



Form 7A (version 5)
UCPR 14.3

COO
Principal Registrar &
Chief Executive Officer

DEFENCE TO FOURTH FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

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

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

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.2060142
Contact name and telephone	Giana Laidlaw +61 3 9269 9322
Contact email	glaidlaw@landers.com.au

PLEADINGS AND PARTICULARS

Note: in this defence, unless otherwise stated, the 17th Defendant, Certain Underwriters at Lloyd's subscribing to Policy No. 04012 (**Newline**), adopts the terminology and definitions used by the Plaintiffs in the Fourth Further Amended Statement of Claim dated 31 May 2022.

In response to the Plaintiffs' Fourth Further Amended Statement of Claim (**4FASOC**), the 17th Defendant says as follows:

A. Group Members

1. It does not plead to paragraph 1 because it contains no allegations against it.
2. It does not admit the allegations in paragraph 2.

2A. It does not admit the allegations in paragraph 2A.

3. It does not admit the allegations in paragraph 3.

B. The Plaintiffs

4. It does not admit the allegations in paragraph 4.

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

6. It does not admit the allegations in paragraph 6.

7. It does not admit the allegations in paragraph 7.

8. It does not admit the allegations in paragraph 8

8A. It does not admit the allegations in paragraph 8A

8B. It does not admit the allegations in paragraph 8B

8C. It does not admit the allegations in paragraph 8C

8D. It does not admit the allegations in paragraph 8D.

8E. It does not admit the allegations in paragraph 8E.

8F. It does not admit the allegations in paragraph 8F.

8G. It does not admit the allegations in paragraph 8G.

C. The Defendants

9. To paragraph 9, it:

(a) admits sub-paragraphs (a) and (b), save that it says that "corporation" is not a term defined by section 2 of the ACL;

(b) otherwise:

(i) it denies that the first defendant (**TCI**) carried on the business of providing BAS services and facilities, and otherwise does not admit the allegations in sub-paragraph (c);

(ii) it denies the allegations in sub-paragraphs (d) – (f);

(iii) it says further that to the extent that any BAS services involved medical advice, the performance of the operation and/or post-operative medical treatment, such services were provided by the sixth to sixteenth defendants (**TCI Surgeons**) personally, save as follows:

(A) services provided by the tenth defendant between around September 2012 to 11 November 2013, which were provided on behalf of TCI Parramatta; and

(B) services provided by the fourteenth defendant, which were provided on behalf of TCI Parramatta.

10. To paragraph 10, it:
 - (a) admits sub-paragraphs (a) and (b), save that it says that "corporation" is not a term defined by section 2 of the ACL;
 - (b) admits that TCI Parramatta provided facilities to certain plaintiffs and group members, and engaged the tenth defendant in the period referred to in sub-paragraph 9(b)(iii)(A) above and the fourteenth defendant to provide BAS to certain patients;
 - (c) otherwise does not admit sub-paragraphs (c) – (d1), (f), (g) and (h), and refers to and repeats paragraph 9(b)(iii) above;
 - (d) denies sub-paragraphs (e) and (g1).
11. It admits the allegations in paragraph 11.
12. To paragraph 12, it:
 - (a) admits sub-paragraphs (a) and (b), save that it says that "corporation" is not a term defined by section 2 of the ACL;
 - (b) admits that TCI Bondi provided facilities to certain plaintiffs and group members;
 - (c) otherwise does not admit sub-paragraphs (c), (d), (f), (g) and (h), and refers to and repeats paragraph 9(b)(iii) above;
 - (d) denies sub-paragraphs (e) and (g1).
13. To paragraph 13, it:
 - (a) admits sub-paragraphs (a) and (b), save that it says that "corporation" is not a term defined by section 2 of the ACL;
 - (b) admits that TCI Southport provided facilities to certain plaintiffs and group members;
 - (c) otherwise does not admit sub-paragraphs (c), (d), (f), (g) and (h), and refers to and repeats paragraph 9(b)(iii) above;
 - (d) denies sub-paragraphs (e) and (g1).
14. To paragraph 14:
 - (a) It admits that Dr Dona:
 - (i) is and was a registered medical practitioner;

- (ii) is and was a plastic and reconstructive surgeon;
- (iii) was a director of TCI Paramatta from around 20 July 2012 to 8 February 2016;
- (iv) was a director of TCI Bondi from 28 August 2013 to 8 February 2016;
- (v) was a director of TCI Southport from 1 May 2015 to 8 February 2016;
- (vi) was a director and beneficial shareholder of Dona Family Pty Limited (ACN 123 469 723), which was a company incorporated under the *Corporations Act 2001* (Cth) and a shareholder of The Cosmetic Institute (TCI), TCI Parramatta, TCI Bondi and TCI Southport;

(b) otherwise, it does not admit the allegations in paragraph 14.

14A. To paragraph 14A:

- (a) it admits that the sixth defendant (**Niroshan Sivathasan**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications;
 - (ii) performed BAS on Ms Rickhuss;
- (b) it denies sub-paragraph (b);
- (c) it denies that Niroshan Sivathasan carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by the fifth defendant (**Dr Dona**);
- (d) otherwise, it does not admit the allegations in paragraph 14A.

14B. To paragraph 14B:

- (a) it admits that the seventh defendant (**Van Nguyen**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and
 - (ii) performed BAS on Ms Pollock;
- (b) it denies sub-paragraph (b);
- (c) it denies that Van Nguyen carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
- (d) otherwise, it does not admit the allegations in paragraph 14B.

14C. To paragraph 14C:

- (a) it admits that the eighth defendant (**Victor Lee**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and
 - (ii) performed BAS on Ms Bruen;
- (b) it denies sub-paragraph (b);
- (c) it denies that Victor Lee carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
- (d) otherwise, it does not admit the allegations in paragraph 14C.

14D. To paragraph 14D:

- (a) it admits that the ninth defendant (**Chi Vien Duong**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and
 - (ii) performed BAS on Ms Rowlands;
- (b) it denies sub-paragraph (b);
- (c) it denies that Chi Vien Duong carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
- (d) otherwise, it does not admit the allegations in paragraph 14D.

14E. To paragraph 14E:

- (a) it admits that the tenth defendant (**Anh Tang**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and
 - (ii) performed BAS on Ms Rutherford;
- (b) to sub-paragraph (b):
 - (i) it refers to paragraph 9(b)(iii)(A) above and admits that Anh Tang was a servant and/or agent of TCI Parramatta from around 13 September 2012 to 11 November 2013;
 - (ii) otherwise, it denies sub-paragraph (b);

- (c) it denies that Anh Tang carried out the duties or activities alleged in sub-paragraphs (c) and (d):
 - (i) for or on behalf of the first, third and/or fourth defendants;
 - (ii) for or on behalf of TCI Parramatta from around 11 November 2013 onwards;
 - (iii) it denies that Anh Tang was supervised or assisted by Dr Dona;
- (d) otherwise, it does not admit the allegations in paragraph 14E.

14F. To paragraph 14F:

- (a) it admits that the eleventh defendant (**Napoleon Chiu**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and
 - (ii) performed BAS on Ms Axen;
- (b) it denies sub-paragraph (b);
- (c) it denies that Napoleon Chiu carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
- (d) otherwise, it does not admit the allegations in paragraph 14F.

14G. To paragraph 14G:

- (a) it admits that the twelfth defendant (**Daniel Kwok**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and
 - (ii) performed BAS on Ms Zahr;
- (b) it denies sub-paragraph (b);
- (c) it denies that Daniel Kwok carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
- (d) otherwise, it does not admit the allegations in paragraph 14G.

14H. To paragraph 14H:

- (a) it admits that the thirteenth defendant (**Pedro Valente**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and

- (ii) performed BAS on Ms Love;
 - (b) it denies sub-paragraph (b);
 - (c) it denies that Pedro Valente carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
 - (d) otherwise, it does not admit the allegations in paragraph 14H.
- 14I. To paragraph 14I:
- (a) it admits that the fourteenth defendant (**Farheen Ali**):
 - (i) was a registered medical practitioner without any specialist surgical qualifications; and
 - (ii) performed BAS on Ms Gielisse;
 - (b) to sub-paragraph (b):
 - (i) it refers to paragraph 9(b)(iii)(B) above and admits that Farheen Ali was a servant and/or agent of TCI Parramatta;
 - (ii) otherwise, it denies sub-paragraph (b);
 - (c) it denies that Farheen Ali carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, third and/or fourth defendants;
 - (d) it denies that Farheen Ali was supervised or assisted by Dr Dona;
 - (e) otherwise, it does not admit the allegations in paragraph 14I.
- 14J. To paragraph 14J:
- (a) it admits that the fifteenth defendant (**James Kenny**):
 - (i) was a registered medical practitioner and general surgeon; and
 - (ii) performed BAS on Ms Turner;
 - (b) it denies sub-paragraph (b);
 - (c) it denies that James Kenny carried out the alleged duties or activities in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
 - (c) otherwise, it does not admit the allegations in paragraph 14J.
- 14K. To paragraph 14K:
- (a) it admits that the sixteenth defendant (**Sri Darshn**):

- (i) was a registered medical practitioner without any specialist surgical qualifications; and
- (ii) performed BAS on Ms Sanchez;
- (b) it denies sub-paragraph (b);
- (c) it denies that Sri Darshn carried out the duties or activities alleged in sub-paragraphs (c) and (d) for or on behalf of the first, second, third and/or fourth defendants, and that he was supervised or assisted by Dr Dona;
- (d) otherwise, it does not admit the allegations in paragraph 14K.

14L. Save to say that the relevant coverholder is Newline Australia Insurance Pty Ltd, it admits the allegations in paragraph 14L.

14M. It does not plead to paragraph 14M because it contains no allegations against it.

14N. It does not plead to paragraph 14N because it contains no allegations against it.

Part II. - THE FIRST TO FIFTH DEFENDANTS' SYSTEM OF BAS

A. TCI Facilities

15. To paragraph 15:

- (a) it denies that the first to fourth defendants offered BAS services to women, to the extent that such services involved medical advice, the performance of the operation, and post-operative medical treatment, save for the services referred to in paragraphs 9(b)(iii)(A) and (B) above;
- (b) it admits that BAS was performed by some or all of the TCI Surgeons at:
 - (i) TCI Parramatta Premises from around August 2012 to September 2015;
 - (ii) TCI Bondi Premises from around August 2013 to September 2015;
 - (iii) TCI Southport Premises from around August 2015;
 - (iv) Concord Private Hospital and Holroyd Private Hospital from around September 2015,
- (c) otherwise, it does not admit the allegations in paragraph 15.

16. To paragraph 16:

- (a) it admits that the TCI Parramatta Premises and TCI Bondi Premises were not licensed under the *Private Health Facilities Act 2007* (NSW) for the treatment of patients administered general, epidural or major regional anaesthetic or sedation resulting in more than conscious sedation;

(b) otherwise, it does not admit the allegations in paragraph 16.

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

B. TCI Surgeons

18. To paragraph 18, it says that:

(a) it refers to paragraph 9(b)(iii) above and admits that TCI Parramatta engaged:

(i) Anh Tang from around 13 September 2012 to 11 November 2013, when Dr Tang ceased to be engaged by it;

(ii) Farheen Ali;

(b) TCI Parramatta accredited the TCI Surgeons, including Anh Tang after the period referred to in sub-paragraph (a) above, to perform surgery at the premises set out in paragraph 18;

(c) otherwise, it denies the allegations in paragraph 18.

19. To paragraph 19:

(a) it says that TCI Parramatta entered into accreditation, training and/or consultancy deeds with each of the TCI Surgeons, save for Dr Tang in the period referred to in paragraph 18(a) above and Dr Ali;

(b) it refers to the said deeds for their full terms and effect; and

(c) otherwise, it denies paragraph 19.

C. TCI Anaesthetists

20. To paragraph 20:

(a) it admits the allegations, insofar as they relate to TCI Parramatta;

(b) otherwise, it does not admit the allegations.

D. The One Size Fits All Approach

21. To paragraph 21:

(a) it denies that BAS was performed at the TCI Premises for or on behalf of TCI, TCI Bondi and TCI Southport;

(b) save as referred to in paragraph 18(a) above, it denies that BAS was performed at the TCI Premises for or on behalf of TCI Parramatta;

(c) otherwise, it does not admit the allegations in paragraph 21.

22. It does not admit the allegations in paragraph 22.

E. The Representations

23. Not used.

23A. Not used.

F. Pre-Surgery Consultations

24. To paragraph 24:

- (a) it admits that prior to undergoing BAS, each of the plaintiffs attended a pre-surgery consultation with a TCI Surgeon and/or a cosmetic consultant;
- (b) save for Dr Tang and Dr Ali as set out in sub-paragraphs 9(b)(iii)(A) and (B) above, it denies that any of the TCI Surgeons were the servants or agents of any of the first to fourth defendants;
- (c) otherwise, it does not admit the allegations in paragraph 24.

G. Post-Surgery Consultations

24A. It refers to and repeats paragraph 24(b) above and otherwise does not admit the allegations in paragraph 24A.

24B. It does not admit the allegations in paragraph 24B.

24C. It does not admit the allegations in paragraph 24C.

24D. It does not admit the allegations in paragraph 24D.

24E. It does not admit the allegations in paragraph 24E.

24F. To paragraph 24F:

- (a) it denies that the fifth defendant made the alleged Representations to the public;
- (b) otherwise, it does not admit the allegations.

24G. To paragraph 24G:

- (a) it denies the allegations;
- (b) it refers to paragraph 24F(a) above.

24H. It does not admit the allegations in paragraph 24H.

24I. It does not admit the allegations in paragraph 24I.

24J. To paragraph 24J:

- (a) as to sub-paragraph (c),
 - (i) it denies the allegations in respect of TCI;

- (ii) save for Dr Tang and Dr Ali as set out in sub-paragraphs 9(b)(iii)(A) and (B) above, it denies that the TCI Surgeons were servants or agents of the first to fourth defendants;

(b) otherwise, it does not admit the allegations in paragraph 24J.

24K. It does not admit the allegations in paragraph 24K.

24L – 24AG. It does not admit the allegations in paragraphs 24L to 24AG.

Part III. - Questions common to claims of group members

25. It does not admit the allegations in paragraph 25.

Part IV. - The Plaintiffs' BAS

A. Amy Rickhuss

26. It does not admit the allegations in paragraph 26.

26A. It does not admit the allegations in paragraph 26A.

26B. It does not admit the allegations in paragraph 26B.

26C. It does not admit the allegations in paragraph 26C.

27. To paragraph 27:

(a) it admits that Ms Rickhuss attended a pre-surgery consultation at the TCI Paramatta Premises;

(b) otherwise, it does not admit the allegations in paragraph 27.

28. It does not admit the allegations in paragraph 28.

28A. To paragraph 28A:

(a) it denies that Niroshan Sivathanan was the servant or agent of the first or second defendant, and refers to and repeats paragraphs 9(b) and 14A(c) above;

(b) otherwise:

(i) it denies the allegations insofar as they relate to the first defendant; and

(ii) it does not admit the allegations insofar as they relate to the second defendant.

28B. It does not admit the allegations in paragraph 28B.

28C. It does not admit the allegations in paragraph 28C.

29. It admits paragraph 29.

30. It does not admit the allegations in paragraph 30 and says further that [REDACTED]

[REDACTED]

- 31. It admits paragraph 31.
- 32. It does not admit the allegations in paragraph 32.
- 33. It admits paragraph 33.
- 34. It admits paragraph 34.
- 35. It admits paragraph 35.
- 36. It does not admit the allegations in paragraph 36.

B. Kylie Pollock

- 37. It does not admit the allegations in paragraph 37.
- 37A. It does not admit the allegations in paragraph 37A.
- 38. To paragraph 38:
 - (a) it admits that Ms Pollock attended a pre-surgery consultation at the TCI Bondi Premises;
 - (b) otherwise, it does not admit the allegations in paragraph 38.
- 39. It does not admit the allegations in paragraph 39.
- 39A. To paragraph 39A:
 - (a) it denies that Van Nguyen was the servant or agent of the first or third defendant, and refers to and repeats paragraphs 9(b) and 14B(c) above;
 - (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the third defendant.
- 39B. It does not admit the allegations in paragraph 39B.
- 39C. It does not admit the allegations in paragraph 39C.
- 40. It admits paragraph 40.
- 41. It does not admit the allegations in paragraph 41 and says further that [REDACTED]
[REDACTED].
- 42. To paragraph 42:
 - (a) [REDACTED]
[REDACTED];
 - (b) otherwise, it does not admit the allegations in paragraph 42.
- 43. It admits paragraph 43.

- 44. It admits paragraph 44.
- 45. It admits paragraph 45.
- 46. It admits paragraph 46.
- 47. It does not admit the allegations in paragraph 47.

C. Jessica Bruen

- 48. It does not admit the allegations in paragraph 48.
- 48A. It does not admit the allegations in paragraph 48A.
- 48B. It does not admit the allegations in paragraph 48B.
- 49. To paragraph 49:
 - (a) it admits that Ms Bruen attended a pre-surgery consultation at the TCI Bondi Premises;
 - (b) otherwise, it does not admit the allegations in paragraph 49.
- 50. It does not admit the allegations in paragraph 50.
- 50A. To paragraph 50A:
 - (a) it denies that Victor Lee was the servant or agent of the first or third defendant, and refers to and repeats paragraphs 9(b) and 14C(c) above;
 - (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the third defendant.
- 50B. It does not admit the allegations in paragraph 50B.
- 50C. It does not admit the allegations in paragraph 50C.
- 51. It admits paragraph 51.
- 52. It does not admit the allegations in paragraph 52.
- 53. It does not admit the allegations in paragraph 53.
- 54. It does not admit the allegations in paragraph 54.
- 55. It does not admit the allegations in paragraph 55.
- 56. It does not admit the allegations in paragraph 56.

D. Kirsty-Anne Rowlands

- 57. It does not admit the allegations in paragraph 57.

57A. It does not admit the allegations in paragraph 57A.

57B. It does not admit the allegations in paragraph 57B.

57C. It does not admit the allegations in paragraph 57C.

58. To paragraph 58:

(a) it admits that Ms Rowlands attended a pre-surgery consultation at the TCI Parramatta Premises;

(b) otherwise, it does not admit the allegations in paragraph 58.

59. It does not admit the allegations in paragraph 59.

59A. To paragraph 59A:

(a) it denies that Chi Vien Duong was the servant or agent of the first or second defendant, and refers to and repeats paragraphs 9(b) and 14D(c) above;

(b) otherwise:

(i) it denies the allegations insofar as they relate to the first defendant; and

(ii) it does not admit the allegations insofar as they relate to the second defendant.

59B. It does not admit the allegations in paragraph 59B.

59C. It does not admit the allegations in paragraph 59C.

60. It admits paragraph 60.

61. It does not admit the allegations in paragraph 61.

62. It does not admit the allegations in paragraph 62.

63. It does not admit the allegations in paragraph 63.

64. It does not admit the allegations in paragraph 64.

E. Lily Knowland

65 – 67. It does not plead to paragraphs 65 to 67 as Ms Knowland makes no claims against it.

67A. To paragraph 67A:

(a) it denies that Van Nguyen was the servant or agent of the first or fourth defendant, and refers to and repeats paragraphs 9(b) and 14B(c) above;

(b) otherwise:

(i) it denies the allegations insofar as they relate to the first defendant; and

- (ii) it does not admit the allegations insofar as they relate to the fourth defendant.

67B – 77. It does not plead to paragraphs 67B to 77 as Ms Knowland makes no claims against it.

F. Tiffany Rutherford

77FA – 77FC. It does not plead to paragraphs 77FA to 77FC as Ms Rutherford makes no claims against it.

77FCA. To paragraph 77FCA:

- (a) it denies that Anh Tang was acting as the servant or agent of the first or third defendant, and refers to and repeats paragraphs 9(b) and 14E(c) above;
- (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the third defendant.

77FCB – 77FO. It does not plead to paragraphs 77FCB to 77FO as Ms Rutherford makes no claims against it.

G. Alysha Axen

77GA – 77GCA. It does not plead to paragraphs 77GA to 77GCA as Ms Axen makes no claims against it.

77GCA. To paragraph 77GCA:

- (a) it denies that Napoleon Chiu was the servant or agent of the first or second defendant, and refers to and repeats paragraphs 9(b) and 14F(c) above;
- (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the second defendant.

77GCB – 77GJ. It does not plead to paragraphs 77GCB to 77GJ as Ms Axen makes no claims against it.

H. Sherine Zahr

77HA – 77HG. It does not plead to paragraphs 77HA to 77HG as Ms Zahr makes no claims against it.

77HGA. To paragraph 77HGA:

- (a) it denies that Sri Darshn and Daniel Kwok were the servants or agents of the first or third defendants, and refers to and repeats paragraphs 9(b), 14G(c) and 14K(c) above;
- (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the second defendant.

77HGB – 77HO. It does not plead to paragraphs 77HGB to 77HO as Ms Zahr makes no claims against it.

I. Emma Love

77IA. It does not admit the allegations in paragraph 77IA.

77IAA. It does not admit the allegations in paragraph 77IAA.

77IAB. It does not admit the allegations in paragraph 77IAB.

77IB. To paragraph 77IB:

- (a) it admits that Ms Love attended a pre-surgery consultation at the TCI Parramatta Premises;
- (b) otherwise, it does not admit the allegations in paragraph 77IB.

77IC. It does not admit the allegations in paragraph 77IC.

77ICA. To paragraph 77ICA:

- (a) it denies that Pedro Valente was the servant or agent of the first or second defendant, and refers to and repeats paragraphs 9(b) and 14H(c) above;
- (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the second defendant.

77ICB. It does not admit the allegations in paragraph 77ICB.

77ICC. It does not admit the allegations in paragraph 77ICC.

77ID. It admits paragraph 77ID.

77IE. It does not admit the allegations in paragraph 77IE.

77IF. To paragraph 77IF:

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) otherwise, it does not admit the allegations in paragraph 77IF.

77IG. It admits paragraph 77IG.

77IH. It does not admit the allegations in paragraph 77IH.

77II. It admits paragraph 77II.

77IJ. It does not admit the allegations in paragraph 77IJ.

J. Candiece Gielisse

77JA – 77JD. It does not plead to paragraphs 77JA to 77JD as Ms Gielisse makes no claims against it.

77JDA. To paragraph 77JDA:

(a) it denies that Farheen Ali was acting as the servant or agent of the first defendant, and refers to and repeats paragraphs 9(b) and 14(c) above;

(b) otherwise:

(i) it denies the allegations insofar as they relate to the first defendant; and

(ii) it does not admit the allegations insofar as they relate to the second defendant.

77JDB – 77JO. It does not plead to paragraph 77JDB to 77JO as Ms Gielisse makes no claims against it.

K. Ali Turner

77KA. It does not admit the allegations in paragraph 77KA.

77KAA. It does not admit the allegations in paragraph 77KAA.

77KAB. It does not admit the allegations in paragraph 77KAB.

77KB. To paragraph 77KB:

(a) it admits that Ms Turner attended a pre-surgery consultation at the TCI Parramatta Premises;

(b) otherwise, it does not admit the allegations in paragraph 77IB.

77KC. It does not admit paragraph 77KC.

77KCA. To paragraph 77KCA:

- (a) it denies that James Kenny was the servant or agent of the first or second defendant, and refers to and repeats paragraphs 9(b) and 14J(c) above;
- (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the second defendant.

77KCB. It does not admit the allegations in paragraph 77KCB.

77KCC. It does not admit the allegations in paragraph 77KCC.

77KD. It admits paragraph 77KD.

77KE. It admits paragraph 77KE.

77KF. To paragraph 77KF:

- (a) [REDACTED];
- (b) otherwise, it does not admit the allegations in paragraph 77KF.

77KG. It does not admit the allegations in paragraph 77KG.

77KH. It does not admit the allegations in paragraph 77KH.

77KI. It does not admit the allegations in paragraph 77KI.

L. Stephanie Sanchez

77LA - 77LF. It does not plead to paragraphs 77LA to 77LF as Ms Sanchez makes no claims against it.

77LFA. To paragraph 77LFA:

- (a) it denies that James Kenny or Sri Darshn were the servants or agents of the first or fourth defendants, and refers to and repeats paragraphs 9(b), 14J(c) and 14K(c) above;
- (b) otherwise:
 - (i) it denies the allegations insofar as they relate to the first defendant; and
 - (ii) it does not admit the allegations insofar as they relate to the fourth defendant.

77LFB – 77LL. It does not plead to paragraphs 77LFB to 77LL as Ms Sanchez makes no claims against it.

Part V. - Negligence

78. To paragraph 78:

- (a) subject to sections 5B and 5C of the *Civil Liability Act 2002* (NSW) (**CLA**) and, where applicable, sections 9 and 10 of the *Civil Liability Act 2003* (Qld) (**Qld Act**), it admits that the fifth defendant owed the plaintiffs and group members a duty to exercise reasonable care and skill in the performance of any medical services by him personally for them and otherwise denies the allegations insofar as they relate to the fifth defendant;
- (b) it refers to and repeats sub-paragraph 9(b)(iii) above;
- (c) it denies that the first to fourth defendants owed any duty in relation to the provision of medical advice, the performance of the operation, or post-operative medical treatment, save for the second defendant in relation to patients of Dr Ali and of Dr Tang in the time period set out in sub-paragraph 9(b)(iii)(A) above;
- (d) otherwise, it does not admit the allegations.

78A. It does not admit the allegations in paragraph 78A.

78B – 78L. It does not admit the allegations in paragraphs 78B to 78L.

79. It does not admit the allegations in paragraph 79.

79A. It does not admit the allegations in paragraph 79A.

79B. It does not admit the allegations in paragraph 79B.

80. Not used.

81. To paragraph 81:

- (a) it does not admit the allegations; and
- (b) it refers to paragraph 96 below.

81A. To paragraph 81A:

- (a) it does not admit the allegations; and
- (b) it refers to paragraph 96 below.

81B – 81X. It does not admit the allegations in paragraphs 81B to 81X.

Part VI. - Competition and Consumer Act

82. To paragraph 82:

- (a) it admits that BAS was ordinarily acquired by the plaintiffs and group members for personal use;

- (b) otherwise, it does not admit the allegations.
- 83. To paragraph 83:
 - (a) it admits the allegations in respect of the plaintiffs;
 - (b) otherwise, it does not admit the allegations in paragraph 83.
- 83A. To paragraph 83A:
 - (a) it denies sub-paragraph (a),
 - (b) it refers to and repeats paragraph 9(b) above;
 - (c) otherwise, it does not admit the allegations in paragraph 83A.
- 84. To paragraph 84:
 - (a) it admits the allegations in respect of the plaintiffs;
 - (b) otherwise, it does not admit the allegations in paragraph 84.
- 85. It does not admit the allegations in paragraph 85.
- 86. It does not admit the allegations in paragraph 86.
- 87. It does not admit the allegations in paragraph 87.
- 88. It does not admit the allegations in paragraph 88.
- 89. To paragraph 89:
 - (a) it denies the allegations in respect of the first defendant;
 - (b) otherwise, it does not admit the allegations.
- 89A. It does not admit the allegations in paragraph 89A.
- 89B – 89L. It does not admit the allegations in paragraphs 89B to 89L.
- 90. To paragraph 90:
 - (a) it does not admit the allegations; and
 - (b) it refers to paragraph 96 below.
- 91. It does not admit the allegations in paragraph 91.
- 92. It does not admit the allegations in paragraph 92.
- 93. Not used.
- 94. To paragraph 94:
 - (a) it does not admit the allegations; and
 - (b) it refers to paragraph 96 below.

94A. To paragraph 94A:

- (a) it does not admit the allegations; and
- (b) it refers to paragraph 96 below.

94B – 94L. It does not admit the allegations in paragraphs 94B to 94L.

95. It does not admit the allegations in paragraph 95.

95A. It does not admit the allegations in paragraph 95A.

95B – 95L. It does not admit the allegations in paragraphs 95B to 95L.

96. To paragraph 96:

- (a) it denies the allegations;
- (b) it says further that:
 - (i) if (which is not admitted) the first to fifth defendants breached any duty of care or consumer guarantee under the ACL in the manner alleged, then any system and/or act or omission of the first to fifth defendants did not of itself constitute causation for the purposes of section 5D of the CLA, section 11 of the Qld Act or otherwise;
 - (ii) any sums the plaintiffs and group members may recover are to be assessed in accordance with Part 2 of the CLA and, where applicable, Part 3 of the Qld Act;
 - (iii) as regards the claims for breach of the consumer guarantees in the ACL, by operation of section 275 of the ACL, such claims are subject to limits under the CLA;
- (c) to sub-paragraphs (d) and (e), it further refers to and repeats paragraph 9(b) above.

96A. It does not admit the allegations in paragraph 96A.

96B. It denies the allegations in paragraph 96B.

96C. To paragraph 96C:

- (a) it denies the allegations;
- (b) further and in the alternative, to the extent that any such claim may relate to a poor aesthetic outcome that constitutes physical impairment, it says that the relevant plaintiff or group member cannot recover damages or compensation by operation of sections 137C and/or 137E of the *Competition and Consumer Act 2010* (Cth) (CCA) and/or section 74(4) of the *Fair Trading Act 1987* (NSW).

96D – 96AJ. It does not admit the allegations paragraphs 96D to 96AJ.

Part VIII - Claims against Insurers

A. Claims against Newline

97. To paragraph 97:

- (a) it admits that it issued a policy of medical malpractice insurance to TCI Parramatta, TCI and TCI Bondi for the period from 28 July 2014 to 30 June 2015 (**2014 Policy**);
- (b) as regards the fifth defendant:
 - (i) it denies that the fifth defendant was a named insured;
 - (ii) it refers to paragraph 14 above, and admits that the fifth defendant was an "insured person" as that term is defined in the 2014 Policy for certain activities for TCI Paramatta and TCI Bondi during the said period of insurance, and refers to the full terms and effect of the 2014 Policy;
- (c) otherwise, it does not admit the allegations.

PARTICULARS

- (i) The 2014 Policy was in writing and to be implied.
 - (ii) Insofar as it was in writing, it was comprised of a schedule, Newline's 02-13 Med Mal CI wording, important notice to the insured, and proposal form, of which copies may be inspected at the offices of Newline's solicitors by prior appointment.
 - (iii) Insofar as it was implied, it was to be so implied by operation of law.
98. To paragraph 98:
- (a) it admits the allegations insofar as they relate to the first to fourth defendants;
 - (b) as regards the fifth defendant:
 - (i) it denies that the fifth defendant was a named insured;
 - (ii) it refers to paragraph 14 above, and admits that the fifth defendant was an "insured person" as that term is defined in the 2015 Policy for certain activities for TCI Paramatta, TCI Bondi and TCI Southport during the said period of insurance prior to and including 8 February 2016, when he ceased to be a director of those companies, and refers to the full terms and effect of the said policy of medical malpractice insurance (**2015 Policy**);
 - (iii) otherwise, it does not admit the allegations;

- (c) it says further that the 2015 Policy subsequently included TCI Southport Pty Ltd and IWP Operations Pty Ltd as insureds by endorsements dated 1 August and 28 August 2015 respectively.

PARTICULARS

- (i) The 2015 Policy was in writing and to be implied.
- (ii) Insofar as it was in writing, it was comprised of a schedule, Newline's 02-13 Med Mal CI wording, important notice to the insured, proposal form, and the said endorsements, of which copies may be inspected at the offices of Newline's solicitors by prior appointment.
- (iii) Insofar as it was implied, it was to be so implied by operation of law.
99. To paragraph 99:
- (a) it admits the allegations; and
- (b) it refers to paragraph 98 above.
100. To paragraph 100:
- (a) subject to production of and reference to the full terms and effect of the 2014 Policy and the 2015 Policy, it admits the allegations; and
- (b) it refers to paragraph 104 below.
101. To paragraph 101:
- (a) subject to production of and reference to the full terms and effect of the 2014 Policy and 2015 Policy, it admits the allegations; and
- (b) it refers to paragraph 104 below.
102. Subject to production of and reference to the full terms and effect of the Policy2015 Policy, it admits the allegations in paragraph 102.
103. To paragraph 103:
- (a) it admits that it received notifications from Lockton Companies Australia Pty Ltd (**Lockton**), being the insurance broker of the first to fourth defendants, in respect of:
- (i) Ms Rickhuss on 6 February 2015;
- (ii) Ms Bruen on 24 September 2015;
- (iii) Ms Rowlands on 8 October 2015;
- (iv) Ms Love on or about 29 October 2015; and

- (v) Ms Turner on 6 March 2016;
- (b) with respect to Ms Pollock, it says that:
- (i) it received an email dated 12 August 2014 from Richard Jane of Lockton attaching a table of notifications recording, amongst other things, that the date of "complaint / claim notified" in respect of Ms Pollock was 3 July 2014;
 - (ii) in the said email, Mr Jane stated that the table contained "some notifications of circumstances that are relevant to the previous program";
 - (iii) it was a term of the 2014 Policy and the 2015 Policy that Newline would not indemnify any Insured against (*inter alia*) any liability or Loss directly or indirectly arising out of, caused by, resulting from or in consequence of:
 - (A) any Claim first made against any Insured prior to the commencement of the Period of Insurance; or
 - (B) any acts, errors, omissions or facts which any Insured knew or ought to have known, prior to the commencement of the Period of Insurance, might give rise to a Claim or Loss;

(Prior Knowledge/Claims Exclusion);
 - (iv) the circumstances notified regarding Ms Pollock fell within the scope of the Prior Knowledge/Claims Exclusion;
 - (v) in the premises, there was no cover in respect of the claim by Ms Pollock under the 2014 Policy or the 2015 Policy;
 - (vi) in an email exchange between Newline and Mr Jane of Lockton dated 26 August 2014, Mr Jane confirmed that the notification in respect of Ms Pollock did not apply to Newline;
- (c) with respect to Ms Rickhuss, it says that:
- (i) the notification regarding Ms Rickhuss related only to [REDACTED];
 - (ii) to the extent that Ms Rickhuss is claiming damages [REDACTED]:
 - (A) there is no recognisable correspondence between the facts that were notified and the facts forming the basis for the claim for unrelated damages, for the purposes of section 40(3) of the *Insurance Contracts Act 1984* (Cth) (ICA); and
 - (B) in the premises, Newline is not liable in respect of such other damages;

- (d) otherwise, it denies the allegations in paragraph 103.

PARTICULARS

- (i) Copies of the above emails may be inspected at the offices of Newline's solicitors by prior appointment.
- (ii) The Prior Knowledge/Claims Exclusion is General Exclusion 4C of the 2014 Policy and the 2015 Policy (**Policies**).

104. To paragraph 104:

- (a) it denies the allegations;
- (b) it says further that:
- (i) Insuring Clause 1A of the Policies, headed "Malpractice", did not cover misleading or deceptive conduct of the nature alleged, or inadequate training of the TCI Surgeons of the nature alleged, as that did not constitute "Healthcare Services" as defined;
- (ii) if (which is not admitted) TCI, TCI Parramatta, TCI Bondi, TCI Southport and/or the fifth defendant engaged in misleading or deceptive conduct of the nature alleged:
- (A) such conduct was not covered by Insuring Clause 1C of the Policies, headed "Misleading and Deceptive Conduct", by reason that:
- (1) Insuring Clause 1C only covered conduct by an Insured that was unintentional and was committed in the provision of "Healthcare Services";
- (2) "Healthcare Services" were defined in Section 7 of the Policies as: "any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person admitted to their care...";
- (iii) in the premises, there was no cover under the 2014 Policy or the 2015 Policy in respect of any such conduct;
- (iv) the matters alleged in paragraphs 133 and 142 below fell within the scope of General Exclusion 4C.2 of the 2014 Policy, and the matters alleged in paragraphs 133, 142 and 145 – 147 below fell within the scope of General Exclusion 4C.2 of the 2015 Policy, being acts, errors, omissions or facts which TCI, TCI Parramatta, TCI Bondi, TCI Southport and/or the fifth defendant knew or ought to have known, prior to the commencement of the relevant periods of insurance, might give rise to a claim or loss, such that

Newline is not liable to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport and/or the fifth defendant in respect of any liability to Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love, Ms Turner or group members (*inter alia*) arising directly or indirectly out of or in consequence of such matters;

(v) the matters alleged in paragraphs 133(u) and (v) below fell within the scope of General Exclusion 4G.4 of the 2014 Policy and 2015 Policy, being intentional, wilful or reckless:

(A) acts without regard for the consequences;

(B) disregard of the need to take all reasonable steps to prevent loss; and/or

(C) as regards the matters alleged in paragraph 133(u) and (v)(iii) below, breach of statute,

such that Newline is not liable to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport and/or the fifth defendant in respect of any liability to Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love, Ms Turner or group members (*inter alia*) arising directly or indirectly out of or in consequence of such matters;

(vi) it refers to the matters in sub-paragraphs (c) to (f) below;

(c) there was no cover under the 2014 Policy or the 2015 Policy for any action to refund, account for, or pay damages calculated by reference to any fee, cost, charge or disbursement charged or incurred by any of the first to fourth defendants, by operation of General Exclusion 4B of each Policy;

(d) the insureds under the 2014 Policy (**2014 Insureds**) and the insureds under the 2015 Policy (**2015 Insureds**) failed and/or refused to provide Newline with requested documents and information, contrary to General Condition 5B.1 of the 2014 Policy and the 2015 Policy respectively and their duty of utmost good faith under section 13 of the ICA, such that:

(i) the 2014 Insureds breached the 2014 Policy;

(ii) the 2015 Insureds breached the 2015 Policy; and

(iii) Newline is not liable to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport and/or the fifth defendant in respect of any liability to Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love, Ms Turner or group members.

PARTICULARS

Newline refers to paragraphs 37 to 43 of a letter from its solicitors, Landers & Rogers, to the liquidators of TCI dated 14 December 2018, a copy of which may be inspected at the offices of its solicitors by prior appointment.

- (e) as regards the fifth defendant:
 - (i) there were terms of the Policies that Newline would not indemnify any Insured (*inter alia*) against any liability or Loss directly or indirectly arising out of, caused by, resulting from or in consequence of:
 - (A) any Insured acting as a director, secretary or officer of a body corporate or a trustee pursuant to a trust deed (General Exclusion 4H); and/or
 - (B) any Claim arising directly or indirectly in respect of the liability of an Insured who is a natural person where such liability arises directly from that person's activities as, or acting in their capacity as, a Medical Practitioner (General Exclusion 4T);
 - (ii) in the premises, Newline is not liable to indemnify the fifth defendant for any liability or loss (*inter alia*) directly or indirectly arising out of, caused by, resulting from or in consequence of the fifth defendant acting:
 - (A) as a director or officer of TCI, TCI Parramatta, TCI Bondi, TCI Southport, Dona Family Pty Limited or any other company; or
 - (B) as a medical practitioner (as that term is defined in the Policies);
 - (iii) further and in the alternative, it denies that the notifications referred to in paragraph 103 above were "Claims" as defined in the Policies, or that they were made by or on behalf of the fifth defendant for the purposes of section 40(3) of the ICA;
- (f) otherwise, it refers to paragraphs 107 and 132 to 161 below.

105. To paragraph 105:

- (a) it admits that patients other than Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love and Ms Turner had surgery performed at premises owned and/or operated by TCI, TCI Parramatta, TCI Bondi and/or TCI Southport in the period 28 July 2014 to 30 June 2016; and
- (b) otherwise, it does not admit the allegations in paragraph 105.

106. To paragraph 106:

- (a) it admits that it received notifications from Lockton on behalf of one or more of the first to fourth defendants in respect of group members other than Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love and Ms Turner in the period 28 July 2014 to 30 June 2016;
- (b) it says further that it is not liable to any plaintiff or group member for whom:
 - (i) a claim or circumstances were not notified to Newline in accordance with section 40(3) of the ICA within the said period from 28 July 2014 to 30 June 2016;
 - (ii) prior circumstances existed or a Claim had been made prior to 28 July 2014 for which the Prior Knowledge/Claims Exclusion applied;
 - (iii) a purported notification within the said period did not disclose facts that may give rise to a claim against any of the first to fifth defendants for the purposes of section 40(3) of the ICA; and/or
 - (iv) there is no recognisable correspondence between facts that were notified that might give rise to a claim and the subsequent claims made in this proceeding.
- (c) otherwise, it does not admit the allegations in paragraph 106.

107. To paragraph 107:

- (a) it denies the allegations;
- (b) it says further that:
 - (i) it refers to paragraph 106(b) above;
 - (ii) it is not liable to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport and/or the fifth defendant in respect of claims by group members where:
 - (A) such claims or circumstances that might give rise to such claims were not notified to Newline during the period of insurance of the 2014 Policy or the 2015 Policy;
 - (B) prior circumstances existed or a Claim had been made prior to 28 July 2014 for which the Prior Knowledge/Claims Exclusion applied;
 - (C) a purported notification within the said period did not disclose facts that may give rise to a claim against any of the first to fifth defendants for the purposes of section 40(3) of the ICA; and/or
 - (D) there is no recognisable correspondence between facts that were notified to Newline during the period of insurance of the 2014 Policy

or the 2015 Policy and the subsequent claims made in this proceeding by group members;

- (iii) the said notifications were not effective for the fifth defendant for the purposes of section 40(3) of the ICA, on the basis (*inter alia*) that no facts were notified to Newline within the said periods of insurance that would form the basis for a claim against the fifth defendant;
- (iv) if it is liable (which is denied) then:
 - (A) its liability is limited to \$10,000,000 (inclusive of defence costs) in the aggregate under each of the 2014 Policy and/or the 2015 Policy; and
 - (B) its liability (including in respect of defence costs) is limited to its relative legal and financial exposure attributed to matters covered under the 2014 Policy and/or the 2015 Policy, as distinct from matters not covered.

PARTICULARS

Newline refers (*inter alia*) to the Schedule and General Condition 6B of the 2014 Policy and the 2015 Policy.

- (c) otherwise, it refers to paragraph 104 above and paragraphs 132 to 160 below.

B. Claims Against Allied World

- 108. It does not plead to paragraph 108 because it contains no allegations against it.
- 109. It does not plead to paragraph 109 because it contains no allegations against it.
- 110. It does not plead to paragraph 110 because it contains no allegations against it.
- 111. It does not plead to paragraph 111 because it contains no allegations against it.
- 112. It does not plead to paragraph 112 because it contains no allegations against it.
- 113. It does not plead to paragraph 113 because it contains no allegations against it.
- 114. It does not plead to paragraph 114 because it contains no allegations against it.
- 115. It does not plead to paragraph 115 because it contains no allegations against it.
- 116. It does not plead to paragraph 116 because it contains no allegations against it.

C. Claims against MDANI

- 117. It does not plead to paragraph 117 because it contains no allegations against it.
- 118. It does not plead to paragraph 118 because it contains no allegations against it.

119. It does not plead to paragraph 119 because it contains no allegations against it.
120. It does not plead to paragraph 120 because it contains no allegations against it.
121. It does not plead to paragraph 121 because it contains no allegations against it.
122. It does not plead to paragraph 122 because it contains no allegations against it.
123. It does not plead to paragraph 123 because it contains no allegations against it.
124. It does not plead to paragraph 124 because it contains no allegations against it.
125. It does not plead to paragraph 125 because it contains no allegations against it.
126. It does not plead to paragraph 126 because it contains no allegations against it.
127. It does not plead to paragraph 127 because it contains no allegations against it.
128. It does not plead to paragraph 128 because it contains no allegations against it.
129. It does not plead to paragraph 129 because it contains no allegations against it.
130. It does not plead to paragraph 130 because it contains no allegations against it.
131. It does not plead to paragraph 131 because it contains no allegations against it.

Limitation Defences

132. Further and in the alternative:
- (a) the claim of Ms Pollock was discoverable more than 3 years prior to the commencement of this proceeding on 14 September 2017;
 - (b) in the premises, such claim is statute barred by operation of section 50C of the *Limitation Act 1969* (NSW) and/or section 87F of the CCA;
 - (c) further and in the alternative, any of the plaintiffs' or group members' claims:
 - (i) which occurred in NSW and were discoverable 3 years or more prior to the commencement of this proceeding are statute barred pursuant to section 50C of the *Limitation Act 1969* (NSW); and/or
 - (ii) which occurred in Queensland and accrued 3 years or more prior to the commencement of this proceeding are statute barred pursuant to section 11 of the *Limitation Act 1974* (Qld).

Avoidance of the 2014 Policy and the 2015 Policy

133. Further and in the alternative to the non-admissions and denials set out above, and in the event that some or all of the Plaintiffs' claims against the first to fifth defendants are made out (which is not admitted), Newline asserts that at all material times, TCI, TCI Parramatta,

TCI Bondi (and subsequently TCI Southport) and related companies (the **TCI Group**) conducted operations (*inter alia*) as follows:

- (a) the TCI Group engaged doctors with no prior experience, alternatively minimal experience performing cosmetic procedures, BAS and/or surgery;
- (b) the said doctors were provided limited and inadequate training, consisting of:
 - (i) observation of other TCI doctors (themselves not being plastic surgeons);
 - (ii) two days of training by Dr Dona;
 - (iii) no syllabus;
 - (iv) no pass or fail criteria;
 - (v) no written component;
 - (vi) no testing or examination;
- (c) in such training, doctors were shown and/or performed limited BAS techniques and accordingly:
 - (i) they were no more than surgical technicians who could not perform required variations, mastopexy or other common procedures;
 - (ii) BAS performed by the doctors was suitable only for limited patients;
 - (iii) patients were exposed to increased risks of complications and poor results;
- (d) doctors thereafter practised BAS operating skills and techniques unsupervised on full fee-paying patients of the TCI Group, without patients being informed of this;
- (e) there was no training or oversight of doctors in relation to infection control practices, resulting in significant spikes in complications and infections when new doctors commenced with the TCI Group, and ongoing issues (*inter alia*) with Dr Kenny and Dr Nguyen;
- (f) there was no adequate system of ongoing evaluation of the performance of doctors, despite certain doctors being known by management of the TCI Group to present increased risks;
- (g) TCI Surgeons were permitted to continue operating on patients unsupervised despite certain TCI Surgeons being known to present an unacceptable or increased risk to patients;
- (h) monetary incentives were offered to staff of the TCI Group who booked the most cosmetic procedures;

- (i) large numbers of vulnerable women with limited means were targeted by the TCI Group (*inter alia*) with payment plans;
- (j) the TCI Group grossly minimalised cautions to patients about risks of BAS, unsatisfactory results and follow-up issues;
- (k) the TCI Group scheduled consultations for patients with persons referred to as consultants who were not in fact medical practitioners and were not supervised in those consultations by medical practitioners;
- (l) the only qualified plastic surgeon associated with the TCI Group was Dr Dona, who:
 - (i) did not generally perform surgery for the TCI Group;
 - (ii) was not generally available to supervise or provide advice to doctors contracted by the TCI Group when those doctors performed BAS; and
 - (iii) generally refused to attend the various TCI premises;
- (m) there was no adequate system for the management, investigation and rectification of complications, and no formal audit system;
- (n) up until around September 2015, BAS was performed on patients at the TCI Parramatta Premises and TCI Bondi Premises using sedation resulting in more than conscious sedation, and on numerous occasions under deep sedation, in premises that were required to be licensed under the *Private Health Facilities Act 2007* (NSW) for such sedation, but which in breach of that legislation were not in fact so licensed;
- (o) such sedation was otherwise inappropriate for BAS because (*inter alia*) it resulted in:
 - (i) unsafe doses of local anaesthetic;
 - (ii) patient movement which increased the risk of unsatisfactory outcomes and complications;
 - (iii) the risk of patient awareness during surgery;
 - (iv) a potential for complications which the TCI Surgeons were not trained to deal with, and for which the premises were not equipped;
- (p) the breast implants used were textured implants linked by research to an increased rate of breast cancer;
- (q) no written procedures or checklists were used for the surgical services provided;

- (r) there was no formal process for assessing whether patients were suitable for discharge on the day of surgery, and patients were frequently discharged soon after their surgery;
- (s) patients were not routinely reviewed by the TCI Surgeons post-operatively:
 - (i) on the day of surgery; or
 - (ii) in the weeks or months after their surgery,but instead by nurses or cosmetic consultants without medical supervision;
- (t) the treatment of patients on occasion was "medically negligent", "seriously medically negligent" and/or "outrageous";
- (u) in wilful breach of AHPRA advertising guidelines and section 133 of the Health Practitioner Regulation National Law, patient testimonials were included on the website maintained by one or more of the TCI Defendants;
- (v) management of the TCI Group made decisions to adopt the above practices and otherwise:
 - (i) not to pursue requisite licensing of the TCI Parramatta Premises and TCI Bondi Premises;
 - (ii) not to engage suitably trained and qualified plastic surgeons;
 - (iii) to permit doctors to perform BAS in unlicensed facilities using more than conscious sedation;
 - (iv) not to enforce appropriate patient selection processes, so that TCI Surgeons operated on patients (including those with ptosis who required mastopexy) who were unsuitable for BAS performed by the TCI Surgeons with their limited skills;
 - (v) to permit individual doctors to continue to operate despite poor results and high complication rates; and
 - (vi) to adopt the One Size Fits All Approach alleged in paragraph 21 of the 4FASOC,

knowing that each and/or all of these practices would compromise standards and safety, and was fraught with the increased risk of injury to, and claims by, patients, (together, the **TCI Group Practices**).

PARTICULARS

- (i) Newline refers, *inter alia*, to:

- (A) statements to the substance alleged by the TCI Group's former nursing manager, Ms Nicole Montgomery, and its former operations manager, Mr Alfie Lombardi, in an ABC Four Corners investigation broadcast on 16 August 2018;
 - (B) sworn testimony of Ms Montgomery to the substance alleged to the NSW Parliamentary Inquiry into the cosmetic health services industry during its hearing on 1 August 2018 (**Parliamentary Inquiry**), such testimony being recorded in a report on the said hearing (**Report**);
 - (C) the reports of Professor Anand Deva dated 22 March 2018, 20 May 2020 and 8 December 2020 served by the Plaintiffs;
 - (D) the report of Professor Mark Ashton dated 11 May 2020 served by the Plaintiffs;
 - (E) the report of Professor Cliff Hughes dated 18 May 2020 served by the Plaintiffs;
 - (F) the report of Dr Rohit Kumar dated 18 May 2020 served by the Plaintiffs.
- (ii) As regards paragraphs (a) and (b), Newline refers (*inter alia*) to:
- (A) an email from Mr Segal to Kylee Trevitt dated 23 January 2014;
 - (B) an email from Dr Dona to Mr Segal and Mr Lombardi dated 26 February 2015.
- (iii) As regards paragraph (e), Newline further refers (*inter alia*) to the report of Dr Michael Whitby dated 5 August 2020 served by the Plaintiffs.
- (iv) As regards paragraph (f) Newline refers (*inter alia*) to the fact that:
- (A) Dr Nguyen was permitted to operate unsupervised until June 2017 despite being placed on probation in October 2014 and having a reputation within the TCI Group as a "cowboy" and a "loose cannon" with inappropriate patient selection;
 - (B) many of Dr Kenny's patients required revision surgery to drop implants. Despite this, Dr Kenny was permitted to operate unsupervised;
 - (C) Dr Lee required (but was not provided) constant post-operative supervision and was permitted to continue to operate despite being considered to pose an unacceptable risk to patients;

- (D) Dr Kwok was allowed to continue to operate despite being known as at May 2014 to have caused a "strange number" of infections.
- (v) As regards paragraph (g), Newline refers (*inter alia*) to:
- (A) an email from Alfie Lombardi to Dr Nguyen dated 16 October 2014;
 - (B) an email from David Segal to Dr Dona dated 25 September 2015;
 - (C) an email from Ms Borg to Ms Lawson dated 28 September 2015;
 - (D) emails between Mr Moini, Mr Segal and Dr Dona dated 29 September 2015;
 - (E) Dr Kenny and Dr Nguyen were permitted to operate out of TCI Southport unsupervised when there were concerns about their performance.
- (vi) As regards paragraphs (n) and (o), Newline further refers (*inter alia*) to:
- (A) the reports of Dr Matthew Griffiths dated 5 April 2018 and 5 May 2020 served by the Plaintiffs;
 - (B) an email from Dr Erez Ben-Menachem to Dr Kerdic and others dated 22 September 2014, instructing anaesthetists not to leave TCI facilities until the last patient of the day was conscious;
 - (C) rules 5(a) and 5(r) of the *Private Health Facilities Regulation 2010* (NSW);
 - (D) a draft investigation report of the NSW Health Care Complaints Commission (HCCC) dated 9 December 2015;
 - (E) an expert report dated 13 November 2015 served on the TCI Group by the HCCC;
 - (F) the TCI Group's admissions in a response dated 26 February 2016 to the HCCC's draft investigation report that 27 patients had been placed under deep sedation and/or general anaesthetic, in premises that were not licensed for the provision of deep sedation or general anaesthetic;
 - (G) a report of the HCCC dated 23 March 2016, which contained findings (*inter alia*) that:
 - (1) patients of the TCI Group were given a combination of sedative drugs that in many cases were consistent with general anaesthesia (for which the TCI Group was not

licensed) and which were in excess of the safe upper limit recommended for the drugs used; and

- (2) these practices placed the health and safety of members of the public at risk;
- (H) testimony of Dr Scott Turner of the Australasian Society of Aesthetic Plastic Surgeons to the Parliamentary Inquiry to the effect that all patients of the TCI Group were having deep to almost general anaesthetic procedures in an unlicensed facility (page 10 of the Report).
- (vii) As regards paragraph (t), Newline refers, *inter alia*, to a letter dated 12 August 2013 from Dr Dona to Mr Segal indicating that Dr Dona knew that treatment had been provided to BAS patients at TCI Premises that Dr Dona considered to have been "seriously medically negligent" and/or "medically negligent".
- (viii) As regards paragraph (u), Newline refers (*inter alia*) to:
 - (A) an email from Mr Segal to Dr Dona, Mr Moini and Mr Champion dated 25 April 2013;
 - (B) email correspondence between Mr Moini and Dr Dona dated 13 May 2013;
 - (C) an email from Mr Moini to Dr Dona, copied to Mr Segal and Mr Champion, dated 14 May 2013;
 - (D) email correspondence between Dr Dona to Mr Moini, copied to Mr Segal and Mr Champion dated 20 May 2013;
 - (E) an email from Dr Ali to Mr Segal, Dr Dona and Mr Peter Freeman of AHPRA dated 3 November 2014; and
 - (F) an email from Ms Trevitt to Mr Segal, copied to Dr Dona, Dr Ali and Mr Lombardi dated 4 November 2014.
- (ix) As regards the TCI Group Practices generally, Newline further refers (*inter alia*) to:
 - (A) TCI board minutes dated 8 May 2013;
 - (B) a letter from Dr Dona to Mr Segal dated 12 August 2013;
 - (C) an email from Dr Dona to Mr Segal dated 1 October 2013;
 - (D) an email from Dr Dona to Mr Segal dated 19 February 2015;

- (E) an email from Dr Dona to Mr Segal and others dated 16 April 2015;
- (F) an email from Dr Dona to Mr Segal dated 8 July 2015;
- (G) an email from Dr Dona to Mr Segal dated 14 August 2015;
- (H) an email exchange between Dr Dona and Mr Segal from 5 to 7 October 2015;
- (I) an email from Dr Dona to the TCI directors dated 9 October 2015;
- (J) the practice of TCI Surgeons to require certain patients including Ms Turner to sign a disclaimer purportedly recording that their doctor had recommended a breast lift to achieve optimal results, but the patient wished to proceed with a breast augmentation only and was aware that only suboptimal results would be achieved.

Copies of the said documents may be inspected at the offices of Newline's solicitors by prior appointment.

Further particulars may be provided prior to trial.

2014 Policy

- 134. By operation of section 21 of the ICA, the 2014 Insureds had a duty to disclose to Newline before the 2014 Policy was entered into every matter that they knew, or a reasonable person in the circumstances could be expected to know, to be a matter relevant to the decision of Newline whether to accept the risk of the 2014 Policy and, if so, on what terms (**duty of disclosure**).
- 135. Prior to their entry into the 2014 Policy, each of the 2014 Insureds knew, or a reasonable person in the circumstances could be expected to know, that the TCI Group Practices were relevant to the decision of Newline whether to accept the risk of the 2014 Policy and, if so, on what terms.

PARTICULARS

Dr Dona, Mr Segal, Mr Babak Moini and Mr Alastair Champion (**Directors**) formed part of the directing mind and will of each of the first to fourth defendants and their knowledge is imputed to those defendants.

- 136. On around 25 June 2014, Mr Richard Jane of Lockton, as agent for the 2014 Insureds, emailed Newline various documents including a proposal form for medical malpractice insurance (**2014 proposal form**) which:
 - (a) did not disclose any of the TCI Group Practices;

- (b) made representations in response to questions in the 2014 proposal form as follows:
- (i) question 12, as to whether the proposed insured was duly licensed to practise at the addresses specified, being the TCI Parramatta Premises and TCI Bondi Premises, to which the answer was "yes";
 - (ii) question 24(a), as to whether the proposed insured had any medical teaching facilities, to which the answer was "no";
 - (iii) question 24(b), as to whether the proposed insured would ensure that competent and adequately trained staff only would be employed and that staff were properly supervised, to which the answer was "yes", with the express representation that all staff were appropriately trained and accredited;
 - (iv) question 28, as to whether any further information should be made known so that a proper estimate of the risk may be formed, to which the answer was "yes", for which the only details provided were that an additional facility was being considered for Queensland, thus impliedly representing that no other such information should be made known;
 - (v) that the person signing the proposal form declared (*inter alia*) that the above statements were true, had not suppressed or misstated any facts, and was authorised to act for all persons who may be entitled to indemnity.

PARTICULARS

A copy of the email and attachments including the 2014 proposal form may be inspected at the offices of Newline's solicitors by prior appointment.

137. In the said email to Newline dated 25 June 2014, Mr Jane of Lockton, as agent for the 2014 Insureds, made the following representations regarding the TCI Group:
- (a) "our team of highly trained and experienced surgeons are supported and mentored by our surgical director";
 - (b) "his knowledge, experience and mentorship ensure our surgeons remain at the forefront of cosmetic surgery's best practice."
138. In an email to Newline dated 2 July 2014, Mr Jane of Lockton, as agent for the 2014 Insureds, represented that no unsupervised procedures were performed within the practice of the TCI Group.

PARTICULARS

A copy of the said email may be inspected at the offices of Newline's solicitors by prior appointment.

139. On around 3 July 2014, Mr Jane of Lockton, as agent for the 2014 Insureds, emailed Newline a medical malpractice addendum signed by the managing director of TCI and/or the TCI Group, in which the 2014 Insureds made the following representations:

(a) that the details of all individuals undertaking procedures/treatments were (*inter alia*) as follows:

Name	Years of experience on cosmetic procedures	Number of procedures performed
Dr Huy Tang	2	1200+
Dr Farheen Ali	2	700
Dr Daniel Kwok	1	100
Dr Charles Wang	4	2000+
Dr Victor Lee	4	2000+
Dr Van Nguyen	10	2000+

(b) in response to question A9, as to whether all patients were given a "Patient Guide" detailing clear and accurate information in relation to the treatment, costs and other services, that the answer was "yes";

(c) that the said deponent was authorised to complete the addendum on behalf of the 2014 Insureds, that all answers were, after enquiry, true and correct to the best of the deponent's knowledge, and that no material facts had been misstated, omitted or suppressed.

PARTICULARS

A copy of the said addendum may be inspected at the offices of Newline's solicitors by prior appointment.

140. Prior to entering into the 2014 Policy on or around 28 July 2014, none of the 2014 Insureds made any further disclosure as to any of the matters alleged in paragraphs 133 to 139 above.

141. In the premises:

(a) each of the 2014 Insureds failed to comply with the duty of disclosure; and

- (b) the representations made by each of the 2014 Insureds alleged in paragraphs 136 to 139 above were false (**2014 Misrepresentations**).

PARTICULARS

Newline refers to:

- (i) the matters alleged in paragraph 133 above and the particulars thereto;
- (ii) the contents of the letter from Lander & Rogers dated 14 December 2018 to the liquidators of TCI referred to in the particulars to paragraph 104(d) above.

142. Further, the 2014 Misrepresentations, and the non-disclosure of matters referred to in paragraph 133 above, were made by each of the 2014 Insureds fraudulently, and the failure by each of them to comply with the duty of disclosure was fraudulent, within the meaning of section 28 of the ICA.

PARTICULARS

Newline refers to the matters alleged in paragraphs 133 to 141 above and the particulars thereto, and says further that:

- (i) the systems first proposed by Dr Dona and Mr Segal when setting up the TCI Group changed significantly in the first 12 to 18 months, and subsequent shortcomings and compromises in the systems regarding patient care were identified by Dr Dona and communicated to TCI's board as early as August 2013;
- (ii) the matters not disclosed and misrepresented, regarding the practices of the TCI Group, were so significant and serious that they were obviously highly relevant to the risk to be insured;
- (iii) the said non-disclosures and the 2014 Misrepresentations were made by or on behalf of the 2014 Insureds:
 - (A) knowingly, or without belief in their truth and/or completeness; and/or
 - (B) with conscious indifference to the truth and their disclosure obligations under the ICA;

in circumstances where the 2014 proposal form had required the signatory to enquire of all entities comprising the insured including senior staff before completing the proposal;
- (iv) the TCI Group and/or the TCI Surgeons informed patients that the TCI Surgeons would provide them with advice on different surgical options as

to type, size, texture, shape and placement of implants and location of incisions. Despite this, if the plaintiffs' allegations regarding the "One Size Fits All" system are proven:

- (A) patients were generally advised to undergo BAS, and received BAS, with the same type, texture, shape and placement of implants and location of incisions;
 - (B) in the premises, the system of operation of the TCI Group was dishonest, and the first to fifth defendants were aware that it was fraught with the increased risk of injury to, and claims by, patients;
- (v) the first to fifth defendants were aware that the TCI Surgeons were no more than surgical technicians, and made a conscious decision that the TCI Surgeons may operate on patients beyond their skills, including by:
- (A) failing to enforce appropriate patient selection; and
 - (B) operating on certain patients with the awareness that sub-optimal results would be achieved,
- at the risk of patient welfare, so as to increase revenue;
- (vi) the first, second, third and/or fifth defendants were aware that the TCI Parramatta Premises and TCI Bondi Premises were not suitable to be licensed premises (for the purposes of administering more than conscious sedation) and were incapable of being licenced, and made a conscious decision to proceed with the use of those premises despite this;
- (vii) the first to third defendants and fifth defendant were aware from at least 12 August 2013 that patients at TCI Parramatta and TCI Bondi were receiving deep sedation, alternatively more than conscious sedation, but described this as conscious sedation in an attempt to avoid the effect of regulations which otherwise would have prohibited such practices;
- (viii) the first to fifth defendants were aware of the risk of multiple claims by patients at TCI Parramatta and TCI Bondi, as a result of them receiving more than conscious sedation in unlicensed premises, as stated in an email from Dr Dona to Mr Segal and other Directors dated 14 August 2015 referred to in particular (vi) of paragraph 154 below;
- (ix) The first to fifth defendants were aware that the publication of patient testimonials on the website maintained by one or more of them breached AHPRA guidelines and section 133 of the Health Practitioner Regulation National Law but made the deliberate decision to continue to publish such

testimonials with the knowledge that this could lead to an investigation and disciplinary action by AHPRA and/or the Medical Board of Australia.

Further particulars may be provided prior to trial.

143. Newline would not have accepted the risk of providing medical malpractice insurance to the 2014 Insureds and/or the TCI Group, alternatively would not have entered into the 2014 Policy on the same terms and conditions, if the 2014 Insureds had not failed to comply with the duty of disclosure or had not made the 2014 Misrepresentations.
144. In the premises, Newline was entitled to avoid the 2014 Policy pursuant to section 28(2) of the ICA.

2015 Policy

145. By email dated 19 May 2015, the TCI Group was informed by the HCCC that the HCCC had referred a letter of complaint dated 23 March 2015 from Dr John McHugh of the Australasian College of Cosmetic Surgery (**McHugh complaint**) for investigation (**2015 Investigation**).

PARTICULARS

A copy of the said email may be inspected at the offices of Newline's solicitors by prior appointment.

146. The TCI Group received a copy of the McHugh complaint by email dated 29 May 2015, such complaint making serious allegations regarding (*inter alia*):
- (a) the lack of training and supervision of doctors by the TCI Group;
 - (b) the TCI Group's sedation practices; and
 - (c) the dangers to which patients of the TCI Group were being exposed.

PARTICULARS

A copy of the said email and the McHugh complaint may be inspected at the offices of Newline's solicitors by prior appointment.

147. In a letter to the TCI Group dated 10 June 2015, the HCCC stated that:
- (a) the McHugh complaint warranted investigation as it raised significant questions (*inter alia*) about care provided at TCI Group facilities and the use of deep sedation at unlicensed premises; and
 - (b) the HCCC required a response by the TCI Group to questions set out in its letter by 26 June 2015.

PARTICULARS

A copy of the said letter may be inspected at the offices of Newline's solicitors by prior appointment.

148. Prior to the inception of the 2015 Policy, by operation of section 21 of the ICA, each of the 2015 Insureds had a duty of disclosure to Newline, in the terms set out in paragraph 134 above.
149. Prior to their entry into the 2015 Policy, each of the 2015 Insureds knew, or a reasonable person in the circumstances could be expected to know, the matters alleged in paragraphs 133 and 145 to 147 above to be relevant to the decision of Newline whether to accept the risk of the 2015 Policy.
150. On 28 May 2015, Mr Jane of Lockton, as agent for the TCI Group, emailed Newline a proposal form on Newline letterhead (**2015 proposal form**) which:
 - (a) did not disclose:
 - (i) the TCI Group Practices;
 - (ii) the McHugh complaint;
 - (iii) the 2015 Investigation; or
 - (iv) a complaint that the TCI Group received from AHPRA in around November 2014 regarding patient testimonials breaching advertising guidelines (**AHPRA complaint**);
 - (b) made representations in response to questions in the 2015 proposal form as follows:
 - (i) question 12, as to whether the practice held the required accreditation or licence at all appropriate times, to which the answer was "yes";
 - (ii) question 25(a), as to whether any claims had been made or were pending which would fall within the scope of insurance cover, in respect of which an attached claims summary:
 - (A) did not list the 2015 Investigation; and
 - (B) impliedly represented that there were no claims other than as listed in that schedule;
 - (iii) question 25(b), as to whether any person was aware, after enquiry, of any circumstances which might give rise to any claim against the Business, to which the answer was "no";

- (iv) question 27(c), as to whether the 2015 Insureds' contracts confirmed that persons engaged by them were appropriately qualified, to which the answer was "yes";
- (v) question 28, as to whether any staff provided healthcare services to patients without the supervision of a medical practitioner, to which the answer was "no";
- (vi) question 29(a), as to whether work undertaken by professional/technical staff was regularly reviewed by a principal/manager, to which the answer was "yes";
- (vii) question 29(b), as to whether written procedures or checklists were used for the professional services provided, to which the answer was "yes";
- (viii) that the person completing the proposal form was authorised to do so on behalf of the 2015 Insureds and that all answers were, after enquiry, true and correct to the best of that person's knowledge, and that no material facts had been misstated, omitted or suppressed.

PARTICULARS

- (i) As regards subparagraphs (b)(ii) and (iii), the 2015 proposal form did not refer to various other investigations into the TCI Group by the HCCC and NSW Health in response to patient complaints.
 - (ii) A copy of the 2015 proposal form may be inspected at the offices of Newline's solicitors by prior appointment.
151. Prior to entering into the 2015 Policy on or around 30 June 2015, none of the 2015 Insureds made any further disclosure as to any of the matters alleged in paragraph 150 above.
152. Further and in the alternative:
- (a) the 2014 Misrepresentations and breaches by the 2014 Insureds of the duty of disclosure were continuing misrepresentations and breaches, for the purposes of section 21 of the ICA and the 2015 Policy renewal; and/or
 - (b) the duty of disclosure of the 2015 Insureds included a duty to:
 - (i) disclose the TCI Group Practices; and/or
 - (ii) correct the 2014 Misrepresentations and breaches by the 2014 Insureds of the duty of disclosure;

- (c) the 2015 Insureds failed to correct the 2014 Misrepresentations and breaches by the 2014 Insureds of the duty of disclosure prior to entering into the 2015 Policy.

153. By reason of the matters alleged in paragraphs 133 to 152 above:

- (a) each of the 2015 Insureds failed to comply with the duty of disclosure; and
- (b) the representations made by each of the 2015 Insureds alleged in paragraph 150 above were false (**2015 Misrepresentations**).

PARTICULARS

Newline refers to the matters alleged in paragraphs 133, 145 to 150 above and 154 below and the particulars thereto.

154. Further, the 2015 Misrepresentations, and the non-disclosure of matters referred to in paragraphs 133 and 145 to 147 above, were made by each of the 2015 Insureds fraudulently, and the failure by each of them to comply with the duty of disclosure was fraudulent, within the meaning of section 28 of the ICA.

PARTICULARS

Newline refers to the matters alleged in paragraphs 133 to 153 above and the particulars thereto, and says further that:

- (i) the McHugh complaint made serious allegations about the practices of the TCI Group and dangers posed to patients;
- (ii) the 2015 Investigation by the HCCC was of critical importance to the ongoing operations of the TCI Group and the risk to be insured under the 2015 Policy, given the HCCC's regulatory powers;
- (iii) the TCI Group regarded the McHugh complaint and the 2015 Investigation as sufficiently serious and material to future operations that they retained Moisson Lawyers to take detailed instructions and respond to the HCCC;
- (iv) the McHugh complaint and the 2015 Investigation were ongoing and unresolved at the time that the 2015 Insureds entered into the 2015 Policy;
- (v) the 2015 Investigation itself was a Claim as defined in the 2015 Policy;
- (vi) in an email to Mr Segal and other TCI Group directors dated 14 August 2015, Dr Dona stated (*inter alia*) that:
 - (A) the directors believed that the HCCC would say "we must stop local and sedation as we are currently doing";

- (B) there were “countless potential law suits etc once it becomes known that we should not have been performing the anaesthetic that we have been doing”;
- (vii) otherwise, and in the premises:
 - (A) the matters not disclosed and misrepresented, regarding the practices of the TCI Group, were so significant and serious that they were obviously highly relevant to the risk to be insured;
 - (B) the non-disclosures and 2015 Misrepresentations were made by or on behalf of the 2015 Insureds:
 - (1) knowingly, or without belief in their truth; and/or
 - (2) with conscious indifference to the truth and their disclosure obligations under the ICA;
- (viii) as regards paragraph 150(b)(vii) (above), the Directors knew that there was no written procedure or checklist used by the TCI Surgeons, by reason (*inter alia*) of Dr Dona’s observations to that effect concerning minutes of a TCI Group board meeting on or around 8 May 2013.

Further particulars may be provided prior to trial.

155. Newline would not have entered into the 2015 Policy, alternatively would not have entered into the 2015 Policy on the same terms and conditions, if:
- (a) the 2015 Insureds had not made the 2015 Misrepresentations and/or failed to comply with the duty of disclosure; and/or
 - (b) the 2014 Insureds had not made the 2014 Misrepresentations and/or failed to comply with the duty of disclosure.
156. In the premises, Newline was entitled to avoid the 2015 Policy pursuant to section 28(2) of the ICA.

Other matters

157. On 25 January 2019, pursuant to section 28(2) of the ICA, Newline avoided the 2014 Policy and the 2015 Policy.

PARTICULARS

The avoidance was communicated by letters dated 25 January 2019 to the liquidators of TCI Parramatta and the liquidators of TCI, TCI Bondi and TCI Southport, copies of which may be inspected at the offices of Newline’s solicitors by prior appointment.

158. Further and in the alternative, if the said avoidance of the Policies was invalid (which is denied), Newline remains entitled to avoid, and hereby avoids, the Policies by reason of the matters referred to above.
159. In the premises:
- (a) the 2014 Policy is not enforceable by the 2014 Insureds;
 - (b) the 2015 Policy is not enforceable by the 2015 Insureds; and
 - (c) Newline is not liable for any claim for indemnity brought by the first to fifth defendants under the 2014 Policy and/or the 2015 Policy.
160. Further and in the alternative, in the premises, if (which is denied) Newline is not entitled to avoid the 2014 Policy and/or the 2015 Policy, its liability to indemnify the first to fifth defendants is reduced to nil, alternatively reduced to the position it would have been in had there been no misrepresentation or non-disclosure, by operation of section 28(3) of the ICA.

PARTICULARS

Newline would not have accepted the risk of providing medical malpractice insurance to the 2014 Insureds and/or the 2015 Insureds if:

- (i) the 2014 Insureds had not made the 2014 Misrepresentations and/or failed to comply with the duty of disclosure; and/or
 - (ii) the 2015 Insureds had not made the 2015 Misrepresentations and/or failed to comply with the duty of disclosure.
161. Newline relies upon the following matters in defence of the claims made against it in this proceeding:
- (a) the matters alleged in paragraphs 97 to 107 and 133 to 160 above, that it would have been entitled to rely on for claims made by TCI, TCI Parramatta, TCI Bondi and Dr Dona under the 2014 Policy, pursuant to section 7(a) of the *Civil Liability (Third Party Claims against Insurers) Act 2017 NSW (2017 Act)*;
 - (b) the matters alleged in paragraphs 97 to 107 and 133 to 160 above, that it would have been entitled to rely on for claims made by TCI, TCI Parramatta, TCI Bondi, TCI Southport and Dr Dona under the 2015 Policy, pursuant to section 7(a) of the 2017 Act; and
 - (c) further and in the alternative, the matters alleged in paragraphs 1 to 96AJ and 132 above, that TCI, TCI Parramatta, TCI Bondi, TCI Southport and Dr Dona would have been entitled to rely on for claims made against them by the Plaintiffs, pursuant to section 7(b) of the 2017 Act.

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 defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor for the 17th Defendant

Date of signature

15 November 2022

FURTHER DETAILS ABOUT FILING PARTY**Filing party**

Name Certain Underwriters at Lloyd's subscribing to Policy No. 04012,
17th Defendant

Address c/- Lander & Rogers, Level 15, 477 Collins Street,
MELBOURNE VIC 3000

Frequent user identifier

Legal representative for filing party

Name Gavin Hollamby

Firm Lander & Rogers

Contact solicitor Giana Laidlaw

Address Level 15, 477 Collins Street
MELBOURNE VIC 3000

DX address 370, Melbourne VIC

Telephone +61 3 9269 9000

Fax +61 3 9269 9001

Email glaidlaw@landers.com.au

Electronic service address