paragraph 132 of the Defence, insofar as it refers to paragraph 42 of the Defence, the Plaintiffs refer to and repeat paragraph 5 above and otherwise deny the paragraph.](#)

26. [In reply to paragraph 134 of the Defence, insofar as it refers to paragraphs 54 and 56\(b\) of the Defence, the Plaintiffs refer to and repeat paragraphs 12 and 13 above and otherwise deny the paragraph.](#)

27. In reply to paragraph 135 of the Defence, the Plaintiffs:

a. refer to and repeat paragraph 14 above;

b. as to subparagraph (c), say that:

i. the Second Plaintiff was not given sufficient opportunity to review and consider the documents referred to in sub-paragraphs (i) – (v);

ii. the Second Plaintiff was not provided with a copy of the “Motor Vehicle Warranty Insurance Policy document” referred to in subparagraph (iv)(D) (ACA.5000.0010.0004 at 0004);

iii. in the alternative to ii, in the event that the Second Plaintiff was provided with a copy of the “Motor Vehicle Warranty Insurance Policy document”, the Second Plaintiff was not given sufficient opportunity to review and consider that document before signing the documents referred to in sub-paragraphs (i) – (v);

iv. further, the Warranty Application Form referred to in sub-paragraph (iv) was marked with an “x” next to “yes” in response to the question “Is the vehicle covered by Statutory Warranty”, with additional notations that that warranty was for a period of 3 months / 5,000km; and

v. an additional form in the “Customer Bundle” (ACA.5000.0012.0001 at 0014) was marked with an “x” next to “yes” in response to the question “Is this motor car automatically covered by a statutory warranty under Section 54 of the *Motor Car Traders Act 1986*”; and

c. otherwise deny the paragraph.

28. In reply to paragraph 136 of the Defence, the Plaintiffs refer to and repeat paragraph 15 above and otherwise deny the paragraph.

29. In reply to sub-paragraph 137(a) of the Defence, the Plaintiffs refer to and repeat paragraph 27 above and otherwise deny the sub-paragraph.

30. In reply to paragraph 138 of the Defence, the Plaintiffs:

a. as to sub-paragraph (a), refer to and repeat paragraph 16 above;

b. as to sub-paragraphs (b) and (c), refer to and repeat paragraphs 26 and 27 above; and

c. otherwise deny the paragraph.

31. In reply to paragraph 142(b), the Plaintiffs refer to and repeat paragraph 17 above and otherwise deny the sub-paragraph.

32. In reply to paragraph 145 of the Defence, the Plaintiffs:

a. as to sub-paragraph (a), refer to and repeat paragraph 18 above;

b. as to sub-paragraphs (b) – (f), refer to and repeat paragraphs 23 to 24, 27 and 30 – 31 above; and

c. otherwise deny the paragraph.

33. In reply to paragraph 148 of the Defence, the Plaintiffs:

a. as to sub-paragraph (a), refer to and repeat paragraph 19 above;

b. as to sub-paragraph (b), refer to and repeat paragraphs 23 to 24, 27 and 30 and 32 above; and

c. otherwise deny the paragraph.

34. In reply to paragraph 157 of the Defence, the Plaintiffs refer to and repeat paragraphs 20 and 27 above and otherwise deny the paragraph.

35. In reply to paragraph 163 of the Defence, insofar as it relates to paragraph 104(a) of the Defence, the Plaintiffs refer to and repeat paragraph 20 and 27 above and otherwise deny the paragraph.

36. In reply to paragraphs 173I and 173J of the Defence, the Plaintiffs refer to and repeat paragraph 21 above and otherwise deny the paragraphs.

Johnson Winter Slattery

Maurice Blackburn Lawyers

Johnson Winter & Slattery

Maurice Blackburn Lawyers

Joint Solicitors for the Plaintiffs

This amended pleading was prepared by Adam Hochroth and Robert Pietriche Dion Fahey of counsel.

SCHEDULE OF PARTIES

TRACY ANN-FULLER	First Plaintiff
JORDAN WILKINSON	Second Plaintiff
and	
ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)	First Defendant
ALLIANZ AUSTRALIA LIFE INSURANCE LIMITED (ACN 076 033 782)	Second Defendant