

FILED

28 SEP 2018



## REPLY

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court of Sydney
Case number	2017/00340824

### TITLE OF PROCEEDINGS

Plaintiff	<b>Louise Haselhurst</b>
Defendant	<b>Toyota Motor Corporation Australia Limited trading as Toyota Australia ABN 64 009 686 097</b>

### FILING DETAILS

Filed for	<b>Louise Haselhurst, Plaintiff</b>
Filed in relation to	Defendant's Defence to Further Amended Statement of Claim
Legal representative	Damian Scattini, Quinn Emanuel Urquhart & Sullivan LLP
Legal representative reference	07435-00001
Contact name and telephone	Damian Scattini, 02 9146 3888
Contact email	Damianscattini@quinnemanuel.com

### PLEADINGS AND PARTICULARS

In this Reply, capitalised terms have the same meaning as defined in the Plaintiff's Second Further Amended Statement of Claim filed 4 September 2018 (**SFASOC**), unless otherwise indicated.

1 In reply to subparagraph 7(b)(iii) of the Defence to the Second Further Amended Statement of Claim (Defence), the Plaintiff:

- (a) admits, insofar as it is alleged, that long term exposure to persistent high absolute humidity and high temperatures contribute to the degradation of the propellant in Takata Airbags;

- (b) admits, insofar as it is alleged, that the factors in subparagraph 7(b)(iii)(1), (2), (3) and (4) can contribute to the rate of degradation of ammonium nitrate used as a propellant in Takata Airbags;
- (c) says that ammonium nitrate used as a propellant in the Takata Airbags will inevitably degrade due to temperature cycling;
- (d) says further that:
  - (i) the absorption of moisture accelerates the rate at which the ammonium nitrate propellant will degrade;
  - (ii) moisture from any source may be absorbed by the ammonium nitrate propellant;
  - (iii) any moisture that is absorbed will contribute to the degradation of the ammonium nitrate propellant;
  - (iv) the sources of moisture are not limited to the factors identified in subparagraphs 7(b)(iii)(1)-(2);
  - (v) factors contributing to the ammonium nitrate propellant degrading are not otherwise limited to the factors identified in subparagraphs 7(b)(iii)(1)-(4);
  - (vi) degradation of the ammonium nitrate is not dependant on long term exposure to persistent high absolute humidity and high temperatures;
- (e) otherwise denies the allegations pleaded.

2 In reply to subparagraph 7(b)(iv) of the Defence, the Plaintiff:

- (a) admits, insofar as it is alleged, that Takata Airbag Inflators have the potential to rupture during airbag deployment and propel metallic fragments into contact with an occupant, resulting in possible injury or death;
- (b) says that all Takata Airbags which use ammonium nitrate as a propellant have the propensities alleged in subparagraphs 7(a)(i) and 7(a)(ii) of the SFASOC and that characteristic is not limited to airbags identified in subparagraph 7(b)(iii) of the Defence;
- (c) otherwise denies the allegations pleaded therein.

3 In reply to subparagraph 10(b)(ii) of the Defence, the Plaintiff:

- (a) denies the allegations therein;

(b) without limiting the foregoing denial, says further that insofar as it is alleged, replacing a Takata Airbag with a Takata Airbag containing a desiccant does not mean that a Defective Vehicle no longer has the characteristics pleaded in subparagraph 10(c) of the SFASOC;

(c) repeats the matters pleaded in paragraph 1 above;

(d) repeats the matters pleaded at paragraphs 7 and 8 of the SFASOC.

4 In reply to subparagraph 10(b)(iii) of the Defence, the Plaintiff:

(a) denies the allegations therein;

(b) says that the propensities alleged in subparagraphs 7(a)(i) and 7(a)(ii) of the SFASOC each begin at the time when the ammonium nitrate propellant begins to degrade;

(c) repeats the matters pleaded in paragraph 1 above.

5 In reply to subparagraphs 24(c)(ii)-(iv), 33(c)(ii)-(iv), 33(e), 46(c)(ii)-(iv), 46(e), 47(g), 50(c)(ii)-(iv) and 50(e) of the Defence, the Plaintiff:

(a) denies the allegations therein;

(b) without limiting the foregoing denial, says further that to the extent that the Defendant offered or offers a Group Member a replacement airbag or inflator which uses ammonium nitrate as a propellant:

(i) such replacement would not remedy the characteristics of the Defective Vehicle pleaded at subparagraphs 10(c)(i) and (ii) of the SFASOC;

(ii) Group Members are not obliged to accept such replacement; and

(iii) If Group Members fail or failed to accept such replacement they have not failed and did not fail to mitigate their loss.

6 In reply to subparagraphs 33(d), 46(d) and 50(d) of the Defence:

(a) the Plaintiff admits that the Plaintiff has been notified by letter of the recall of the Plaintiff's Vehicle;

(b) the Plaintiff cannot plead to the state of the Defendant's records;

(c) on or around 10 May 2018, the Takata Airbag in the Plaintiff's Vehicle was replaced. The Defendant did not inform the Plaintiff, and the Plaintiff does not know, the type or make of airbag installed in the Plaintiff's Vehicle.

**Particulars**

The Plaintiff attended Phil Gilbert's Toyota in Croydon Park, New South Wales.

7 In reply to subparagraph 33(h) of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) says that the Defendant's non-compliance was not only because of an act, default or omission of, or representation made by, Takata, and as such the Defendant cannot rely on section 271(2)(a) of the ACL;

**Particulars**

The Defendant manufactured the Defective Vehicles, and imported the Defective Vehicles, as pleaded in subparagraphs 4(d) and 4(g) of the SFASOC, respectively, and carried out the conduct alleged in subparagraphs 12(a), 12(b) and 12(c) of the SFASOC. In those circumstances, the Defendant ought to have had the capacity to assess the design and quality of the airbags of the Defective Vehicles.

The Plaintiff reserves the right to plead further matters following discovery and evidence.

8 In reply to subparagraph 42(d) and sub-paragraph (b) to 42B(b) of the Defence, the Plaintiff:

- (a) denies the allegations therein;
- (b) says that the Defendant had no reasonable basis for holding the Defective Vehicles out as being safe to drive.

**Particulars**

The Defendant's knowledge, pleaded at paragraph 48 of the SFASOC, together with publicly available information available at the times set out in paragraph 48, on the chemical and physical properties of ammonium nitrate.

The Plaintiff reserves the right to plead further matters following discovery and evidence.

9 In reply to paragraphs 47J, 47L and 47M of the Defence, the Plaintiff:

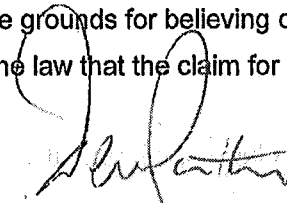
- (a) denies the allegations therein; and
- (b) says further that the Defendant has not pleaded any action of Takata giving rise to a cause of action of the Plaintiff against Takata;

~~(e) says further that the Defendant cannot rely on section 87CB of the  
Competition and Consumer Act 2010 (Cth) and/or section 87CB of the TPA.~~

**SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in this reply has reasonable prospects of success.

Signature



Solicitor on record

Capacity

Date of signature

27 September 2018

**AFFIDAVIT VERIFYING**

Name Louise Haselhurst  
 Address 34 Fountain Ave, Croydon Park NSW 2133  
 Occupation Cleaner  
 Date 26 SEPTEMBER 2018

## I say on oath:

- 1 I am the Plaintiff.
- 2 I believe that the allegations of fact contained in the reply are true.
- 3 I believe that the allegations of fact that are denied in the reply are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the reply are true.

SWORN at 34 FOUNTAIN AVE CROYDON PARK NSW 2133

Signature of deponent



Name of witness SEAN PATRICK CULLEN

Address of witness 34 L 15 111 ELIZABETH STREET SYDNEY

Capacity of witness SOLICITOR

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]  
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.\*~~
- 2 ~~#I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]~~  
 #I have confirmed the deponent's identity using the following identification document:

DRIVER LICENCE 8812CZ

Identification document relied on (may be original or certified copy) †.

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[\* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]