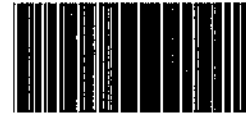




Filed: 9 September 2019 3:56 PM



D00016HZN

Form 3A/B
Rule 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Supreme Court Sydney
Case number	2017/00126664

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	Kathryn Emeny
Legal representative reference	
Telephone	(03) 5560 2000

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Amended Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Amended Statement of Claim (Amended SOC.pdf)

[attach.]

- 4 Costs including interest on costs.

PLEADINGS AND PARTICULARS

1. On 17 February 2017, a fire started at 78 Brindabella Place, Carwoola, in the State of New South Wales, and burnt over an area of approximately 3,500 hectares (**the Carwoola bushfire**).

The Plaintiff and Group Members

2. The plaintiff is and was, at all material times, the sole registered proprietor of real property situated at 358 Widgiewa Road, Carwoola, (**the plaintiff's land**) which was damaged by the Carwoola bushfire.
3. The plaintiff brings this proceeding pursuant to section 157 of the *Civil Procedure Act 2005* (NSW) on her own behalf and on behalf of the group members, being:
- (a) all those persons who suffered personal injury (whether physical injury, or psychiatric injury) as a result of the Carwoola bushfire;
 - (b) all those persons who suffered loss of or damage to property as a result of the Carwoola bushfire; and
 - (c) the legal personal representatives of the estates of any deceased persons who came within paragraphs (a) or (b) at the time of the Carwoola bushfire.
4. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the defendants arising out of the Carwoola bushfire.

The First Defendant

5. At all material times, the first defendant:
- (a) is and was a corporation incorporated pursuant to the *Corporations Act 2001* (Cth) and capable of being sued; and
 - (b) carried on business principally as a commercial plumbing contractor, including related activities such as footings and drainage (**the Business**).

- (ii) cause death or injury to persons;
 - (iii) cause loss or damage to property within the area affected by the fire;
 - (iv) cause consequential economic loss, including by:
 - (A) disrupting or impairing their incoming earning activities;
 - (B) impeding the use or amenity of their properties;
 - (C) reducing the value of real property or businesses located within the area affected by the fire.
10. At all relevant times, members of the public who might be, or who owned or had an interest in property that might be, within the area across which a fire, caused by the discharge of sparks from the use of plant, including a power cutting wheel, at the Property, might spread (**the Class**):
- (a) had no ability, or no practical or effective ability, to prevent or minimise the Risks materialising;
 - (b) were vulnerable to the Risks materialising;
 - (c) for the purposes of protecting themselves and their property against the Risks, dependent on the first defendant exercising reasonable care in performing the Works, including the use of a power cutting wheel, at the Property.
11. As at 17 February 2017, the plaintiff and group members were members of the Class.
12. In the premises, at all relevant times, the first defendant owed to the plaintiff and the group members a duty to exercise reasonable care to eliminate or reduce the Risks.

The Carwoola Bushfire

13. On 17 February 2017:
- (a) the weather and fuel conditions at and in the vicinity of the Property were favourable for the ignition and spread of fire.

- (b) the probability that the harm referred to in paragraph 9(c) above would occur if the first defendant failed to take reasonable care to avoid the materialisation of the Risks was not insignificant;
 - (c) in the event that the Risks materialised, the harm was potentially catastrophic;
 - (d) any burden on the first defendant in taking precautions to avoid the Risks was slight and not unreasonable having regard to the probability of the Risks materialising and the seriousness of the harm.
16. In the circumstances, a reasonable person in the position of the first defendant would have taken the following precautions to avoid the materialisation of the Risks:
- (a) refrained from using any plant or equipment, including any power cutting wheel, that would, or had the potential to, discharge sparks, embers or flames in conditions of high bushfire risk;
 - (b) designed and implemented a system for performing the Works at the Property so as to ensure that sparks, embers or flames were not emitted or discharged by the operation of plant or equipment;
 - (c) designed and implemented a system for performing the Works at the Property so as to ensure that the emission or discharge of any sparks, embers or flames from the use of plant or equipment was controlled so as to prevent the ignition of a fire;
 - (d) had in place adequate fire suppression systems and equipment to control and suppress any fire that was ignited by the operation of plant or equipment.
17. In breach of its duty of care, on 17 February 2017, the first defendant by its employees or agents:
- (a) used a power cutting wheel to cut steel at the Property in conditions of high bushfire risk;

Loss and Damage

21. By reason of the negligence of the first defendant, its employees or agents, the plaintiff and each of the group members suffered loss and damage.

Particulars of loss and damage

The plaintiff suffered loss and damage by:

- (i) the destruction of a shipping container and household contents and personal property stored in it;
- (ii) the destruction of a 200 litre wheat sprayer;
- (iii) extensive damage to a 7m x 9m shed; and
- (iv) damage and destruction of boundary fencing;

Further particulars of the plaintiff's loss and damage will be provided prior to trial.

Particulars relating to individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

Third Party Claims Act

21A. By reason of the Policy:

- (a) the first defendant is an "insured person" within the meaning of s 3 of the Third Party Claims Act; and
- (b) the liability of the first defendant alleged in paragraphs 19, 20 and 21 of this Amended Statement of Claim is an "insured liability" in the meaning of s 3 of the Third Party Claims Act.

Particulars

Policy Schedule and Policy Wording cl 1

- 21B. In the premises of paragraph 21A, the plaintiff may pursuant to s 4(1) of the Third Party Claims Act recover from the second defendant the amount of indemnity payable pursuant to the terms of the Policy in respect of the first defendant's liability to the plaintiff and group members in these proceedings.

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 these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature 

Capacity

Date of signature 9.9.19

KATHRYN AMY EMENY
of Maddens Lawyers 219 Korolt Street
Warrambool An Australian legal practitioner
within the meaning of the Legal Profession
Uniform Law (Victoria)

NOTICE TO DEFENDANTS

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

AFFIDAVIT VERIFYING

Name Kathryn Amy Emeny
Address 219 Koroit Street, Warrnambool Victoria, 3280
Occupation Lawyer
Date 09.09.2019

I, **Kathryn Amy Emeny**, of 219 Koroit Street, Warrnambool, Victoria, Solicitor, make oath and say as follows:

- 1 I am a Principal of Maddens Lawyers of 219 Koroit Street, Warrnambool ("**my firm**") and have the carriage of this matter for and on behalf of the Plaintiff.
- 2 The Plaintiff is the sole proprietor of property at 358 Widgiewa Road, Carwoola, 2620, NSW which was damaged in the Carwoola fire described in the Statement of Claim ("**the fire**").
- 3 The Plaintiff's knowledge of the allegations of fact in the pleading are limited by reason of the representative nature of these proceedings and accordingly I have been authorised to make this Affidavit on behalf of the Plaintiff
- 4 My firm has undertaken extensive investigations into the cause and circumstances of the fire including attending at the fire seat, conferring with witnesses and reviewing relevant documentation.
- 5 My firm has received instructions from in excess of seven owners of property damaged in the fire, including the Plaintiff to pursue a claim against Advanced Plumbing and Drains Pty Ltd seeking damages for losses suffered as a result of the fire.
- 6 As to any allegations of fact in the pleading, I believe that the allegations are true.

