

Amended Pursuant to Order 36.04

PROCESSED

IN THE SUPREME COURT OF VICTORIA
AT BALLARAT
COMMON LAW DIVISION

SCI 2015 03495

VALERIE ELLEN JACKSON

Plaintiff

and

GP & JM BRUTY PTY LTD (ACN 108 581 111)

First Defendant

and

DARREN BRUTY

Second Defendant

and

~~JENNIFER MARY BRUTY, JASON MATTHEW BRUTY AND TANIA MARIE KEHOE (as
executors of GEOFFREY PHILIP BRUTY)~~

~~Third Defendant~~

AMENDED STATEMENT OF CLAIM

Date of Document:	<i>MAIL</i>	June 15 December 2016
Filed on behalf of:		The Plaintiff
Prepared by:		Solicitor's code: 102650
Maddens Lawyers	<i>AS</i>	DX: 28001 Warrnambool
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WARRNAMBOOL VIC 3280		Ref: Brendan Pendergast/Jess Walker : 130057
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A. PRELIMINARY

1. At approximately 3.00 PM on 8 January 2013, a fire started at 17 McIntosh's Lane, Snake Valley, in the State of Victoria ("the Property").
2. The fire spread over a wide geographic area from the Property burning approximately 1300 hectares within the Pyrnees Shire ("the Snake Valley Bushfire") as depicted on the map annexed hereto ("the Snake Valley Bushfire Area") (Annexure 1).
3. The Plaintiff is and was at all material times the registered proprietor of land at 124 Fitzpatrick Lane, Carngham in the State of Victoria ("the Plaintiff's land") which was burnt by the Snake Valley Bushfire.

PARTICULARS

The Plaintiff's land is more particularly described as Certificates of Title Volume 09196 Folios 306, 307 and 308, being Lots 5, 6 and 7 on Plan of Subdivision 119541.

4. The Plaintiff brings this proceeding on her own behalf and on behalf of the Group Members.

5. The Group Members are:

- a. all those persons who suffered loss of or damage to property as a result of the Snake Valley Bushfire;
- b. all those persons who at the time of the Snake Valley Bushfire resided in, or had real or personal property, in the area affected by the Snake Valley Bushfire and who suffered economic loss by reason of the Snake Valley Bushfire, which loss was not consequent upon injury to that person or loss of or damage to their property;
- c. all those who conduct a business or enterprise and whose business or enterprise suffered loss or damage by reason of the Snake Valley Bushfire;
- d. all those whose use or enjoyment of their real or personal property was interfered with by reason of the Snake Valley Bushfire;
- e. all those persons who suffered personal injury (whether physical injury, or psychiatric injury as defined below) as a result of the Snake Valley Bushfire (including, without limitation, an injury suffered as a result of attempts to escape the Snake Valley Bushfire or other emergency action taken by any person in response to the Snake Valley Bushfire")

where "psychiatric injury" in this group definition means nervous shock or another psychiatric or psychological injury, disturbance, disorder or condition which has been diagnosed as such in a diagnosis given to the person by a medical practitioner prior to 30 June 2016;

- f. the legal personal representatives of the estates of any Deceased persons who came within paragraphs 3(a), (b), (c), (d) and (e) at the time of the Snake Valley Bushfire.

Individuals and entities described in paragraphs 4(a) to (f) above are hereafter referred to as "Group Members".

6. As at the date of the commencement of this proceeding there are seven or more Group Members who have claims against the Defendants.
7. The First Defendant is a company incorporated in the State of Victoria.
8. At all material times including 8 December 2013, Geoffrey Philip Bruty, deceased ("the Deceased"), was a servant or agent of the First Defendant. The Third named Defendants are sued as the executors of Geoffrey Philip Bruty, Deceased ("the Deceased").
9. On 8 January 2013 the First Defendant and/or the Deceased were the owners was the owner of a Massey Ferguson tractor, model 5455, registration TPZ 977 ("the Tractor").
10. On 8 January 2013 the Second Defendant was driving the Tractor in the course of harvesting being undertaken at the Property.

11. The Snake Valley Bushfire was ignited by the Tractor.

PARTICULARS

- a. The fire commenced on the Property. The fire commenced in the north east corner of the land situated in the north west quadrant of the intersection of Pittong-Chepstowe Road, Mackintosh Lane, Chepstowe in the State of Victoria (map reference Special Vision Map Book South West Region Edition 1 206 map 438208351);
- b. The area of origin was in a wheat crop stubble in the north east corner of the subject paddock. At the time the fire commenced there was parked a Toyota Hilux 4WD ("**the Toyota**"). A short distance south of this vehicle were 2 field bins;
- c. The point of origin of the fire was a short distance south west of the Toyota and a short distance north east of the western most field bin. The point of origin is within the area of origin as shown on the diagram drawn by Ian Nash CFA Investigator and annexed hereto (Annexure 2).
- d. The fire started at the point of origin by reason of ~~exhaust~~ crop particle(s) from the ~~Tractor heated to ignition whilst in contact with the Tractor~~ when it was parked and/or travelling between the two field bins escaping and landing ~~downwind~~ from the Tractor at the point of origin and igniting the stubble.

- ~~12. As at 8 January 2013 the Second Defendant and/or the Deceased knew or ought to have known that the Tractor had a propensity to emit hot gases containing exhaust particles which could cause a fire.~~

PARTICULARS

- ~~a. both the Second Defendant and the Deceased were experienced farmers who had for many years operated machinery in harvesting conditions in the area and thereby knew or ought to have known the escape of hot exhaust gases containing particles could cause a fire;~~
- ~~b. the Deceased from time to time was involved in the maintenance of the Tractor himself or arranged others to undertake the maintenance of the Tractor. The Deceased by reason of this involvement in and/or the arranging of the maintenance and in inspection of the Tractor for maintenance knew or ought to have known that there was leakage from the exhaust system;~~
- ~~c. the Second Defendant in the driving of the Tractor from time to time and on the day of the fire during such driving knew or ought to have known that there was leakage from the exhaust system of exhaust gases and particles;~~
- ~~d. the Deceased and/or the Second Defendant in servicing of the Tractor observe and/or had the opportunity to observe any defects and/or signs of leakages from the exhaust system;~~

- e. ~~The exhaust system had leakages near the manifold join which was clearly visible from the carbon and/or diesel deposit situated there at.~~

B. NEGLIGENCE

Duty

13. At all material times the First Defendant ~~and/or the Deceased~~:
- a. owned the Tractor;
 - b. including through its servants and agents, was responsible for the condition of the Tractor;
 - c. including through its servants and agents, had practical control over the operation of the Tractor.
14. At all material times the Second Defendant was driving the Tractor at the Property as a servant or agent of the First Defendant ~~and/or the Deceased~~.
- 14A. At all material times including 8 January 2013, the Defendants knew or ought to have known that:
- a. operation of the Tractor would cause parts of the Tractor to heat up;
 - b. if the Tractor was being used for harvesting, crop particles would accumulate at points in and around the parts of the Tractor that heated up during operation;
 - c. particles that accumulated in and around the parts of the Tractor that heated up during operation were at a reasonably foreseeable risk of igniting and causing a fire.
15. At all material times including 8 January 2013, the Defendants knew or ought reasonably to have known that:
- a. a failure to properly clean from the Tractor at regular intervals during operation would increase the risk of accumulated crop particles igniting and causing a fire; a failure to properly repair and/or maintain the Tractor may cause loss and/or damage;
 - b. it was reasonably foreseeable that the vegetation in the paddocks of the Property was dry and capable of being ignited by crop particles heated by the Tractor; a defective / leaking exhaust system which causes gas leakage containing carbon or diesel particles, is highly flammable and combustible;
 - c. ~~the vegetation in the paddocks of the Property was dry and capable of being ignited by a carbon or diesel particles emitted from the Tractor;~~
 - d. ~~the Tractor had a problem with the exhaust, in that the exhaust was leaking;~~
 - e. ~~the Deceased, who had no mechanical training had undertaken significant servicing/repairs of the Tractor and in particular had changed the transmission on~~

~~the Tractor and was aware of high low problems and forward/reverse light showing on the dash and transmission abnormalities or faults.~~

~~fc.~~ in January 2013, Snake Valley had been assessed as having a high bushfire rating in accordance with the Victorian Fire Risk Register.

16. On 8 January 2013, it was reasonably foreseeable to the Defendants that:
- a. ~~by reason of the matters pleaded in paragraphs 14A-15, operating the Tractor, or allowing/enabling another to operate the Tractor could ignite a fire given the ignition of crop particles attaching to the Tractor;~~
 - b. the likelihood of ignition of a fire is increased during the summer months;
 - c. a fire, once ignited, might spread over a wide geographical area; and
 - d. such a fire might cause death or injury to people and/or damage to property within the area over which the fire burned, and consequential losses including economic loss
17. At all material times, people who might be, or who owned or had an interest in real or personal property, that might be, within the area over which such a fire might spread:
- a. had no practical or effective ability to prevent or minimise the risk of such a fire occurring;
 - b. were vulnerable to the effect of such a fire;
 - c. were dependent to a material degree for the protection of their person and/or property upon the Defendants to ensure that they maintained and/or repaired the Tractor appropriately to minimise the risk of a fire being ignited.
18. In the circumstances in paragraphs 14A-17, the First Defendant ~~and the Deceased as owners and operators as owner~~ of the Tractor and the Second Defendant as operator of the Tractor owed the Plaintiff and each Group Member a duty to take reasonable care in operating the Tractor and / or allowing or enabling another to operate the Tractor ~~in circumstances where each Defendant knew or ought to have known about the exhaust of the Tractor and the potential to ignite a fire.~~

Breach—failure to remove accumulated crop particles

18A. On 8 January 2013:

- a. the Second Defendant was operating the Tractor in the course of harvesting being undertaken at the Property;
- b. parts of the Tractor heated up as a result of its operation;
- c. crop particles accumulated in and around the parts of the Tractor that heated up during its operation.

18B. On 8 January 2013 the Second Defendant failed to carry out any reasonable system of regularly removing particles that accumulated at points on or in and around the parts of the Tractor that heated up in on the Tractor while it was being operated.

18C. The First Defendant permitted the Second Defendant to operate the Tractor in the manner in paragraph 18B.

18D. The Snake Valley Bushfire was caused by the matters in paragraphs 18A-18C.

19. As a result of the matters in paragraphs 18A-18D, the Defendants breached the duty of care owed to the Plaintiff and Group Members. The Defendants breached the duty of care owed to the Plaintiff and Group Members by:

- a. ~~using/operating the Tractor; and/or~~
- b. ~~allowing and / or enabling another individual to use and / or operate the Tractor~~

~~in circumstances where each Defendant:~~

- (i) ~~each Defendant knew or ought to have known that the Tractor had exhaust defect issues;~~
- (ii) ~~knew that the weather conditions were a high fire risk;~~
- (iii) ~~knew or ought to have known that once a fire ignited it might spread over a wide geographical area.~~

~~20. The Snake Valley Bushfire was caused by the Defendants negligence in operating and/or permitting the operation of the Tractor when they knew it had overheating and/or exhaust issues that had the potential to cause a fire in the conditions that it was being operated in.~~

Breach—overheating Tractor

20A. Further or in the alternative to the matters in paragraphs 18A-19, at all material times, the Defendants knew or ought to have known that the risk of accumulated crop particles igniting and causing a fire would be greater than the risk set out in paragraph 14A for a tractor that:

- a. overheated (**Overheating Defect**); and/or
- b. had a defect in its exhaust system that allowed hot exhaust gases to leak onto or near accumulated crop particles (**Exhaust Defect**);

such increased risk being by reason of those such defects.

20B. On 8 January 2013, the Tractor whilst being operated by the Second Defendant had:

- a. an Overheating Defect; and/or
- b. an Exhaust Defect.

20C. The First Defendant failed to maintain or have the Tractor repaired to such a state that it would not on 8 January 2013 have:

- a. an Overheating Defect; and/or
- b. an Exhaust Defect.

20D. The matters in paragraphs 20B and 20C caused or made a material contribution to the Snake Valley Bushfire.

21. On 9 January 2013 the Deceased engaged in a phone call with Ian Nash relating to investigations undertaken by Nash in respect of the Tractor repair and service of the Tractor and of it being a cause of the fire.
22. Some weeks subsequent to the date of the fire the Second Defendant spoke to a local resident in relation to the Tractor telling him that it was being offered for sale and that:

“You don’t want it. It overheats a bit and there is a problem with the exhaust” (further particulars will be provided as to the date place and with whom such conversation took place when it is known to the Plaintiff).

23. At a date subsequent to the date referred to in the previous paragraph the same person mentioned to the Deceased that he was interested in purchasing the Tractor. The Deceased said to that person:

“I had to get rid of that pretty quick after, you know, the fire in January” (further particulars will be provided as to the date place and with whom such conversation took place when it is known to the Plaintiff).

24. The statement of the Second Defendant referred to in paragraph 22 was an admission by him that Statements referred to in paragraphs 22 and 23 made by the Second Defendant and the Deceased constitute an admission by each of them that the Tractor, by reason of the overheating defect and the defect in the exhaust system, had caused or made a material contribution to the Snake Valley Bushfire.

24A. The statement of the Deceased referred to in paragraph 23 was:

- a. by reason of the matters in paragraph 8, an admission by the First Defendant;
- b. an admission that the Tractor, by reason of the overheating defect and the defect in the exhaust system, had caused or made a material contribution to the Snake Valley Bushfire.

C. PRIVATE NUISANCE AND TRESPASS

25. Further, and in the alternative, the Plaintiff brings these proceedings on her behalf and on behalf of those Group Members who held an interest in land located in the Snake Valley Bushfire Area (whether in the nature of freehold title, lease or otherwise), whose use or enjoyment of that interest was interfered with by reason of the Snake Valley Bushfire in the period from 8 January 2013, by reason of the Tractor which ignited a fire.
26. The allegations contained in paragraphs 13 to ~~20~~19 are repeated.
27. It was reasonably foreseeable that the Snake Valley Bushfire may unreasonably interfere with the use or enjoyment of interests in:
- a. land that was affected as a result of the Snake Valley Bushfire; and

- b. land that became inaccessible or practically unusable because of the Snake Valley Bushfire.

28. In the premises:

- a. the Snake Valley Bushfire experienced by Group Members on or about 8 January 2013 substantially and unreasonably interfered with the use or enjoyment of interests in land held by the Plaintiff and other Group Members; and
- b. constituted a private nuisance.

29. Further and in the alternative to paragraphs ~~24-25~~ to ~~24-28~~ above, the Snake Valley Bushfire, constituted a trespass to land, to the extent that the Snake Valley Bushfire entered onto any land in which the Plaintiff or any Group Members held an interest.

D. COMMON QUESTIONS OF LAW OR FACT

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

- a. whether a Duty of Care was owed to the Plaintiff and Group Members, and if so the content of that duty;
- b. how the Snake Valley Bushfire started;
- c. whether the Snake Valley Bushfire was caused by a breach by the Defendants or one or other of the Duty of Care owed to the Plaintiff and Group Members;
- d. what kinds of losses suffered in the Snake Valley Bushfire and suffered by the Plaintiff and Group Members are recoverable from the Defendants, and the principles in assessing those losses.

AND THE PLAINTIFF CLAIMS on her own behalf and on behalf of the Group Members

A. Damages

B. Interest

C. Costs

Dated:

Maddens Lawyers

Timothy P TOBIN

Min GUO

SCHEDULE OF PARTIES

BETWEEN

VALERIE ELLEN JACKSON

Plaintiff

and

GP & JM BRUTY PTY LTD (ACN 108 581 111)

First Defendant

and

DARREN BRUTY

Second Defendant

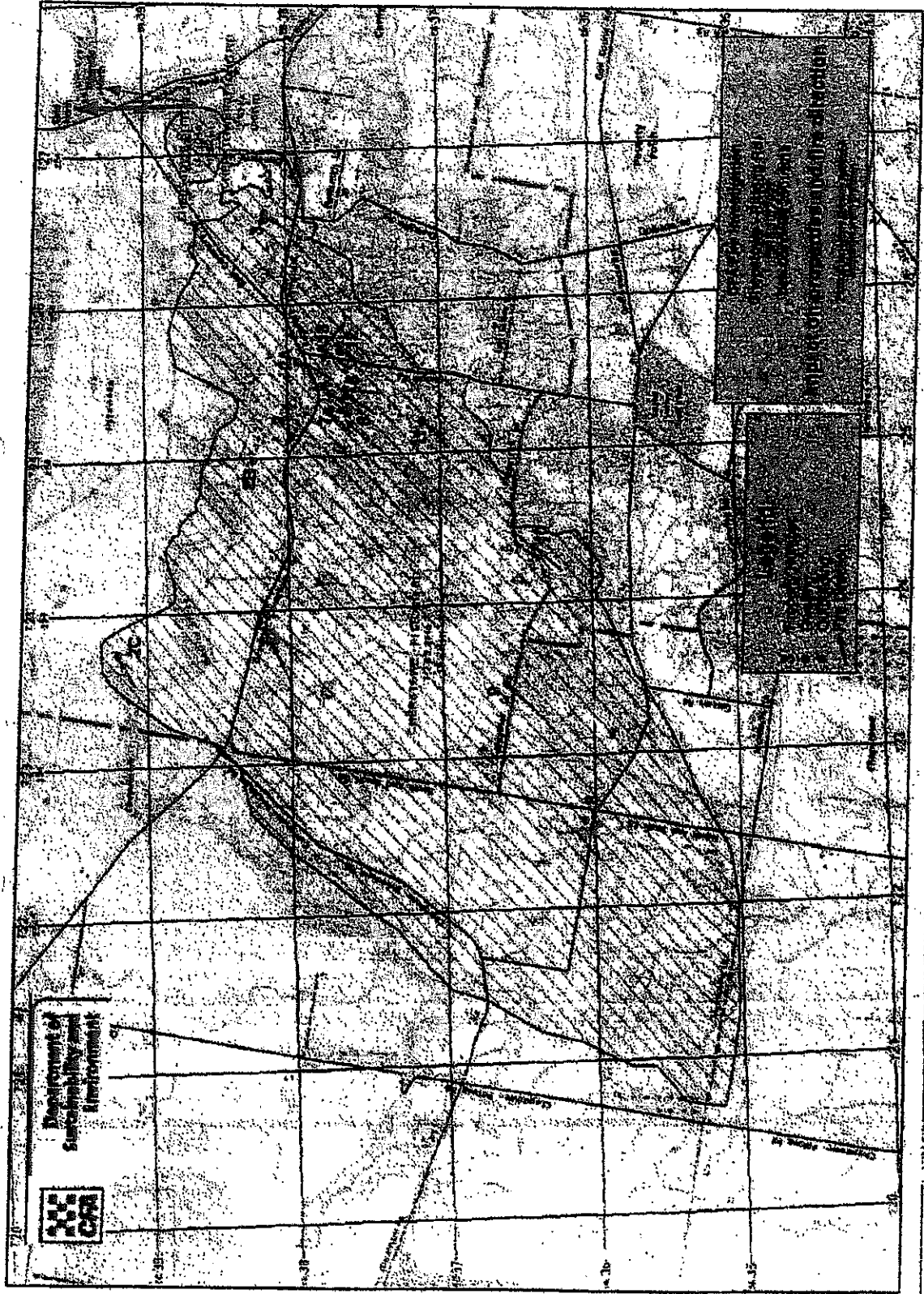
and

~~**JENNIFER MARY BRUTY, JASON MATTHEW BRUTY AND TANIA MARIE KEHOE (as
executors of GEOFFREY PHILIP BRUTY)**~~

~~Third Defendant~~

1. Place of trial - Ballarat
2. Mode of trial - Judge alone
3. This writ was filed for the Plaintiffs by Mr Brendan Pendergast of Maddens Lawyers, Warrnambool
4. The address of the Lead Plaintiff is:
Valerie Jackson
124 Fitzpatrick Lane
CARNGHAM 3351
5. The address for service of the Plaintiffs is:
Maddens Lawyers,
1A Liebig Street
WARRNAMBOOL 3280
Ref: BFP
6. The address of the First Defendant is:
GP & JM Bruty Pty Ltd
350 Mortchup Road
SNAKE VALLEY VIC 3351
7. The address of the Second Defendant is:
Darren Bruty
350 Mortchup Road
SNAKE VALLEY VIC 3351
8. The address of the Third Defendant is:
350 Mortchup Road
SNAKE VALLEY VIC 3351

Annexure 1



This map is a report prepared for the Government of Sri Lanka. The information contained herein is for reference purposes only and should not be used as a basis for any action. The Government of Sri Lanka does not accept any liability for any loss or damage caused by the use of this map.

Colombo, Sri Lanka. 09/12/2018

Chepstowe-Pittong Rd.
Chepstowe
29/01/2013
FIRS. No. 1077937.
Sketch not to scale.

Annexure 2

