

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

S CI 2014 06770

BETWEEN:

MAJID KAMARI KAMASAE

Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA and others
(in accordance with the schedule attached)

Defendants

AMENDED DEFENCE TO AMENDED THIRD PARTY NOTICE

(Filed pursuant to the orders of Justice McDonald made on 12 September 2016)

Date of document: 29 November 2016 9
October 2015

Solicitor's Code: 9973

Filed on behalf of: The Third Defendant

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To the Statement of Claim endorsed on the Amended Third Party Notice served by the First Defendant (**the Commonwealth**) and dated ~~21 August 2015~~ 27 September 2016 the Third Defendant (**Transfield Services**) says -

- 1 It does not plead to paragraph 1, in which no allegations are made against it.
- 2 To paragraph 2 -
 - (a) it admits the allegations therein;
 - (b) it says that by the contract (the **Transfield Contract**) it agreed to provide to the Commonwealth, the services specified in and defined by the contract;

(c) it says further that it relies on the Transfield Contract for its full terms and effect.

3 It admits the allegations in paragraph 3.

4 It admits the allegations in paragraph 4.

5 To paragraph 5 - insofar as the allegations concern Transfield Services -

(a) it denies that it is liable in respect of any injury, loss or damage claimed by the plaintiff as alleged in the Plaintiff's ~~second~~third amended statement of claim.

Particulars

Transfield Services refers to and relies on the positive allegations, admissions and denials made in its defence to the Plaintiff's ~~second~~third amended statement of claim.

(b) it says that pursuant to the Transfield Contract -

- (i) Transfield Services is required only to indemnify the Commonwealth for any cost, liability, loss, damage or expense incurred by the Commonwealth, including in respect of personal injury, disease, illness or death, where such liability, loss, damage or expense arises from any breach by Transfield Services of the Transfield Contract or arising from any negligent act or omission, any fraudulent or criminal action or wilful default by Transfield Services in connection with the Transfield Contract;
- (ii) Transfield Services' liability to indemnify the Commonwealth is to be reduced proportionately to the extent that any act or omission involving fault on the part of the Commonwealth or its personnel contributed to the relevant cost, liability, loss, damage or expense.

Particulars

Transfield Services relies on clause 12 of the Transfield Contract which clause is to be construed by reference to the Contract as a whole.

(c) it denies that it is liable:

- (i) to indemnify the Commonwealth for all damages which the Commonwealth is liable to pay in respect of any injury, loss or damage claimed by the plaintiff, or to contribute to the Commonwealth's liability;
- (ii) to indemnify the Commonwealth for its legal costs or to contribute to the Commonwealth's legal costs,

pursuant to the Transfield Contract, s 37 of the *Wrongs (Miscellaneous Provisions) Act 1975* (PNG), s 21 of the *Civil Law (Wrongs) Act 2002* (ACT), or otherwise.

(d) otherwise, it denies the allegations therein.

6 To paragraph 6 - insofar as the allegations concern Transfield Services -

(a) it denies that it is liable in respect of any injury, loss or damage claimed by the plaintiff as alleged in the Plaintiff's ~~second~~third amended statement of claim.

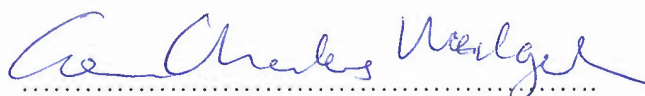
Particulars

Transfield Services refers to and relies on the positive allegations, admissions and denials made in its amended defence to the Plaintiff's ~~second~~third amended statement of claim.

(b) it denies that the Commonwealth is entitled to recover contribution from it, pursuant to the Transfield Contract, *Wrongs (Miscellaneous Provisions) Act 1975* (PNG), the *Civil Law (Wrongs) Act 2002* (ACT), or otherwise.

STEPHEN DONAGHUE

LISA NICHOLS



Corrs Chambers Westgarth
Solicitors for the Third Defendant

DATED: ~~9 October 2015~~29 November 2016

SCHEDULE OF PARTIESNo. SCI 2014 06770MAJID KARAMI KAMASAEPlaintiffCOMMONWEALTH OF AUSTRALIAFirst DefendantG4S AUSTRALIA PTY LTDSecond DefendantABN 64 100 104 658TRANSFIELD SERVICES (AUSTRALIA) PTY LTDThird DefendantABN 11 093 114 553INTERNATIONAL HEALTH AND MEDICAL
SERVICES PTY LTD (ABN 40 073 811 131)First Third PartyWILSON PROTECTIVE SERVICES PNG
LIMITED (Company No. 1-100593)Second Third Party