



No. S ECI 20

Case: S ECI 2019 02916

Filed on: 29/09/2021 09:03 AM

Plaintiff

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST**

BETWEEN

PATRICE SARAH TURNER

-and-

BAYER AUSTRALIA LTD (ACN 000 138 714) and others
(in accordance with the Schedule to the Writ)

Defendants

**FURTHER AMENDED WRIT FILED PURSUANT TO ORDER 1 OF THE ORDERS OF THE
HONOURABLE JUSTICE KEOGH DATED 28 SEPTEMBER 2021**

Date of document:	28 June 2019 29 September 2021		
Filed on behalf of:	The Plaintiff		
Prepared by:	Slater and Gordon Lawyers	Lawyer code:	339
	485 La Trobe Street	DX:	229
	MELBOURNE VIC 3000	Tel:	(03) 9602 6888
Email:	rori.walsh@slatergordon.com.au	Ref:	M578211

TO THE DEFENDANTS

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, 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 ~~28 June 2019~~ [29 September 2021](#)

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.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST**

No. S CI 2019

BETWEEN

PATRICE SARAH TURNER

Plaintiff

-and-

BAYER AUSTRALIA LTD (ACN 000 138 714) and others
(in accordance with the Schedule to the Writ)

Defendants

INDORSEMENT OF CLAIM

Date of document:	28 June 2019 29 September 2021		
Filed on behalf of:	The Plaintiff		
Prepared by:	Slater and Gordon Lawyers	Lawyer code:	339
	485 La Trobe Street	DX:	229
	MELBOURNE VIC 3000	Tel:	(03) 9602 6888
Email:	rory.walsh@slatergordon.com.au	Ref:	M578211

Representative proceeding and group membership

1. The Plaintiff brings this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986 (Vic)* on her own behalf and on behalf of all persons who received an implant of one or more of the permanent contraceptive medical devices in Australia marketed, labelled or identified as:

- a. a “STOP” device; or
- b. an “Essure” device (including models ESS105, ESS205, ESS305 and ESS505);

(collectively, the **Essure Device**) at any time on or prior to 31 December 2018, and has suffered harm as a result of the Essure Device.

2. At the commencement of this proceeding there are more than seven group members who make the claims set out in this indorsement against each of the Defendants.

The Plaintiff

3. The Plaintiff was born on 2 April 1986.

4. On 25 September 2013, the Plaintiff underwent a hysteroscopic sterilisation procedure, in which one Essure Device was implanted into each of her fallopian tubes.

5. The Plaintiff as a result of the Essure Devices developed a series of ongoing and worsening symptoms, including pain, dysmenorrhoea, and menorrhagia.
6. On 25 June 2018, as a result of her symptoms the Plaintiff underwent a laparoscopic hysterectomy with removal of fallopian tubes and preservation of ovaries in order to remove the Essure Devices.

The Defendants

7. Each of:
 - a. the First Defendant (**Bayer Australia Ltd**);
 - b. the Second Defendant (**Bayer Aktiengesellschaft**);
 - c. the Third Defendant (**Bayer HealthCare LLC**);
 - d. the Fourth Defendant (**Bayer Essure Inc**);
 - e. the Fifth Defendant (**Gytech Pty Limited**); and
 - f. the Sixth Defendant (**Australasian Medical & Scientific Limited**);~~;~~
 - ~~g. the Seventh Defendant (**Lake Regional Medical Inc**); and~~
 - ~~h. the Eighth Defendant (**Integer Holdings Corporation**);~~

was and is a corporation capable of being sued.

The Essure Device

8. At all material times, the Essure Device was designed, developed and/or manufactured by, further and alternatively liability for the design, development and/or manufacture of the Essure Device was transferred to, one or more of:
 - a. Bayer Aktiengesellschaft;
 - b. Bayer HealthCare LLC; and
 - c. Bayer Essure Inc;~~;~~
 - ~~d. Lake Regional Medical Inc; and~~
 - ~~e. Integer Holdings Corporation.~~
9. At all material times, the Essure Device was sponsored for the purposes of the *Therapeutic Goods Act 1989 (Cth)* (**TG Act**) by, further and alternatively liability of the sponsor of the Essure Device was transferred to, one or more of:
 - a. Gytech Pty Limited;
 - b. Australasian Medical & Scientific Limited; and
 - c. Bayer Australia Ltd.

Causes of action

10. The Defendants owed the Plaintiff and group members a duty to take reasonable care to prevent acts and omissions that may expose them to foreseeable risks of harm.
11. One or more of the Defendants breached their duties of care to the Plaintiff and group members.
12. For the purposes of the *Australian Consumer Law* (the **ACL**) in Schedule 2 of the *Consumer and Competition Act 2010 (Cth)* (the **CCA**):
 - a. the Essure Device had a safety defect within the meaning of ss9(1) and 138 of the ACL because its safety was not such as persons were generally entitled to expect; and
 - ~~b. one or more of the Defendants engaged in conduct that was misleading or deceptive or was likely to mislead or deceive consumers in contravention of s18 of the ACL;~~
 - c. the Essure Device was not of acceptable quality within the meaning of s54(2) of the ACL contrary to the guarantee as to acceptable quality in s54(1) of the ACL; ~~and~~
 - ~~d. the Essure Device was not reasonably fit for the particular purpose for which it was acquired by consumers within the meaning of s55(2) of the ACL contrary to the guarantee as to fitness for purpose in s55(1) of the ACL.~~
13. For the purposes of the *Trade Practices Act (1974) (Cth)* (the **TPA**):
 - ~~a. the Essure Device was not reasonably fit for the particular purpose for which it was acquired by consumers, for the purposes of s74B of the TPA;~~
 - b. the Essure Device was not of merchantable quality, for the purposes of s74D of the TPA; and
 - c. the Essure Device had a defect within the meaning of ss75AC and 75AD of the TPA because its safety was not such as persons were generally entitled to expect; ~~and~~
 - ~~d. one or more of the Defendants engaged in conduct that was misleading or deceptive or was likely to mislead or deceive consumers in contravention of s 52 of the TPA.~~
14. By reason of the matters pleaded above, the Plaintiff and group members have been injured and suffered loss and damage.

Common questions of law and fact

15. The questions of law or fact common to the claims of the Plaintiff and each of the group members or subgroup members are:
 - a. Did the Defendants owe the Plaintiff and group members a duty of care?
 - b. Did the Defendants breach that duty of care?
 - ~~e. Did the Defendants engage in conduct that was misleading or deceptive or likely to mislead or deceive for the purposes of s52 of the TPA and/or s18 of the ACL?~~

- d. Did the Essure Device have a safety defect within the meaning of ss9(1) and 138 of the ACL?
- e. Was the Essure Device of acceptable quality for the purposes of s54 of the ACL?
- ~~f. Was the Essure Device reasonably fit for the particular purpose for which it was acquired by consumers for the purposes of s55 of the ACL?~~
- ~~g. Was the Essure Device reasonably fit for the particular purpose for which it was acquired by consumers for the purposes of s74B of the TPA?~~
- h. Was the Essure Device of merchantable quality for the purposes of s74D of the TPA?
- i. Did the Essure Device have a defect within the meaning of ss75AC and 75AD of the TPA?

AND THE PLAINTIFF CLAIMS on her own behalf and on behalf of the group members against each of the Defendants:

- A. Damages, including aggravated and exemplary damages;
- B. Interest pursuant to statute;
- C. Costs.

Take notice that this indorsement of claim does not constitute a statement of claim.

Slater and Gordon

Slater and Gordon Lawyers
Lawyers for the Plaintiff

1. Place of trial: Melbourne
2. Mode of trial: Jury
3. This writ was filed for the Plaintiff by Slater and Gordon Lawyers, of 485 La Trobe Street, Melbourne Victoria 3000
4. The address of the plaintiff is:
[REDACTED]
[REDACTED]
5. The address for service of the plaintiff is:
Slater and Gordon Lawyers
485 La Trobe Street
Melbourne Victoria 3000
6. The email address for service of the plaintiff is: rory.walshandrew.baker@slatergordon.com.au
7. The address of the defendants are:

First Defendant:

Bayer Australia Ltd
C/- Clayton Utz
Level 15, 1 Bligh Street
Sydney, New South Wales 2000

Second Defendant:

Bayer Aktiengesellschaft
Kaiser-Wilhelm-Allee 1
51373 54368 Leverkusen, Germany

Third Defendant:

Bayer HealthCare LLC
C/- Corporation Service Company
251 Little Falls Drive
Wilmington, New Castle, DE
19808, United States

Fourth Defendant:

Bayer Essure Inc
C/- Corporation Service Company
251 Little Falls Drive
Wilmington, New Castle, DE
19808, United States

Fifth Defendant:

Gytech Pty Limited
29 Hall Street
Hawthorn East, Victoria 3123

Sixth Defendant:

Australasian Medical & Scientific Limited

C/- Mclean Charge Partners
30 Grose Street
Parramatta, New South Wales 2150

~~Seventh Defendant:~~

~~Lake Region Medical Inc
2405 York Road
Suite 201, Lutherville
Timonium MD, 21093-2264
United States~~

~~Eighth Defendant:~~

~~Integer Holdings Corporation
C/- The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801
United States~~

SCHEDULE OF PARTIES

S CI 2019

PATRICE SARAH TURNER Plaintiff

BAYER AUSTRALIA LTD
ACN 000 138 714 First Defendant

BAYER AKTIENGESELLSCHAFT Second Defendant

BAYER HEALTHCARE LLC Third Defendant

BAYER ESSURE INC Fourth Defendant

GYTECH PTY LIMITED
ACN 076 599 570 Fifth Defendant

AUSTRALASIAN MEDICAL & SCIENTIFIC LIMITED
ARBN 051 991 372 Sixth Defendant

~~**LAKE REGIONAL MEDICAL INC** Seventh Defendant~~

~~**INTEGER HOLDINGS CORPORATION** Eighth Defendant~~