

SUPREME COURT OF NEW SOUTH WALES
ASSOCIATE'S RECORD OF PROCEEDINGS

Reference:

CLASS ACTION

FILE NO: 2018/9555

PARTIES: Owen Brewster v BMW Australia Ltd

DATE: 16 September 2019 – CHAMBERS/no appearances

CORAM: SACKAR J

APPEARANCES: Counsel:

Plf: Mr J Sheahan QC, Ms R Mansted
Def/ BMW: T Prince

Solicitors: Plf: Quinn Emanuel Urquhart & Sullivan (Damian Scattini)

Def: Ashurst Australia (John Pavlakis)

Adjourned: To: 25 October 2019 – 2pm
For:
Before: Sackar J

VERDICT/ORDER/DIRECTION

By consent Sackar J makes the orders for further discovery in chambers.
Order that:

1. pursuant to rule 21.2(1) (a) of the Uniform Civil Procedure Rules 2005, the defendant is to give discovery to the plaintiff of documents within the classes described in Annexure A to these orders by 18 October 2019.
2. such further or other order as the Court sees fit.

Annexure A attached.

CONSENT ORDER

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Equity General
Registry	Sydney
Case number	2018/00009555

TITLE OF PROCEEDINGS

Plaintiff **Owen Brewster**

Defendant **BMW Australia Limited**

PREPARATION DETAILS

Prepared for	Owen Brewster, Plaintiff
Legal representative	Damian Scattini, Quinn Emanuel Urquhart & Sullivan
Legal representative reference	07435-00001
Contact name and telephone	Damian Scattini, (02) 9546 3888
Contact email	damianscattini@quinnemanuel.com

TERMS OF ORDER MADE BY THE COURT BY CONSENT

- 1 Pursuant to rule 21.2(1)(a) of the Uniform Civil Procedure Rules 2005, the defendant is to give discovery to the plaintiff of documents within the classes described in Annexure A to these orders by 18 October 2019.
- 2 Such further or other order as the Court sees fit.

SIGNATURES

Plaintiff

Owen Brewster, plaintiff consents.

Signature of legal representative



Capacity

Solicitor

Date of signature

13 September 2019

Defendant

BMW Australia Limited, defendant consents.

Signature of legal representative

Capacity

Date of signature

[Handwritten Signature]
Solicitor
16/9/19

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date made or given

Date entered

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

ANNEXURE A

1. All correspondence between Takata and the defendant or its related entities during the period 1 September 1999 to 10 January 2018, inclusive, referring to or in respect of Takata Airbags (and/or their components) of the type fitted, or to be fitted, to Recalled Vehicles and any one or more of the following:
 - (a) the safety, and/or the functionality or operation on deployment, of those Takata Airbags (and/or their components) insofar as they relate to failures of the following types:
 - (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly; or
 - (iii) the airbag deploying with excessive force;
 - (b) the defects or potential defects in those Takata Airbags (and/or their components), insofar as they relate to:
 - (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant;
 - (c) the malfunction or potential malfunction of those Takata Airbags (and/or their components) on deployment insofar as they relate to:
 - (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant.
2. All documents, including correspondence, memoranda, file notes and business records brought into existence or modified by the defendant or its related entities during the period 1 September 1999 to 10 January 2018, inclusive, recording or constituting any consideration, analysis or review by the defendant (or any employees or contractors of the defendant) of Takata Airbags (and/or their components) of the type fitted, or to be fitted, to Recalled Vehicles in connection with:
 - (a) the safety, and/or the functionality or operation on deployment, of those Takata Airbags (and/or their components) insofar as they relate to failures of the following types:

- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly; or
 - (iii) the airbag deploying with excessive force;
- (b) the defects or potential defects in those Takata Airbags (and/or their components) insofar as they relate to:
- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant;
- (c) the malfunction or potential malfunction of those Takata Airbags (and/or their components) on deployment insofar as they relate to:
- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant.
3. All correspondence between Takata and the defendant or its related entities during the period 1 September 1999 to 10 January 2018, inclusive, referring to or in respect of any danger or potential danger that meant a vehicle fitted with Takata Airbags (and/or their components) by reason of:
- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) degradation of the propellant,
- was, or was potentially:
- A. not safe to drive; and/or
 - B. if driven, would expose the driver or passengers to danger and harm.

4. All documents, including correspondence, memoranda, file notes and business records brought into existence or modified by the defendant or its related entities during the period 1 September 1999 to 10 January 2018, inclusive, recording or constituting any consideration, analysis or review by the defendant (or any employees or contractors of the defendant) of any danger or potential danger that meant a vehicle fitted with Takata Airbags (and/or their components) by reason of:
- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) degradation of the propellant,
- was, or was potentially:
- A. not safe to drive; and/or
 - B. if driven, would expose the driver or passengers to danger and harm.

In respect of the above classes of documents:

- A. the term “**document**” means any record of information (including any part or copy of a document or part thereof) and includes:
 - (i) anything on which there is writing;
 - (ii) anything on which there are marks, figures, symbols or perforations that have a meaning for persons qualified to interpret them;
 - (iii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, including but not limited to audio recordings, video recordings, a computer databases containing information which can be converted into a readable;
- B. unless otherwise defined in this Annexure A, all capitalised terms have the meaning ascribed to them in the FASOC filed 4 September 2018 or the Defence;
- C. anything that is mentioned after the word “including” does not limit any other documents that might be included;
- D. no class of documents limits any other class of documents;
- E. all dates and time periods referred to are inclusive;
- F. **BMW** means BMW AG and its related entities or subsidiaries;
- G. **Defence** means the Defence to Further Amended Statement of Claim filed 14 September 2018;
- H. **FASOC** means the Further Amended Statement of Claim filed 4 September 2018;

- I. **Proceeding** means Owen Brewster v BMW Australia Ltd, Supreme Court of New South Wales proceeding no. 2018/00009555;
- J. **Recalled Vehicles** means vehicles which are the subject of the recalls pleaded in paragraphs 11 and 11A of the Defence to FASOC which includes, for the avoidance of doubt, the future recalls to be issued as set out in paragraph 1(b)(ii)(II) of the FASOC;
- K. **Takata** means Takata Corporation and its related entities or subsidiaries, including TK Holdings, Inc and Takata Sachsen GmbH;
- L. **Takata Airbag** means an airbag manufactured or supplied by Takata Corporation and its related entities or subsidiaries, including TK Holdings, Inc and Takata Sachsen GmbH.