


Leave granted to file on the undertaking that the medical reports be filed by 1/11/2017


Duty Registrar
14/9/17

Form 3A (version 4)
UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court Supreme Court
Division Common Law
List Professional Negligence
Registry Sydney
Case number 2017/ 279308

FILED

14 SEP 2017



TITLE OF PROCEEDINGS

First plaintiff AMY RICKHUSS
Number of plaintiffs 5

First defendant THE COSMETIC INSTITUTE PTY LTD
(ACN 153 061 155)

Number of defendants 5

FILING DETAILS

Filed for The plaintiffs
Legal representative Armando John Gardiman
Legal representative reference Sally.Gleeson:\M161245.298
Contact name and telephone Sally Gleeson 02 8222 3333
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TYPE OF CLAIM

Professional negligence – medical; Commercially misleading conduct.

NOTATION

The proceedings are listed for an initial case conference at 9:00 am on the Wednesday after the expiration of 42 days following the filing of the originating process.

This matter has been listed before the Court
on 5/02/2018
at 9:00 am

Clerk of the Court

RELIEF CLAIMED

- 1 Common law damages;
- 2 Further or alternatively, damages pursuant to the *Civil Liability Act 2002* (NSW);
- 3 Further or alternatively, as against the fourth defendant, damages pursuant to the *Civil Liability Act 2003* (QLD);
- 4 Further or alternatively, damages pursuant to sections 236, 237, 238, 267(3) and/or (4) of the Australian Consumer Law (ACL) comprising schedule 2 of the *Competition & Consumer Act 2010* (Cth) (CCA);
- 5 Interest thereon pursuant to s 100 of the *Civil Procedure Act 2005* (NSW); and,
- 6 Costs.

PLEADINGS AND PARTICULARS

Part I. - INTRODUCTION

A. Group Members

1. The plaintiffs bring these representative proceedings pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW):
 - (a) in their own right; and,
 - (b) on behalf of the group members as defined below (**group members**).
2. The group members are persons who:
 - (a) Had breast augmentation surgery (**BAS**) at the following premises:
 - (i) Smith Street Parramatta, New South Wales (**TCI Parramatta Premises**);
 - (ii) Hollywood Avenue, Bondi Junction, New South Wales (**TCI Bondi Premises**);
 - (iii) Suite 1, 98 Marine Parade, Southport, Queensland (**TCI Southport Premises**);
 - (iv) Burwood Road, Concord, New South Wales (**Concord Private Hospital**);
 - (v) Chetwynd Road, Guildford, New South Wales (**Holroyd Private Hospital**).

- (b) Had BAS performed by surgeons who were the servants and/or agents of the first, second, third or fourth defendants (**TCI Surgeons**);
 - (c) Had BAS performed by a TCI Surgeon trained by, or under the supervision of, the fifth defendant in accordance with accreditation and training contracts between the TCI Surgeons and the first, second, third and/or fourth defendants;
 - (d) Had BAS using the "One Size Fits All" Approach (refer to paragraph 21);
 - (e) Had BAS performed under anaesthesia administered by anaesthetists who were the servants and/or agents of the first, second, third and/or fourth defendants (**TCI Anaesthetists**); and,
 - (f) Suffered injury, loss and damage as a result of undergoing BAS.
3. As at the date of these pleadings, there are seven or more persons who are group members and who have claims against each defendant.

B. The Plaintiffs

4. The first plaintiff (**Ms Rickhuss**):
- (a) was born on 1 December 1993;
 - (b) lives in Western Australia;
 - (c) is in a de facto relationship with one dependent child;
 - (d) is employed as a caterer.
5. The second plaintiff (**Ms Pollock**):
- (a) was born on 25 June 1977;
 - (b) lives in New South Wales;
 - (c) is married with two dependent children;
 - (d) is currently unemployed.
6. The third plaintiff (**Ms Bruen**):

- (a) was born on 7 November 1984;
- (b) lives in New South Wales;
- (c) is married with three children;
- (d) is employed in a customer service position at a pharmacy.

7. The fourth plaintiff (**Ms Rowlands**)

- (a) was born on 6 March 1994;
- (b) lives in Victoria;
- (c) is single with two dependent child;
- (d) is currently unemployed.

8. The fifth plaintiff (**Ms Knowland**)

- (a) was born on 25 August 1994;
- (b) lives in Queensland;
- (c) is single with no dependent children;
- (d) is a student and is casually employed.

C. The Defendants

9. At all material times, the first defendant (**The Cosmetic Institute**):

- (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
- (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL.
- (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;

- (d) Provided BAS services and facilities to the plaintiffs and group members at premises situated at:
 - (i) TCI Parramatta Premises;
 - (ii) TCI Bondi Premises;
 - (iii) TCI Southport Premises;
 - (iv) Concord Private Hospital;
 - (v) Holroyd Private Hospital.
- (e) In the alternative, controlled and directed the provision of BAS services and facilities, by the second, third and fourth defendants, to the plaintiffs and group members.
- (f) Applied the One Size Fits All Approach to BAS (refer to paragraph 21) to the plaintiffs and group members.

10. At all material times, the second defendant (**TCI Parramatta**):

- (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
- (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL;
- (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;
- (d) Provided BAS services and facilities at TCI Parramatta Premises;
- (e) Was a subsidiary of The Cosmetic Institute;
- (f) Provided BAS services and facilities to the plaintiffs and group members;
- (g) In the alternative, provided BAS services and facilities under the control and direction of The Cosmetic Institute;

- (h) Applied the One Size Fits All Approach to BAS (refer to paragraph 21) to the plaintiffs and group members.
11. On or about 5 October 2016, TCI Parramatta entered into a creditors' voluntary winding up pursuant to section 446A of the *Corporations Act 2001*, and Mr Benjamin Carson was appointed liquidator of TCI Parramatta.
12. At all material times, the third defendant (**TCI Bondi**):
- (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
 - (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL;
 - (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;
 - (d) Provided BAS services and facilities at TCI Bondi Premises;
 - (e) Was a subsidiary of The Cosmetic Institute;
 - (f) Provided BAS services and facilities to the plaintiffs and group members;
 - (g) In the alternative, provided BAS services and facilities under the control and direction of The Cosmetic Institute;
 - (h) Applied the One Size Fits All Approach to BAS (refer to paragraph 21) to the plaintiffs and group members.
13. At all material times, the fourth defendant (**TCI Southport**):
- (a) Was a company incorporated under the *Corporations Act 2001* (Cth);
 - (b) Was a corporation within the meaning of section 4 of the CCA and section 2 of the ACL;
 - (c) Carried on, in trade or commerce, the business of providing, and marketing the provision of, BAS services and facilities to women in Australia, being the supply of product-related services within the meaning of section 2 of the ACL;

- (d) Provided BAS services and facilities at TCI Southport Premises;
- (e) Was a subsidiary of The Cosmetic Institute;
- (f) Provided BAS services and facilities to the plaintiffs and group members;
- (g) In the alternative, provided BAS services and facilities under the control and direction of The Cosmetic Institute;
- (h) Applied the One Size Fits All Approach to BAS (refer to paragraph 21) to the plaintiffs and group members.

14. At all material times, the fifth defendant (**Eddy Dona**):

- (a) Is and was a registered medical practitioner practising as a plastic and reconstructive surgeon;
- (b) Was a director of TCI Parramatta, TCI Bondi and TCI Southport;
- (c) Is and 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 Parramatta, TCI Bondi and TCI Southport;
- (d) Is and was the surgical director of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;
- (e) Devised, designed, implemented, supervised and conducted the training of doctors who performed BAS for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;
- (f) Recommended to The Cosmetic Institute, TCI Parramatta, TCI Southport and/or TCI Bondi that the TCI Surgeons be accredited to perform BAS for or on their behalf;
- (g) In the alternative, authorised the accreditation of the TCI Surgeons to perform BAS for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;

- (h) Devised, designed, implemented and supervised the application of the One Size Fits All Approach to BAS (refer to paragraph 21) that was performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital.

Part II. - THE DEFENDANTS' SYSTEM OF BAS

A. TCI Facilities

- 15. From about 2012, BAS services and facilities were offered to women by The Cosmetic Institute and/or TCI Parramatta and/or TCI Bondi and/or TCI Southport and BAS was performed by TCI Surgeons at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport premises, Concord Private Hospital and Holroyd Private Hospital at a cost of \$5,990, which included:
 - (a) the goods and services tax (GST);
 - (b) a surgical fee;
 - (c) a hospital fee;
 - (d) the cost of implants;
 - (e) an anaesthetic fee;
 - (f) follow-up appointments.

Particulars

www.thecosmeticinstitute.com.au

Versions of this web site were publicly available from about 2012 until the date of commencement of these proceedings.

- 16. BAS was performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital using facilities with the following characteristics (**the TCI Facilities**):
 - (a) Inadequate infection control procedures during BAS;

- (b) No capacity to access urgent surgical or medical assistance in the event of emergency during BAS;
 - (c) In respect of TCI Parramatta Premises and TCI Bondi Premises, no capacity to legally administer general anaesthesia;
 - (d) In respect of TCI Parramatta Premises and TCI Bondi Premises, unlicensed premises:
 - (i) at which persons were admitted, provided with medical, surgical or other prescribed treatment and then discharged; or,
 - (ii) from at least 3 June 2016, at which a person was provided with prescribed services or treatments within the meaning of ss 4(1), 12(2), 33 and 41(1) of the *Private Health Facilities Act 2007* (NSW).
17. The system under which BAS was performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital was:
- (a) Devised, designed and implemented by The Cosmetic Institute and/or Eddy Dona;
 - (b) At all material times under the control and direction of The Cosmetic Institute and/or Eddy Dona.

B. TCI Surgeons

18. At all material times, The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport engaged the TCI Surgeons to perform BAS at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital.
19. The TCI Surgeons were engaged to perform BAS pursuant to training and accreditation contracts, which involved The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport:
- (a) Providing surgical training and accreditation to the TCI Surgeons under the control and supervision of Eddy Dona;
 - (b) Providing such facilities, plant and equipment necessary for the TCI Surgeons to provide BAS;

- (c) Maintaining, repairing, cleaning and keeping in good order and condition all equipment, plant, apparatus and instruments used by the TCI Surgeons in providing BAS services;
- (d) Providing materials, drugs and medical requisites reasonably required by the TCI Surgeons in providing BAS;
- (e) Providing all staff reasonably necessary for the TCI Surgeons to provide BAS services, including TCI Anaesthetists;
- (f) Recovering fees on behalf of the TCI Surgeons; and,
- (g) Acting as attorney for the TCI Surgeons;

in return for the TCI surgeons:

- (i) Performing BAS services for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport;
- (ii) Not using the services, staff, facilities, plant and equipment provided by The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport for their own purposes;
- (iii) Paying The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport a fee of \$500,000, in instalments over 3 years;
- (iv) Promoting to the general public the medical and paramedical services, including the BAS services, offered by The Cosmetic Institute and/or TCI Parramatta, TCI Bondi and/or TCI Southport.

Particulars

MJ Jobs "Cosmetic Surgeons wanted" dated 12 August 2015

Accreditation Deed

Training Deed

C. TCI Anaesthetists

20. At all material times, The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport engaged anaesthetists to provide anaesthesia to enable BAS to be performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital.

Particulars

Further particulars to be provided after discovery.

D. The One Size Fits All Approach

21. The BAS performed at TCI Parramatta, TCI Bondi, TCI Southport, Concord Private Hospital and Holroyd Private Hospital for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport adopted the following approach (**the One Size Fits All Approach**):

- (a) Pre-operative consultations were conducted, and advice provided to plaintiffs and group members, in the absence of an appropriately qualified and trained surgeon;
- (b) Surgery was performed by TCI Surgeons under anaesthesia provided by TCI Anaesthetists;
- (c) The surgery was performed using bilateral infra-mammary incisions;
- (d) Round textured Allergan silicone implants were implanted;
- (e) Implants were inserted into subpectoral pockets and/or using a dual plane approach;
- (f) The same technique was used irrespective of:
 - (i) Differences in the size or shape of the plaintiffs' and group members' breasts;
 - (ii) Whether plaintiffs' and group members' breasts were tuberous or ptotic; or,
 - (iii) Whether different or additional surgical approaches and techniques were indicated, such as mastopexy.
- (g) At TCI Parramatta Premises and TCI Bondi Premises:

- (i) Surgery was performed by TCI Surgeons under local anaesthesia and twilight sedation provided by TCI Anaesthetists;
- (ii) Surgery was performed without general anaesthesia;
- (iii) The same surgical technique was used irrespective of whether general anaesthesia was required so as to enable different or additional surgical approaches.

22. By reason of the One Size Fits All Approach to BAS performed on the plaintiffs and group members at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital, the plaintiffs and group members were at an increased risk of having the following complications (**the BAS Complications**):

- (a) The creation of inappropriate pockets into which the implants were inserted;
- (b) Malpositioning of the implants;
- (c) Ripping of the implants;
- (d) Excessive tissue trauma;
- (e) Haemorrhage;
- (f) Infection;
- (g) Scarring;
- (h) Wound dehiscence;
- (i) Contracture of the implant capsule;
- (j) Local anaesthetic toxicity leading to cardiac arrest, pneumothorax and death; and,
- (k) Breast implant-associated anaplastic large-cell lymphoma.

E. The Representations

23. At all material times, the defendants made the following representations to the plaintiffs and group members (**the Representations**):

- (a) The defendants do not compromise on quality;
- (b) TCI Surgeons:
 - (i) Are plastic and reconstructive surgeons;
 - (ii) Are highly skilled;
 - (iii) Are highly experienced;
 - (iv) Are of a high calibre;
 - (v) Have had extensive training;
 - (vi) Are trained in-house by a plastic surgeon, Eddy Dona, which sets them apart from other surgeons;
 - (vii) Are award-winning surgeons with many years of surgical experience specialising in cosmetic and plastic surgery;
 - (viii) Have many years of experience performing complex urological, neurological and pancreatic surgical procedures;
 - (ix) Regularly teach and present at national and international conferences;
 - (x) Have a broad skill set acquired over many years of experience;
 - (xi) Are well-respected in the industry; and,
 - (xii) Were already good at surgery, but after being trained by Eddy Dona, were turned into exceptional cosmetic surgeons.
- (c) Patients receive the best possible post-operative care;
- (d) The defendants use textured Allergan implants which reduce the risk of capsular contracture;
- (e) The difference between a plastic surgeon and a cosmetic surgeon is that plastic surgeons actually deal with more reconstructive procedures, whereas cosmetic surgeons specialise in procedures such as BAS;

- (f) The defendants go far and beyond customers' expectations;
- (g) The defendants receive positive feedback from all of their customers, which is overwhelming and unprecedented;
- (h) The defendants provide services which are over and above what is required;
- (i) The defendants' services are affordable because TCI has its own state-of-the-art facilities;
- (j) The defendants offer high quality procedures at affordable prices;
- (k) The defendants' services change people's lives;
- (l) The defendants' services make customers more confident;
- (m) The defendants provide a first class service;
- (n) The defendants will make customers feel sexy again;
- (o) The defendants have a dedicated team of anaesthetists;
- (p) The defendants uphold professional standards so that each customer gets the same experience;
- (q) The defendants' nurses are highly trained;
- (r) The defendants' medical professionals deliver the best results;
- (s) The defendants' BAS transforms shy girls into confident and happy girls;
- (t) It is no longer the case that revision BAS will be required after ten to twelve years unless severe capsular contracture or rupture occurs;
- (u) The reason the defendants' services are so affordable is that all facilities are available under the one roof;
- (v) The defendants meet top Australian specifications;
- (w) The defendants offer the highest level of care by providing facilities that are ISO 9001 accredited;

- (x) The defendants offer the most affordable, safe and easy services for all patients; and,
- (y) The defendants' services enhance the appearance and vitality of patients.

Particulars

The Representations were made at www.thecosmeticinstitute.com.au, www.youtube.com, www.facebook.com, www.instagram.com, www.pinterest.com, on radio advertisements and in promotional material published or otherwise disseminated for or on behalf of the defendants.

The Representations were made by the defendants' employees and agents during their interactions with the plaintiffs and group members.

Further particulars will be provided following provision by the defendants of discovery.

F. Pre-Surgery Consultations

24. Prior to undergoing and agreeing to undergo BAS, each of the plaintiffs and group members attended a pre-surgery consultation with a TCI Surgeon and/or with a cosmetic consultant who was the servant or agent of The Cosmetic Institute, TCI Bondi, TCI Parramatta and/or TCI Southport:
- (a) at the TCI Parramatta Premises;
 - (b) at the TCI Bondi Premises;
 - (c) at the TCI Southport Premises;
 - (d) at Concord Private Hospital; or,
 - (e) at Holroyd Private Hospital.

Particulars

The consultations occurred on average between one day and two months prior to each plaintiff or group member's BAS.

The plaintiffs and group members paid The Cosmetic Institute, or alternatively, paid TCI Parramatta, TCI Bondi or TCI Southport \$150 for the consultation.

The consultations were booked by the plaintiffs and group members contacting the first, second, third or fourth defendants by telephone, email or through the defendants' website accessible at www.thecosmeticinstitute.com.au.

Part III. - QUESTIONS COMMON TO CLAIMS OF GROUP MEMBERS

25. The questions of law or fact common to the claims of group members are:

- (a) Whether the TCI Surgeons acted on behalf of, through, or in connection with the first, second, third or fourth defendants?
- (b) Whether the TCI Surgeons made the Representations to the plaintiffs and group members?
- (c) Whether the defendants made the Representations to the plaintiffs and group members?
- (d) Whether BAS was performed negligently by the TCI Surgeons?
- (e) Whether the defendants:
 - (i) contravened s 60 of the ACL;
 - (ii) breached their duty under the common law to exercise due care and skill in performing BAS;
 - (iii) breached a warranty implied by law into the agreement that BAS would be performed with due care and skill;
 - (iv) contravened a guarantee that BAS would be fit for purpose implied into the agreement by s 61(2) of the ACL?
- (f) Whether the representations were misleading representations with respect to future matters for the purposes of s 4 of the ACL?
- (g) Whether the representations were misleading or deceptive and in contravention of ss 18, 29(1)(b) and 29(1)(m) of the ACL?

- (h) Whether the representations were negligent representations?
- (i) Whether the fifth defendant devised, designed, implemented, supervised and conducted the training of TCI Surgeons?
- (j) Whether the fifth defendant recommended to the first, second, third and/or fourth defendants that the TCI Surgeons be accredited to perform BAS?
- (k) Whether the fifth defendant authorised the accreditation of the TCI Surgeons to perform BAS?
- (l) Whether the fifth defendant devised, designed, supervised and implemented the One Size Fits All Approach to BAS?
- (m) Whether the first defendant controlled and directed the provision of BAS services and facilities to the plaintiffs and group members by the second, third and fourth defendants?
- (n) Whether the adoption of the One Size Fits All Approach to BAS was negligent?

Part IV. - THE PLAINTIFFS' BAS

A. Amy Rickhuss

- 26. Between about March 2014 and January 2015 Ms Rickhuss accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.facebook.com, www.youtube.com and www.instagram.com.
- 27. On or about 29 January 2015 Ms Rickhuss attended at TCI Parramatta Premises for her first and only pre-surgery consultation.

Particulars

Ms Rickhuss consulted with Dr Duong.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

28. On 29 January 2015 it was agreed that Ms Rickhuss would receive 450 cc implants bilaterally which were to be:
 - (a) Round, high profile implants;
 - (b) Natrelle brand, textured silicone implants;
 - (c) Inserted by way of an infra-mammary incision;
 - (d) Placed sub-pectorally.
29. On 30 January 2015 Ms Rickhuss underwent BAS at TCI Parramatta Premises performed by Dr Duong.
30. During the course of Ms Rickhuss' BAS, she was administered cumulatively high doses of Ropivacaine and Lignocaine with adrenaline.
31. Approximately 30 minutes into Ms Rickhuss' BAS, she experienced ventricular fibrillation.
32. Ms Rickhuss' ventricular fibrillation was caused by the administration of cumulatively high doses of Ropivacaine and Lignocaine with adrenaline.
33. As a result of Ms Rickhuss' ventricular fibrillation, she required cardiopulmonary resuscitation, intubation and direct current cardioversion.
34. Following Ms Rickhuss' BAS she was conveyed by ambulance to Westmead Hospital.
35. Ms Rickhuss remained an inpatient at Westmead Hospital until her discharge on 10 February 2015.
36. Ms Rickhuss suffered from ventricular fibrillation as a result of local anaesthetic toxicity.

B. Kylie Pollock

37. Between January 2014 and July 2014 Ms Pollock accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.youtube.com and www.facebook.com.
38. On or about 7 May 2014 Ms Pollock attended at TCI Bondi Premises for her first and only pre-surgery consultation.

Particulars

Ms Pollock consulted with Dr Van Nguyen.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

39. On 7 May 2014 it was agreed that Ms Pollock would receive 375 cc implants bilaterally which were to be:
 - (a) Round, moderate profile implants;
 - (b) Natrelle brand, textured silicone implants;
 - (c) Inserted by way of an infra-mammary incision;
 - (d) Placed sub-pectorally.
40. On 3 July 2014 Ms Pollock underwent BAS at TCI Bondi Premises performed by Dr Van Nguyen.
41. During the course of Ms Pollock's BAS, she was administered cumulatively high doses of Ropivacaine and adrenaline.
42. Approximately 20 minutes after Ms Pollock's arrival into recovery she suffered a tonic clonic seizure for which she was administered two milligrams of diazepam.
43. Shortly thereafter, Ms Pollock suffered two further seizures for which a further eight milligrams of diazepam was administered.
44. At about 1441 hours on 3 July 2014 Ms Pollock was conveyed by ambulance to Prince of Wales Hospital.
45. While Ms Pollock was en route to hospital she suffered two further seizures.
46. On 4 July 2014 Ms Pollock was discharged from Prince of Wales Hospital.
47. Ms Pollock continued to suffer from seizures for a number of months following BAS.

C. Jessica Bruen

48. In June and July 2014 Ms Bruen accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.facebook.com, www.youtube.com and www.instagram.com.
49. On or about 29 July 2014 Ms Bruen attended at TCI Bondi Premises for her first and only pre-surgery consultation.

Particulars

Ms Bruen consulted with Dr Victor Lee.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

50. On 29 July 2014 it was agreed that Ms Bruen would receive 520 cc implants bilaterally which were to be:
- (a) Round, high profile implants;
 - (b) Natrelle brand, textured silicone implants;
 - (c) Inserted by way of an infra-mammory incision;
 - (d) Placed sub-pectorally.
51. On 8 August 2014 Ms Bruen underwent BAS at TCI Bondi Premises performed by Lee.
52. Post-operatively, Ms Bruen's breast implants appear to be positioned too high.
53. Post-operatively, Ms Bruen's breast tissue has slid off the implant such that the tissue sits below the implant.
54. Post-operatively, Ms Bruen has breast asymmetry.
55. Post-operatively, Ms Bruen has pain and discomfort in her breasts.
56. Ms Bruen requires revision BAS.

D. Kirsty-Anne Rowlands

57. From July 2014 to December 2014 Ms Rowlands accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.youtube.com and www.facebook.com.
58. On or about 12 December 2014 Ms Rowlands attended at TCI Parramatta Premises for her first and only pre-surgery consultation.

Particulars

Ms Rowlands consulted with Dr Chi Vien Duong.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

59. On 12 December 2014 it was agreed that Ms Rowlands would receive 415 cc implants bilaterally which were to be:
- (a) Round, high profile implants;
 - (b) Natrelle brand, textured silicone implants;
 - (c) Inserted by way of an infra-mammary incision;
 - (d) Placed sub-pectorally.
60. On 13 December 2014 Ms Rowlands underwent BAS at TCI Parramatta Premises performed by Dr Duong.
61. Post-operatively, Ms Rowlands' implants dropped below the natural infra-mammary fold creating an unnatural indentation along the lower pole of the breast (commonly known as "double bubble").
62. Post-operatively, Ms Rowlands has significant breast asymmetry.
63. Post operatively, Ms Rowlands has ptotic breasts.

64. Ms Rowland requires revision BAS.

E. Lily Knowland

65. Between about October 2015 and 13 January 2016 Ms Knowland accessed material published or otherwise disseminated by the defendants at www.thecosmeticinstitute.com.au, www.facebook.com and www.instagram.com.

66. On or about 20 November 2015 Ms Knowland attended at TCI Southport Premises for her first and only pre-surgery consultation.

Particulars

Ms Knowland consulted with Dr Van Nguyen.

She conveyed that she wished to have BAS for the BAS Purpose (refer to paragraph 89).

She conveyed that she expected to achieve the BAS Results (refer to paragraph 91).

67. On 20 November 2015 it was agreed that Ms Knowland would receive 330 cc implants bilaterally which were to be:

- (a) Round, moderate profile implants;
- (b) Natrelle brand, textured silicone implants;
- (c) Inserted by way of an infra-mammary incision;
- (d) Placed sub-pectorally.

68. Ms Knowland underwent BAS on 13 January 2016 at TCI Southport Premises performed by Dr Nguyen.

69. Post-operatively, Ms Knowland's left implant dropped below the natural infra-mammary fold creating an unnatural indentation along the lower pole of the breast (commonly known as "double bubble").

70. Post-operatively, Ms Knowland developed severe pain in her left breast.

71. Post-operatively, Ms Knowland had significant breast asymmetry.

72. Post-operatively, Ms Knowland developed a severe infection in her right breast requiring washout and replacement of the right implant by way of emergency surgery at TCI Southport Premises on 5 July 2016 (**the second procedure**).

Particulars

The replacement implant was:

- (a) A round, moderate profile implant;
 - (b) Natrelle brand, textured silicone implant;
 - (c) Inserted by way of an infra-mammary incision;
 - (d) Placed in the existing sub-pectoral breast pocket.
73. Ms Knowland's infection occurred as a result of bacteria introduced during the first procedure.
74. Following her initial BAS and the second procedure, Ms Knowland continued to have double bubble in the left breast, pain in the left breast and significant breast asymmetry.
75. On 26 October 2016, Dr Kwok removed Ms Knowland's breast implants due to the pain and the unsatisfactory appearance of Ms Knowland's breasts (**the third procedure**).
76. Following the third procedure, Ms Knowland:
- (a) Continues to experience pain and discomfort in the breasts;
 - (b) Has ptotic breasts;
 - (c) Continues to have an unnatural indentation along the lower pole of the left breast despite the removal of the implant.
77. Ms Knowland requires further BAS.

Part V. - Negligence

78. The defendants owed the plaintiffs and group members a duty to exercise reasonable care and skill in the provision of advice about, and in the performance of, BAS.

79. The defendants knew or ought to have known that there was a not insignificant risk that the plaintiffs and group members would suffer the BAS Complications if reasonable care and skill in the provision of advice about, and in the performance of, BAS, was not provided.
80. The defendants breached their duty of care to the plaintiffs and group members by failing to exercise reasonable care and skill to avoid the BAS Complications.
81. The defendants breached their duties of care to the plaintiffs and group members by:
 - (a) Recommending BAS in accordance with the One Size Fits All Approach;
 - (b) Performing BAS in accordance with the One Size Fits All Approach;
 - (c) Failing to inform the plaintiffs and group members that they were at an increased risk of requiring revision surgery in the future;
 - (d) Failing to engage adequately qualified, trained, experienced and accredited surgeons to perform BAS;
 - (e) Failing properly to train the TCI Surgeons;
 - (f) Failing properly to supervise the TCI Surgeons;
 - (g) Devising and implementing the Defendants' System of BAS;
 - (h) Devising and implementing the Defendants' System of BAS including the TCI Facilities, TCI Surgeons, TCI Anaesthetists, the One Size Fits All Approach to BAS, and the Pre-Surgery Consultations;
 - (i) Failing to properly supervise the TCI Anaesthetists;
 - (j) Failing to regularly review and/or revise the Defendants' System of BAS;
 - (k) Failing to implement adequate infection control procedures for BAS;
 - (l) Failing to maintain and review infection control procedures for BAS;
 - (m) Failing in the planning and performance of BAS to consider differences in the anatomy of the plaintiffs and group members;

- (n) Failing to provide adequate review and follow up of the plaintiffs and group members following BAS;
 - (o) Failing to decline to perform BAS in circumstances where BAS was considered technically difficult;
 - (p) Failing to decline to perform BAS in circumstances where BAS in the absence of maxtopexy or other different or additional surgical techniques were indicated;
 - (q) Recommending and/or performing BAS when they knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery thereby increasing the risk of BAS Complications;
 - (r) Failing to inform the plaintiffs and group members that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would increase the risk of BAS Complications;
 - (s) Recommending and/or performing BAS when they knew or ought to have known that performing BAS without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications;
 - (t) Failing to inform the plaintiffs and group members that performing the surgery without general anaesthetic and under twilight sedation and local anaesthetic would result in patients experiencing pain and moving during the surgery which would, in turn, require the administration of increasing cumulative doses of local anaesthetic thereby increasing the risk of BAS Complications.
82. Further or in the alternative, the defendants knew or ought to have known that the plaintiffs and group members would act in reliance on the Representations by consenting to and undergoing BAS.
83. The defendants owed a duty to the plaintiffs and group members to take reasonable care in making the Representations.

84. By reason of the matters alleged above, the Representations were, at the time they were conveyed to each plaintiff and group member, inaccurate or untrue.
85. In the premises, the Representations were negligent.

Part VI. - COMPETITION AND CONSUMER ACT

86. BAS was ordinarily acquired by the plaintiffs and the group members, for personal use and, as such, was a service within the meaning of s 3 of the ACL.
87. BAS was supplied to the plaintiffs and group members as consumers within the meaning of section 3 of the ACL.
88. Each plaintiff and group member acquired BAS as a consumer within the meaning of s 3(3) of the ACL.

Particulars

The amount paid or payable by the group members for BAS did not exceed \$40,000.

The services were of a kind ordinarily acquired for personal use.

BAS was a service provided in trade or commerce within the meaning of s 4 of the CCA and s 2 of the ACL.

89. BAS was performed to:
- (a) Enlarge a woman's breasts;
 - (b) Improve the aesthetic appearance of a woman's breasts;
 - (c) Restore the anatomy of a woman's breasts after the effect of conditions or processes such as aging and breastfeeding; and,
 - (d) Improve a woman's self-esteem and confidence.

(the BAS Purpose).

90. The BAS Purpose was known by each of the defendants.

Particulars

The defendants marketed and promoted BAS for the BAS Purpose. During their pre-surgery consultations, each of the plaintiffs and group members informed staff that they wished to have BAS for the BAS Purpose.

91. BAS was performed with the reasonable expectation that the result would be:
- (a) Enlargement of a woman's breasts;
 - (b) Improvement in the aesthetic appearance of a woman's breasts;
 - (c) Restoration of the anatomy of a woman's breasts to alleviate the effects of conditions or processes such as aging or breastfeeding;
 - (d) Increased self-esteem and confidence.

(the BAS Results).

92. The BAS Results were known by each of the defendants.
93. By reason of the Defendants' System of BAS referred to in Part II above and/or the matters referred to in paragraph 81 above, BAS acquired by the plaintiffs and group members:
- (a) was provided in breach of the guarantee of due skill and care in s 60 of the ACL;
 - (b) was not, within the meaning of s 61(1) of the ACL, reasonably fit for the BAS Purpose;
 - (c) was not of a nature, quality, state or condition, that might reasonably be expected to achieve the BAS Results, within the meaning of s 61(2) of the ACL.

94. The defendants' breaches of the guarantees in ss 60, 61(1) and 61(2) of the ACL were:
- (a) failures within the meaning of the ACL.
 - (b) major failures within the meaning of s 268(a), (d) and (e) of the ACL.

(the Failures).

Particulars

Acquiring BAS put the plaintiffs and group members in an unsafe situation because it threatened their physical and mental health.

BAS and the effects of it upon the plaintiffs and group members could not be easily remedied.

BAS was not fit for purpose.

95. The plaintiffs and group members would not have acquired BAS had they been fully aware of the nature and extent of the Failures.
96. The BAS supplied by the defendants would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the Failures.
97. In making the Representations the defendants engaged in conduct in trade or commerce.
98. By reason of the Failures:
 - (a) the Representations were misleading representations with respect to future matters for the purposes of s 4 of the ACL;
 - (b) the Representations made by the defendants amounted to misleading or deceptive conduct in contravention of s 18 of the ACL;
 - (c) further and in the alternative, the Representations were false or misleading representations in contravention of s 29(1)(b) of the ACL;
 - (d) further and in the alternative, the Representations were false or misleading representations in contravention of s 29(1)(m) of the ACL;
 - (e) further and in the alternative, the Representations were false or misleading representations in contravention of s 34 of the ACL.
99. The plaintiffs and group members relied upon, and were induced by, the Representations to acquire BAS.

Part VII. - INJURY LOSS AND DAMAGE

100. The plaintiffs and group members suffered injury, loss and damage by reason that:

- (a) the defendants were negligent;
- (b) the Representations were negligent;
- (c) further or in the alternative, the Representations were false, misleading and deceptive pursuant to ss 18, 29 and 34 of the ACL;
- (d) the defendants' services were not fit for the BAS Purpose; and,
- (e) the defendants' services were not of a nature, quality, state or condition that might reasonably be expected to achieve the BAS Results expected by the plaintiffs and group members.

Particulars of Injuries

BAS Complications and in consequence:

- (a) Breast asymmetry;
- (b) Implant wrinkling;
- (c) Loss of sensation;
- (d) Ptosis;
- (e) Difficulties breast feeding;
- (f) Chest wall deformity;
- (g) Implant animation deformity;
- (h) Requirement for revision surgery;
- (i) Pain;
- (j) Discomfort;
- (k) Psychiatric injury.

Particulars of Loss and Damage

- (l) Costs associated with revision surgery;
- (m) Costs associated with psychiatric or psychological services;
- (n) Health care expenses and medical monitoring;
- (o) Other out-of-pocket expenses;
- (p) Economic loss;
- (q) Need for gratuitous and/or commercial care; and,
- (r) Non-economic loss.

SIGNATURE OF LEGAL REPRESENTATIVE

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

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

Signature



Name

Armando Gardiman

Capacity

Solicitor for the plaintiffs by his partner, Sally Gleeson

Date of signature

14 September 2017

NOTICE TO DEFENDANT

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

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

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

HOW TO RESPOND

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

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

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.ucprforms.justice.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 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 plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - 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 plaintiff 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.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

Fourth plaintiff

Name Kirsty-Anne Rowlands
Address 8 Jess Street
RESERVOIR VIC 3072

Fifth plaintiff

Name Lily Knowland
Address 14 Mackay Close
SORRENTO QLD 4217

Legal representative for plaintiffs

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Practising certificate number 2328
Firm Turner Freeman
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DETAILS ABOUT DEFENDANTS

First defendant

Name The Cosmetic Institute Pty Ltd
(ACN 153 061 155)
Address C/- Axis Accounting
84 Audley Street
PETERSHAM NSW 2049

Second defendant

Name The Cosmetic Institute Parramatta Pty Limited
(in liquidation) (ACN 144 469 036)
Address C/- Axis Accounting
84 Audley Street
PETERSHAM NSW 2049

Third defendant

Name TCI Bondi Junction Pty Limited
(ACN 165 531 895)
Address C/- Axis Accounting
84 Audley Street
PETERSHAM NSW 2049

Fourth defendant

Name TCI Southport Pty Ltd
(ACN: 605 603 423)
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84 Audley Street
PETERSHAM NSW 2049

Fifth defendant

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