



Principal Registrar &
Chief Executive Officer



Form 9 (version 6)
UCPR 9.1

FIRST CROSS-CLAIM STATEMENT OF CROSS-CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Civil Claims
List	Professional Negligence
Registry	Sydney
Case number	2017/279308 Proceeding: 015

TITLE OF PROCEEDINGS

First plaintiff	AMY RICKHUSS
Number of plaintiffs	12
First defendant	THE COSMETIC INSTITUTE PTY LTD (IN LIQUIDATION) (ACN 153 061 155)
Number of defendants	19

TITLE OF THIS CROSS-CLAIM

Cross-Claimant	Certain Underwriters at Lloyd's subscribing to Policy No. 04012, 17th Defendant
First Cross-Defendant	Niroshan Sivathanan
Number of Cross-Defendants	11 (Refer to Party Details at rear for full list of parties)

FILING DETAILS

Filed for	Certain Underwriters at Lloyd's subscribing to Policy No. 04012, 17th Defendant
Legal representative	Gavin Hollamby, Lander & Rogers
Legal representative reference	GJH.GLA.2066645
Contact name and telephone	Giana Laidlaw +61 3 9269 9322
Contact email	glaidlaw@landers.com.au

RELIEF CLAIMED

1. A declaration that some or all of the cross-defendants are liable to pay contribution to and/or indemnify the cross-claimant pursuant to sections 4(3) and/or 7 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW)*, section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946 (NSW)* and/or the general law in respect of any amounts the cross-claimant is found liable to pay to the plaintiffs and/or group members.
2. Further or in the alternative, a declaration that the cross-claimant is entitled to recoupment from some or all of the cross-defendants in respect of any amounts the cross-claimant is found liable to pay to the plaintiffs and/or group members.
3. Indemnity, alternatively contribution, in respect of the plaintiffs' and group members' costs.
4. Costs of defending the principal action and costs of the cross-claim.
5. Such further or other order as this Honourable Court sees fit.

PLEADING AND PARTICULARS

1. The cross-claimant (**Newline**) is and, at all material times, was a Lloyd's syndicate authorised to underwrite insurance in Australia and able to sue and be sued.
2. The cross-defendants are the sixth to sixteenth defendants in these proceedings issued by the plaintiffs.
3. For the purposes of this cross-claim only, and without admission, Newline refers to and repeats the allegations by the plaintiffs in their Fourth Further Amended Statement of Claim filed 31 May 2022 (**4FASOC**) as if it were fully set out herein.
4. The plaintiffs allege (*inter alia*) that:
 - (a) they have suffered injury, loss and damage as detailed in the 4FASOC as a result (*inter alia*) of the negligence, misleading and deceptive conduct, and/or breach of the Australian Consumer Law (**ACL**) of the first to fifth defendants;
 - (b) Newline is liable to indemnify the first to fifth defendants; and
 - (c) Newline is consequently liable to the plaintiffs pursuant to section 4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW)* (**2017 Act**).
5. Newline denies any liability to the first to fifth defendants, plaintiffs and/or group members, as will be set out in its defence to the 4FASOC.
6. Pursuant to section 4(3) of the 2017 Act:

- (a) in these proceedings, Newline stands in the place of the first to fifth defendants as if the proceedings against it were to recover damages, compensation or costs from the first to fifth defendants;
 - (b) accordingly, subject to the 2017 Act, Newline (*inter alia*) has the same rights and the Court has the same powers as if the proceedings against Newline were brought against the first to fifth defendants.
7. Further, pursuant to section 7 of the 2017 Act, Newline is entitled (*inter alia*) to rely on any matter in answer to the claims against it or in reduction of its liability to the plaintiffs and group members that the first to fifth defendants would have been entitled to rely on in proceedings brought against them by the plaintiffs and group members.
8. The plaintiffs allege that they have suffered injury, loss and damage as detailed in the 4FASOC as a result (*inter alia*) of the negligence, misleading and deceptive conduct, and breach of the ACL of the cross-defendants.
9. Each of the first to ninth cross-defendants entered into an agreement with the second defendant (*inter alia*) for accreditation to render medical services (**Accreditation Deed**).

Particulars

- (i) Each of the Accreditation Deeds was in writing, as follows:
 - (A) an Accreditation Deed between Niroshan Sivathanan (first cross-defendant) and the second defendant dated on or around 3 July 2014;
 - (B) an Accreditation Deed between Van Nguyen (second cross-defendant) and the second defendant dated on or around 18 May 2014;
 - (C) an Accreditation Deed between Victor Lee (third cross-defendant) and the second defendant dated on or around 22 January 2014;
 - (D) an Accreditation Deed between Chi-Vien Duong (fourth cross-defendant) and the second defendant dated on or around 13 January 2014;
 - (E) an Accreditation Deed between Napoleon Chiu (fifth cross-defendant) and the second defendant dated on or around 30 March 2015;
 - (F) an Accreditation Deed between Daniel Kwok (sixth cross-defendant) and the second defendant dated on or around 2 January 2014;

- (G) an Accreditation Deed between James Kenny (seventh cross-defendant) and the second defendant dated on or around 30 March 2015;
 - (H) an Accreditation Deed between Sri Darshn (eighth cross-defendant) and the second defendant dated on or around November 2014; and
 - (I) an Accreditation Deed between Farheen Ali (ninth cross-defendant) and the second defendant dated on or around 19 November 2014.
- (ii) Copies of the above Accreditation Deeds may be inspected at the offices of Newline's solicitors.
10. There were terms of each Accreditation Deed that each of the first to ninth cross-defendants respectively agreed that:
- (a) he/she would perform medical services to the best of his/her skills, knowledge and ability, and with a high standard of medical care and professionalism, and that he/she would comply with all statutory and regulatory requirements (clause 5.8); and
 - (b) he/she indemnified the second defendant against any liability whatsoever arising from that cross-defendant rendering medical services pursuant to or in connection with the Accreditation Deed or other acts or failure to act on the part of the cross-defendant, whether of a medical service nature or otherwise (clause 8.1) **(Indemnity Clause)**.
11. Each of the tenth and eleventh cross-defendants entered into an agreement with the second defendant (*inter alia*) for them to provide medical services (**Consultancy Deed**).

Particulars

- (i) Each of the Consultancy Deeds was in writing, as follows:
 - (A) a Consultancy Deed between (*inter alia*) Pedro Valente (tenth cross-defendant) and the second defendant dated on or around 21 February 2013; and
 - (B) a Consultancy Deed between (*inter alia*) Anh Tang (eleventh cross-defendant) and the second defendant dated on or around 11 November 2013.
- (ii) In the event that the tenth cross-defendant did not execute the above Consultancy Deed on the date alleged, the said agreement was also to be implied by operation of law, and by the tenth cross-defendant's conduct in performing medical services in accordance with the terms of the Deed.

- (iii) Copies of the above Consultancy Deeds may be inspected at the offices of Newline's solicitors.

12. There were terms of each Consultancy Deed that each of the tenth and eleventh cross-defendants respectively agreed that:

- (a) he would perform the consultancy services (defined as cosmetic surgical consulting, cosmetic surgical procedures, and surgical after-care) to the best of his skills, knowledge and ability, and with a high standard of medical care and professionalism, and that he would comply with all statutory and regulatory requirements (clause 3.1);
- (b) the second defendant would be indemnified (*inter alia*) against any liability or loss arising from, and all costs incurred in connection with, any breach of the Consultancy Deed or any negligence by the tenth or eleventh cross-defendant respectively (clause 10.2).

13. Further and in the alternative, if (which is not admitted):

- (a) the tenth cross-defendant was not bound by the terms of the above Consultancy Deed but was otherwise retained by the second defendant; and/or
- (b) any of the cross-defendants were retained by the first, third or fourth defendants to perform medical services (as alleged by the plaintiffs);

there was an implied term of each such retainer that each such cross-defendant would perform those medical services with due care and skill (**Implied Term**).

Particulars

The said Implied Term is to be implied by operation of law and the need to give business efficacy to any such retainer, taking into account the nature of the professional services to be provided by the cross-defendants.

14. If Newline is liable to the plaintiffs and/or group members as alleged (which is denied), it says that:

- (a) the alleged injury, loss and damage suffered by the plaintiffs and/or group members was caused and/or contributed to by:
 - (i) the negligence, misleading and deceptive conduct and/or breach of the ACL of the first to eighth and tenth cross-defendants;
 - (ii) the negligence, misleading and deceptive conduct and/or breach of the ACL of the ninth cross-defendant from around 19 November 2014 onwards;

- (iii) the negligence, misleading and deceptive conduct and/or breach of the ACL of the eleventh cross-defendant from around 11 November 2013 onwards;
- (iv) as regards the first to eighth cross-defendants, and the ninth cross-defendant from around 19 November 2014 onwards:
 - (A) breach of clause 5.8 of the Accreditation Deed; and/or
 - (B) breach of the Implied Term;
- (v) as regards the tenth cross-defendant, and the eleventh cross-defendant from around 11 November 2013 onwards:
 - (A) breach of clause 3.1 of the Consultancy Deed; and/or
 - (B) breach of the Implied Term;

Particulars

Newline refers to and relies upon the allegations contained (*inter alia*) in paragraphs 81B to 96AJ of the 4FASOC.

- (b) in the premises, the first to eighth cross-defendants, and the ninth cross-defendant for the time period referred to in sub-paragraph (a)(ii) above, would be liable to indemnify:
 - (i) the second defendant:
 - (A) pursuant to the Indemnity Clause;
 - (B) by reason of their breach of clause 5.8 of the Accreditation Deed; and/or
 - (C) by reason of their breach of the Implied Term;
 - (ii) the first, third and/or fourth defendants (to the extent they retained such cross-defendants, which is not admitted) for breach of the Implied Term;
- (c) in the premises, the tenth cross-defendant, and the eleventh cross-defendant for the time period referred to in sub-paragraph (a)(iii) above, would be liable to indemnify:
 - (i) the second defendant by reason of their breach of clause 3.1 of the Consultancy Deed; and/or
 - (ii) the first, third and/or fourth defendants (to the extent they retained such cross-defendants, which is not admitted) for breach of the Implied Term;

- (d) the first to eighth and tenth cross-defendants, the ninth cross-defendant from around 19 November 2014 onwards, and the eleventh cross-defendant from around 11 November 2013 onwards, would be joint tortfeasors of the first, second, third, fourth and/or fifth defendants for the purposes of section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946 (NSW) (1946 Act)*;
 - (e) pursuant to sections 4(3) and/or 7 of the 2017 Act:
 - (i) Newline is entitled to indemnity from the cross-defendants to the extent that the first to fourth defendants would have been entitled to indemnity from those cross-defendants; and/or
 - (ii) Newline is entitled to contribution from the cross-defendants to the extent that the first to fifth defendants would have been entitled to indemnity from those cross-defendants, pursuant to section 5 of the 1946 Act and/or the general law, and to the extent that this Honourable Court considers just and equitable.
15. Further and in the alternative, if Newline is liable to the plaintiffs and/or group members as alleged (which is denied), it says that:
- (a) the cross-defendants are primarily liable to the plaintiffs and group members as set out in paragraph 14 above, whereas Newline's liability is secondary;

Particulars

- (i) Any liability of Newline would be as the insurer of the first, second, third, fourth and/or fifth defendants, whereas the cross-defendants would be directly liable.
- (ii) The first to ninth cross-defendants would each be liable to indemnify the second defendant pursuant to the Indemnity Clause.
- (iii) Further and in the alternative, the cross-defendants would each be liable to indemnify:
 - (A) the second defendant for breach of clause 5.8 of the Accreditation Deed, clause 3.1 of the Consultancy Deed, and/or the Implied Term; and/or
 - (B) the first, third and/or fourth defendants for breach of the Implied Term.
- (b) Newline would be compelled by law to make payment to the plaintiffs and/or group members;
- (c) Newline did not officiously expose itself to the liability to make such payment;

- (d) such payment would discharge the liability of the cross-defendants to the plaintiffs and/or group members, alternatively benefit the cross-defendants, to the extent of the payment;
- (e) given the above matters, it would be just and equitable for Newline to recover from the cross-defendants any such payment to the plaintiffs and/or group members; and
- (f) in the premises, Newline is entitled to equitable recoupment from the cross-defendants.

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 statement of cross-claim has reasonable prospects of success.

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

Signature



Capacity

Solicitor on record

Date of signature

21 October 2022

NOTICE TO CROSS-DEFENDANT

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.

HOW TO RESPOND

Please read this statement of cross-claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the cross-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:

- 1 **If you intend to dispute the cross-claim or part of the cross-claim**, by filing a defence and/or making a cross-claim.
- 2 **If money is claimed, and you believe you owe the money claimed**, by:
 - Paying the cross-claimant all of the money and interest claimed.
 - Filing an acknowledgement of the claim.
 - Applying to the court for further time to pay the claim.
- 3 **If money is claimed, and you believe you owe part of the money claimed**, by:
 - Paying the cross-claimant that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address: Supreme Court of NSW, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000

Postal address: Supreme Court of NSW, GPO Box 3, Sydney NSW 2001

DX: Supreme Court of NSW, DX 829, Sydney NSW

Telephone: 1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this statement of cross-claim.

PARTIES TO THIS CROSS-CLAIM

Cross-Claimant	Certain Underwriters at Lloyd's subscribing to Policy No. 04012, 17th Defendant
First Cross-Defendant	Niroshan Sivathanan, 6th Defendant
Second Cross-Defendant	Van Huu Anthony Nguyen, 7th Defendant
Third Cross-Defendant	Victor Lee, 8th Defendant
Fourth Cross-Defendant	Chi-Vien Duong (aka Charles Wong), 9th Defendant
Fifth Cross-Defendant	Napoleon Po-Han Chiu, 11th Defendant
Sixth Cross-Defendant	Daniel Kwok, 12th Defendant
Seventh Cross-Defendant	James Francis Christopher Kenny, 15th Defendant
Eighth Cross-Defendant	Sri Balakrishnan Darshn, 16th Defendant
Ninth Cross-Defendant	Farheen Ali, 14th Defendant
Tenth Cross-Defendant	Pedro Miguel da Silva Valente, 13th Defendant
Eleventh Cross-Defendant	Anh Huy Tang, 10th Defendant