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

PROCESSED

SCI 2017 02779

BETWEEN

CASTOR MURILLO Plaintiff

and

SKM SERVICES PTY LTD Defendant

DEFENCE

Date of Document:	1 December 2017
Filed on behalf of:	The Defendant
Prepared by:	Solicitors code: 101060
Meridian Lawyers	DX: 627 Melbourne
Level 12	Tel: (03) 9810 6777
357 Collins Street	Fax: (03) 9810 6770
MELBOURNE VIC 3000	Ref: 2017593
	Email: aray@meridianlawyers.com.au

IN THE SUPREME COURT efiled - 1 DEC 2017 PROTHONOTARY'S OFFICE

In answer to the statement of claim dated 6 October 2017, the Defendant says as follows:

1. It does not admit the allegations contained in paragraph 1.

2. It does not plead to the allegations contained in paragraph 2.

3. Save to say that at or around 0830 hours on 13 July 2017 an agent of the Defendant discovered smoke at 82A Maffra Street and that subsequently the Metropolitan Fire Brigade was called in relation to a fire at 82A Maffra Street, it does not admit the allegations contained in paragraph 3. Further, it denies a fire started at 94 Maffra Street on 13 July 2017.

4. It refers to and repeats paragraph 3 hereof. Further, save to say that it admits the fire emitted smoke which was visible in neighbouring areas and soot, it does not admit the allegations contained in paragraph 4.

5. It does not admit the allegations contained in paragraph 5.

6. It does not know and cannot admit the allegations contained in paragraph 6.

7. It admits the allegations contained in paragraph 7.

8. Save to say it admits it carried on a business of accepting, sorting and processing of recyclable materials under the name 'SKM Recycling' and that it stored these materials for periods pending sorting and processing, it denies the allegations contained in paragraph 8. Further, it says that the recyclable materials were not waste materials and were typically constituted of 50-55% paper and cardboard, 30% glass, 8% plastics and 7-10% other residual materials. Further, it says that the collection of the recyclable materials was performed by contractors engaged by local councils.

9. (a) It refers to and repeats paragraphs 3 and 8 hereof and otherwise denies the allegations contained in paragraph 9(a).

(b) It refers to and repeats paragraph 3 hereof and further says it was the sole operator of the business identified in paragraph 8 hereof and otherwise admits the allegations contained in paragraph 9(b).

(c) It refers to and repeats paragraph 3 hereof and further says it was the sole occupier of part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street and otherwise admits the allegations contained in paragraph 9(c).

10. (a) It refers to and repeats paragraph 8 hereof and otherwise denies the allegations contained in paragraph 10(a).

(b) It refers to and repeats paragraphs 3 and 8 hereof and further says that it admits it stored recyclable materials pending sorting and/or processing at part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street and otherwise denies the allegations contained in paragraph 10(b).

(c) It refers to and repeats paragraphs 3 and 8 hereof and further says that it admits it sorted and processed recyclable materials at part of 80 Maffra Street and 82A Maffra Street in order to make it available for sale to end-users for re-manufacture into new products and otherwise denies the allegations contained in paragraph 10(c).

(d) It admits it had sole responsibility for the operation and maintenance for part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street and otherwise denies the allegations contained in paragraph 10(d).

(e) It admits it had the right, to the exclusion of other private persons to operate and maintain the business conducted as SKM Recycling at part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street and it admits it had the right, to the exclusion of

other private persons, to give directions as to the operation and maintenance of the business conducted as SKM Recycling at part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street, and otherwise admits the allegations contained in paragraph 10(e).

(f) It refers to and repeats paragraph 10(e) hereof and otherwise admits the allegations contained in paragraph 10(f).

(g) Save that it denies it had practical control over part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street during the periods of time that the Metropolitan Fire Brigade assumed control of part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street including 9 July 2017, 12 July 2017 and during the period from 13 July 2017 until on or about 1 August 2017, it admits the allegations contained in paragraph 10(g).

11. (a) Save that it admits it was reasonably foreseeable, and was foreseen that recyclable materials at part of 80 Maffra Street, 82A Maffra Street and 94 Maffra Street could be ignited, and that it says further that the risk of this was low or minimal, it denies the allegations contained in paragraph 11(a).

(b) It denies the allegations contained in paragraph 11(b).

(c) It does not admit the allegations contained in paragraph 11(c).

12. It does not admit the allegations contained in paragraph 12.

13. Save to say that it denies it owed a duty of care to those group members who allegedly suffered pure economic loss, it does not admit the allegations contained in paragraph 13. Further, it refers to and repeats paragraphs 3 and 4 hereof.

14. (a) It refers to and repeats paragraphs 8 and 11(a) hereof and otherwise denies the allegations contained in paragraph 14(a).

(b) Save to say it admits that it was reasonably foreseeable that a fire ignited within the premises at Maffra Street, Coolaroo where the business of SKM Recycling was conducted, could emit smoke and soot, it otherwise denies the allegations contained in 14(b).

(c) It refers to and repeats paragraph 4 hereof and otherwise denies the allegations contained in paragraph 14(c).

(d) It does not admit the allegations contained in paragraph 14(d).

15. (a) Save to say that the term 'high density' is not defined and that it cannot plead to the term 'high density', it admits the allegations contained in paragraph 15(a).

(b) It does not admit the allegations contained in paragraph 15(b).

16. (a) It denies the allegations contained in paragraph 16(a).

(b) It refers to and repeats paragraph 11(a) hereof and otherwise denies the allegations contained in paragraph 16(b).

(c) Save that it admits there had been fires prior to 13 July 2017 at 82A Maffra Street and 94 Maffra Street, it denies the allegations contained in 16(c).

17. It does not admit the allegations contained in paragraph 17.

18. It does not plead to the allegations contained in paragraph 18 as it pleads matters of law and not fact.

19. It denies the allegations contained in paragraph 19 and further says as follows:

(a) It denies the allegations contained in paragraph 19(a) and says that it had a risk management plan in place which included fire management.

Particulars

The risk management plan was contained in the risk management system manual and provided for "emergency management" in the event of certain situations including fire and set out the role of the Chief Warden as follows:

'Chief Warden

During an emergency the chief warden must:

- *assess the emergency situation and determine appropriate action including whether it is necessary to evacuate*
- *Ensure emergency services have been notified*
- *Ensure other persons at the facility are advised of the situation*
- *Initiate evacuation and control entry to the affected areas if necessary*

- *Brief emergency services upon arrival on the type, scope and location of the emergency and the status of the evacuation*
- *Co-ordinate the activities of the emergency control team including training, meetings and the annual evacuation exercise*
- *attend training as required to fulfil this role*

(b) It denies the allegations contained in paragraph 19(b) and says that it implemented its risk management plan on 13 July 2017.

(c) It denies the allegations contained in paragraph 19(c) and says it had a fire suppression system in place at the factory at 94 Maffra Street.

(d) It denies the allegations contained in paragraph 19(d) and says it called the Metropolitan Fire Brigade in response to the fire on 13 July 2017 and it briefed emergency services upon arrival on the type, scope and location of the emergency.

(e) It denies the allegations contained in paragraph 19(d)(i).

(f) It denies the allegations contained in paragraph 19(d)(ii).

(g) It denies the allegations contained in paragraph 19(d)(iii). Further, it says that the term "flammable waste" has not been defined and so it cannot plead to this allegation.

(h) It denies the allegations contained in paragraph 19(d)(iv).

20. It denies the allegations contained in paragraph 20.

21. It denies the allegations contained in paragraph 21.

22. It denies the allegations contained in paragraph 22.

23. It denies the allegations contained in paragraph 23.

24. Save to say that it repeats paragraphs 11(a)-(c) and paragraphs 14 (a) to (d) hereof, it does not admit the allegations contained in paragraph 24.

25. It denies the allegations contained in paragraph 25.

26. It denies the allegations contained in paragraph 26.

27. It denies the allegations contained in paragraph 27.

28. Further, it denies the plaintiff and group members are entitled as claimed.

Dated: 1 December 2017

D J WALLIS

MERIDIAN LAWYERS
Solicitors for the Defendant