



Principal Registrar &
Chief Executive Officer



Form 7A (version 5)
UCPR 14.3

EIGHTEENTH DEFENDANT'S DEFENCE TO FOURTH FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Professional Negligence List
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 (if more than two)	19

FILING DETAILS

Filed for	Allied World Assurance Company, Ltd, Eighteenth Defendant
Legal representative	Mark Williams, MinterEllison
Legal representative ref.	PMYW:SJFS:1172932
Contact name and telephone	James Stanton (02) 9921 8000
Contact email	james.stanton@minterellison.com

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at

PLEADINGS AND PARTICULARS

The eighteenth defendant (**Allied World**) pleads as follows to the allegations made by the plaintiffs in the Fourth Further Amended Statement of Claim dated 31 May 2022 (**4FASOC**):

I Introduction

A Group Members

1. Allied World does not plead to paragraph 1 of the 4FASOC because it does not contain any allegations against any of the defendants.

2. Allied World does not admit any of the allegations in paragraphs 2, 2A and 3 of the 4FASOC.

B The Plaintiffs

3. Allied World does not admit any of the allegations in paragraphs 4 to 8G of the 4FASOC.

C The Defendants

4. In answer to paragraph 9 of the 4FASOC, Allied World:

- (a) admits each allegation in paragraphs 9(a) and 9(b);
- (b) otherwise does not admit any of the allegations in that paragraph.

5. In answer to paragraph 10 of the 4FASOC, Allied World:

- (a) admits each allegation in paragraphs 10(a) and 10(b);
- (b) otherwise does not admit any of the allegations in that paragraph.

6. Allied World does not admit any of the allegations in paragraph 11 of the 4FASOC.

7. In answer to paragraph 12 of the 4FASOC, Allied World:

- (a) admits each allegation in paragraphs 12(a) and 12(b);
- (b) otherwise does not admit any of the allegations in that paragraph.

8. In answer to paragraph 13 of the 4FASOC, Allied World:

- (a) admits each allegation in paragraphs 13(a) and 13(b);
- (b) otherwise does not admit any of the allegations in that paragraph.

9. Allied World does not admit any of the allegations in paragraph 14 to 14L inclusive of the 4FASOC.

10. Allied World admits each allegation in paragraph 14M of the 4FASOC.

11. Allied World does not admit any of the allegations in paragraph 14N of the 4FASOC.

II ~~The First to Fifth Defendants~~ "System of BAS"

12. Allied World does not admit any of the allegations in paragraphs 15 to 24C of the 4FASOC.

IIA Representations

- 12A. Allied World does not admit any of the allegations in paragraphs 24D to 24AG of the 4FASOC.

III Questions Common to the Claims of Group Members

13. Allied World does not plead to paragraph 25 of the 4FASOC because it does not contain any allegations against any of the defendants.

IV The Plaintiffs' BAS

14. Allied World does not admit any of the allegations in paragraphs 26 to 77LL of the 4FASOC.

V Negligence

15. Allied World does not admit any of the allegations in paragraphs 78 to 81X of the 4FASOC.

VI ~~Competition and Consumer Act~~ Australian Consumer Law

16. Allied World does not admit any of the allegations in paragraphs 82 to 95L of the 4FASOC.

VII Injury, Loss and Damage

17. In respect of paragraph 96 to 96AJ of the 4FASOC, Allied World:
- (a) Allied World does not admit any of the allegations in those paragraphs;
 - (b) says that the action in negligence of the sixth to sixteenth defendants who performed BAS in New South Wales or Queensland on Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse, Ms Sanchez and/or group member and whose claims were discoverable three or more years before 10 December 2020 is statute barred by reason of s 50C of the *Limitation Act 1969 (NSW)* or s 11 of the *Limitation of Actions Act 1974 (Qld)*, as applicable;

- (c) says in respect of the action for misleading or deceptive conduct, by reason of ss 137C(1) and 137E(1) of the *Competition and Consumer Act 2010* (Cth), the group members are not entitled to recover the damages claimed;
- (d) says further that any entitlement to damages (which is denied) is governed by Part 2 of the *Civil Liability Act 2002* (NSW) or, where applicable, Chapter 3 of the *Civil Liability Act 2003* (Qld).

Particulars

In respect of the relief claimed by the plaintiffs under the Australian Consumer Law compromising schedule 2 of the *Competition and Consumer Act 2010* (Cth):

- (i) *Judiciary Act 1903* (Cth), ss 79 and 80
- (ii) *Civil Liability Act 2002* (NSW), s 11A
- (iii) *Civil Liability Act 2003* (Qld), s 50

VIII Claims against Insurers

A Claim against Newline

18. Allied World does not plead to paragraphs 97 to 107 of the 4FASOC because they do not contain any allegations against Allied World.

B Claim against Allied World

19. In answer to paragraph 108 of the 4FASOC, Allied World:
- (a) says that the Allied World Healthcare Package Policy wording, the policy schedule and the endorsements issued under the policy together comprise the full terms and conditions of the Allied World Policy;

Particulars of endorsements

- (i) Subsidiary Amendment Endorsement bearing the reference '*C030829/001 endorsement 0002*' with the effective date of 30 June 2016;
- (ii) Cyber Liability and Systems Failure Exclusion Amendment Endorsement bearing the reference '*Manuscript Endorsement C030829/001/1*' with the effective date of 30 June 2016;

- (iii) Fraud/Dishonesty Defence Costs Exclusion bearing the reference '*Manuscript Endorsement C030829/001/2*' with the effective date of 30 June 2016;
 - (iv) Professional Healthcare Services Amendment Endorsement bearing the references '*C030829/001*' and '*Endorsement number: 0003*' with the effective date of 30 June 2016;
 - (v) Return Premium Endorsement bearing the references '*C030829/001*' and '*Endorsement number: ONE*' with the effective date of 12 August 2016;
- (b) says that the 'Named Insured' (as those words are defined in the Allied World Policy) was TCI Parramatta;
- (c) as to the particulars to that paragraph, admits that the fifth defendant would, if the Allied World Policy were engaged, be an 'Insured' under the Policy but otherwise denies the particulars and any implication arising from them, relying on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence; and
- (d) otherwise admits each allegation in that paragraph.
20. Allied World admits the allegation in paragraph 109 of the 4FASOC.
21. In answer to paragraphs 110 and 111 of the 4FASOC, Allied World:
- (a) does not admit the description of the definition of "Damages" denies each allegation in paragraph 110(a) and relies on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence;
 - (b) admits each allegation in paragraph 110(b) and relies on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence;
 - (c) does not admit the description of the definition of "Incident" admits each allegation in paragraph 110(c) and relies on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence;
 - (d) admits each allegation in paragraph 110(d) and relies on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence;

- (e) denies each allegation in paragraph 111(a) and relies on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence;
- (f) admits each allegation in paragraph 111(b) and relies on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence;
- (g) otherwise denies each allegation in paragraphs 110 and 111 and:
 - (i) says that Allied World's liability under the Healthcare Liability Section in Part A of the Allied World Policy to indemnify the 'Insured' (as that word is defined in the Allied World Policy) against 'Damages' (as that word is defined in the Allied World Policy) the Insured is legally liable to pay is contingent upon (among other things) the Insured's liability being a result of a 'Claim' (as that word is defined in the Allied World Policy) first made against the Insured during the period 30 June 2016 to 30 June 2017 (**Allied World Policy Period**) and notified to Allied World as soon as reasonably practicable and no later than 30 days after the end of the Allied World Policy Period;
 - (ii) says that it was a term of the Allied World Policy that the Allied World Policy does not cover and Allied World will not indemnify or be liable to any Insured under the Allied World Policy in respect of any actual or alleged liability of any Insured:
 - (A) arising from any Claim or 'Circumstance' (as that word is defined in the Allied World Policy), which is known in whole or in part by such Insured prior to the Allied World Policy Period; or
 - (B) arising from any Claim or Circumstance, which is known in whole or in part by the Named Insured or any manager (or equivalent) in any Insured Entity's risk, insurance, claims or legal department, prior to the Allied World Policy Period;

(Prior Known Exclusion 21);
 - (iii) says that it was a term of the Allied World Policy that the Allied World Policy does not cover and Allied World will not indemnify or be liable to any Insured under the Allied World Policy in respect of any actual or alleged liability of any Insured arising from any incident, 'Wrongful Act' (as those words are defined in the Allied World Policy), 'Occurrence' (as that word is

defined in the Allied World Policy), 'Injury' (as that word is defined in the Allied World Policy), 'Claim', 'Circumstance' or any other matter:

- (A) notified to a 'Medical Defence Organisation' (as those words are defined in the Allied World Policy) prior to the Allied World Policy Period; or
- (B) notified under any insurance policy commencing prior to the Allied World Policy Period, or deemed notified, or which the Insured was entitled to or should reasonably have notified under the terms of any such policy;

(Prior Notified Exclusion 23);

- (iv) relies on the full terms of the Allied World Policy for their full meaning and effect as if set out in this defence.

22. In answer to paragraph 112, Allied World:

- (a) says that Lockton Companies Australia Pty Ltd (**Lockton**) was TCI, TCI Parramatta, TCI Bondi and TCI Southport's insurance broker, and acted as agent and on behalf of TCI, TCI Parramatta, TCI Bondi and TCI Southport, at all relevant times;
- (b) says that Carly Robinson of Allied World received an email from Scott Loder of Lockton on 6 July 2017 and an attached Cosmetic Institute insurance notification form relating to Lily Knowland and relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (c) says that Carly Robinson received an email from Richard Ossington of Lockton on 25 January 2017 and an attached a Cosmetic Institute insurance notification form relating to Sherine Zahr and relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (d) says that Carly Robinson received an email from Emma Walter of Lockton on 12 May 2017 and an attached draft 4FASOC and relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (e) says that, if Tiffany Rutherford, Alysha Axen, Candiece Gielisse and/or Stefanie Sanchez made a claim against any one or more of TCI, TCI Parramatta, TCI Bondi or TCI Southport during the Allied World Policy Period in their own right and on behalf of any group members, neither the claim(s) nor the circumstances of the claim(s) were notified to Allied World during the Allied World Policy Period or within 30 days after the end of the Allied World Policy Period;

Particulars

It is a term of the Allied World Policy that notice of a claim under the policy must contain sufficient information to allow Allied World to identify the claim, circumstance or occurrence or other matter in question and to also identify the nature of the injury and the identity of the person concerned
(Notice and Conduct of Claims Condition 4)

- (f) otherwise denies each allegation in that paragraph.
23. Allied World denies each allegation in paragraph 113 of the 4FASOC and:
- (a) repeats paragraphs 22(a), 22(c), 22(d) and 22(e) above;
- (b) denies that Allied World is liable to indemnify the fifth defendant, TCI, TCI Parramatta, TCI Bondi or TCI Southport for their respective liabilities to Lily Knowland for damages and costs in these proceedings:
- (i) by reason of the facts pleaded in paragraphs 27 to 41 below;
- (ii) by reason of the terms of Prior Known Exclusion 21 and the fact that TCI, TCI Parramatta, TCI Bondi and/or TCI Southport's actual or alleged liability in these proceedings:
- (A) arises from circumstances that were known, in whole or in part, by TCI, TCI Parramatta, TCI Bondi and/or TCI Southport prior to the Allied World Policy Period; and/or
- (B) arises from circumstances that were known, in whole or in part, by TCI Parramatta and/or any manager (or equivalent) in TCI, TCI Parramatta, TCI Bondi and/or TCI Southport's risk, insurance, claims or legal department, prior to the Allied World Policy Period;

Particulars

- (I) prior to the Allied World Policy Period commencing, the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport knew that there were many dissatisfied patients who had undergone breast augmentation surgery and who were considering taking legal action;
- (II) various media articles about '*botched*' breast implants at TCI before the Allied World Policy Period, including:
 - (1) on or about 10 September 2015, 7 News presented a story on its nightly news titled '*Botched breast implants*' that referred to scores of patients of TCI needing to pay thousands of dollars to repair their bodies;
 - (2) on or about 27 September 2015, Yahoo News reported that 7 News has identified more than 30 TCI patients with a range of surgical deformities, including uneven and misshapen breasts, and reported that many of these women claimed they were misled about TCI doctors' precise qualifications;
 - (3) on or about October 2015, 7 News presented a follow-up story to its report on or about 10 September 2015, which referred to about 60 women approaching Channel 7 News and identifying themselves as suffering from post-operative defects and complications;
 - (4) on or about 27 November 2015, Yahoo News reported that over 100 former patients of TCI were talking to lawyers planning a class action against the clinic alleging they were misled about surgery or left scarred;
 - (5) on or about 16 April 2016, ABC News presented a story to effect that:

- A. according to a NSW Health Care Complaints Commission report, 6 TCI patients suffered potentially life-threatening complications while getting breast implants in the last 12 months, including rapid heartbeat, seizures and cardiac arrest;
 - B. the report found that the TCI clinics placed the health and safety of members of the public at risk;
- (III) correspondence between the fifth defendant and David Segal in August 2013 and October 2015 regarding, amongst other things, patient complaints, negative media coverage and potential lawsuits;
 - (IV) correspondence from Turner Freeman to one or more of the first to fourth defendants from 2015 seeking, *inter alia*, client medical records;
 - (V) correspondence from the Health Care Complaints Commission to Moisson Lawyers outlining proposed comments and recommendations to TCI under s 42(1)(b) of the *Health Care Complaints Act 1993*, and the Commission's draft Investigation Report, and inviting TCI to make submissions concerning the Commission's proposal;
 - (VI) further particulars will be provided following evidence, discovery and production of documents in answer to subpoenas;
- (c) denies that Allied World is liable to indemnify the fifth defendant, TCI, TCI Parramatta, TCI Bondi or TCI Southport for their respective liabilities to Sherine Zahr for damages and costs in these proceedings:
 - (i) by reason of the facts pleaded in paragraphs 27 to 41 below;
 - (ii) by reason of the terms of Prior Known Exclusion 21 and the fact that the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport's actual or alleged liability to Sherine Zahr in these proceedings:

- (A) arises from circumstances that were known, in whole or in part, by TCI, TCI Parramatta, TCI Bondi and/or TCI Southport prior to the Allied World Policy Period; and/or
- (B) arises from circumstances that were known, in whole or in part, by TCI Parramatta and/or any manager (or equivalent) in TCI, the fifth defendant, TCI Parramatta, TCI Bondi and/or TCI Southport's risk, insurance, claims or legal department, prior to the Allied World Policy Period;

Particulars

- (I) [REDACTED]
- (II) on or about 10 September 2015, 7 News presented a story on its nightly news titled '*Botched breast implants*' that referred to scores of patients of TCI needing to pay thousands of dollars to repair their bodies;
- (III) at a post-operative review on 18 September 2015, Sarah Butler, an employee or agent of TCI, TCI Parramatta, TCI Bondi and/or TCI Southport, [REDACTED]
- (IV) [REDACTED]
- (V) on 28 September 2015:
 - (1) [REDACTED]

C. [REDACTED]
[REDACTED]

(2) Sherine Zahr's mother said to Hannah Hamilton-Cookson, an employee or agent of TCI, TCI Parramatta, TCI Bondi or TCI Southport, words to the effect that:

A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

(3) Hannah Hamilton-Cookson made an appointment for Sherine Zahr to see the fifth defendant (**Eddy Dona**) on 28 September 2015;

(4) Eddy Dona examined Sherine Zahr on 28 September 2015, during which he said words to the effect of the statements pleaded in paragraph 77HJ of the 4FASOC;

(VI) on 4 February 2016, Bianca Cross, an employee or agent TCI, TCI Parramatta, TCI Bondi and/or TCI Southport, made an entry in Sherine Zahr's electronic record saying '*6 month email not sent due to [patient] concerns*';

(VII) prior to the Allied World Policy Period commencing, the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport knew that there were many dissatisfied patients who had undergone breast augmentation surgery and were considering taking legal action;

(VIII) further particulars will be provided following production of documents in answer to subpoenas;

(d) denies that Allied World is liable to indemnify the fifth defendant, TCI, TCI Parramatta, TCI Bondi or TCI Southport for their respective liabilities to Tiffany

Rutherford, Alysha Axen, Candiece Gielisse and/or Stefanie Sanchez for damages and costs in these proceedings:

- (i) by reason of the facts pleaded in paragraphs 22(d) and 22(e) above;
- (ii) by reason of the facts pleaded in paragraphs 27 to 41 below;
- (iii) by reason of the terms of Prior Known Exclusion 21 and the fact that the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport's actual or alleged liability in these proceedings:
 - (A) arises from circumstances that were known, in whole or in part, by the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport prior to the Allied World Policy Period; and/or
 - (B) arises from circumstances that were known, in whole or in part, by TCI Parramatta and/or any manager (or equivalent) in TCI, TCI Parramatta, TCI Bondi and/or TCI Southport's risk, insurance, claims or legal department, prior to the Allied World Policy Period;

Particulars

- (I) Allied World repeats the particulars to paragraph set out 23(b)(ii)(B);
 - (II) further particulars will be provided following evidence, discovery and production of documents in answer to subpoenas.
24. Allied World does not admit any of the allegations in paragraph 114 of the 4FASOC.
25. In answer to paragraph 115 of the 4FASOC, Allied World:
- (a) says that, on 3 February 2021, Allied World was provided a list of all known group members as at 3 February 2021 (**List**);

Particulars

The list was attached to an email sent by Sally Gleeson of Turner Freeman to Mark Williams and Daniel Bunoza of MinterEllison (among others) on 3 February 2021

- (b) denies that Allied World is liable to indemnify the fifth defendant, TCI, TCI Parramatta, TCI Bondi or TCI Southport for their respective liabilities to group members identified in paragraph 115 of the 4FASOC by reason of the terms of Prior Known Exclusion 21 and the fact that the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport's actual or alleged liability in these proceedings:
- (i) arises from circumstances that were known, in whole or in part, by the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport prior to the Allied World Policy Period; and/or
 - (ii) arises from circumstances that were known, in whole or in part, by the fifth defendant, TCI Parramatta and/or any manager (or equivalent) in TCI, TCI Parramatta, TCI Bondi and/or TCI Southport's risk, insurance, claims or legal department, prior to the Allied World Policy Period;

Particulars

- (I) Allied World repeats the particulars set out at 23(b)(ii)(B);
 - (II) further particulars will be provided following evidence, discovery and production of documents in answer to subpoenas;
- (c) says that:
- (i) in relation to Fiorina Anzellotti (known group member listed at item 26 of the List):
 - (A) Carly Robinson received an email from Richard Jane on 4 November 2016 attaching a notification and other supporting documentation in relation to Fiorina Anzellotti;
 - (B) Allied World relies on the entire content of that email and the attachments for their full meaning and effect as if set out in this defence; in relation to Phoebe Bateman (known group member listed at item 62 of the List):

- (A) Carly Robinson received an automated email generated by Lockton on 9 June 2017 attaching a notification and other supporting documentation in relation to Phoebe Bateman;
 - (B) Allied World relies on the entire content of that email and the attachments for their full meaning and effect as if set out in this defence;
- (iii) in relation to Nina Brooks (known group member listed at item 117 of the List):
- (A) Carly Robinson received an email from Richard Ossington on 2 November 2016 attaching a notification in relation to Nina Brooks;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (iv) in relation to Sheryl Buchanan (known group member listed at item 133 of the List):
- (A) Carly Robinson received an email from Emma Walter on 25 May 2017 attaching a notification in relation to Sheryl Buchanan;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (v) in relation to Kristy Buckpitt (known group member listed at item 136 of the List):
- (A) Carly Robinson received an email from Richard Ossington on 2 November 2016 attaching a notification in relation to Kristy Buckpitt;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (vi) in relation to Laura Burton (known group member listed at item 145 of the List):

- (A) Carly Robinson received an email from Richard Ossington on 1 September 2016 attaching a notification in relation to Laura Burton;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (vii) in relation to Kim Cantarakis (known group member listed at item 161 of the List):
- (A) Carly Robinson received an email from Richard Ossington on 22 February 2017 attaching a notification in relation to Kim Cantarakis;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (viii) in relation to Caterina Castrogiovanni (known group member listed at item 172 of the List):
- (A) Carly Robinson received an email from Richard Ossington on 1 September 2016 attaching a notification in relation to Caterina Castrogiovanni;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;
- (ix) in relation to Bianca Crino (known group member listed at item 220 of the List):
- (A) Carly Robinson received an email from Richard Ossington on 21 March 2017 attaching a notification in relation to Bianca Crino;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (x) in relation to Emily Down (known group member listed at item 274 of the List):
 - (A) Carly Robinson received an email from Richard Ossington on 10 February 2017 attaching a notification in relation to Emily Down;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (xi) in relation to Sarah Ennis (known group member listed at item 305 of the List):
 - (A) Carly Robinson received an email from Richard Ossington on 10 February 2017 attaching a notification in relation to Sarah Ennis;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (xii) in relation to Kellie Gant (known group member listed at item 365 of the List):
 - (A) Carly Robinson received an email from Richard Ossington on 1 September 2016 attaching a notification in relation to Kellie Gant;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (xiii) in relation to Ashleigh Gilbert (known group member listed at item 375 of the List):
 - (A) Carly Robinson received an email from Richard Ossington on 2 November 2016 attaching a notification in relation to Ashleigh Gilbert;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

(xiv) in relation to Stacey Kennedy (known group member listed at item 548 of the List):

(A) Carly Robinson received an email from Richard Ossington on 1 September 2016 attaching a notification in relation to Stacey Kennedy;

(B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

(xv) in relation to Natalie McHugh (known group member listed at item 652 of the List):

(A) Carly Robinson received an email an automated email generated by Lockton on 9 June 2017 attaching a notification in relation to Natalie McHugh;

(B) relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

(xvi) in relation to Gemma Smedley (known group member listed at item 925 of the List):

(A) Carly Robinson received an email from Emma Walter on 27 July 2017 attaching a notification in relation to Gemma Smedley;

(B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

(xvii) in relation to Coreen Topp (known group member listed at item 1017 of the List):

(A) Carly Robinson received an email from Richard Ossington on 10 February 2017 attaching a notification in relation to Coreen Topp;

(B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (xviii) in relation to Monique Toutounji (known group member listed at item 1019 of the List):
 - (A) Carly Robinson received an email from Richard Ossington on 22 February 2017 attaching a notification in relation to Monique Toutounji;
 - (B) relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (xix) in relation to Clyde Weigang (known group member listed at item 1079 of the List):
 - (A) Carly Robinson received an email from Richard Ossington on 2 November 2016 attaching a notification in relation to Clyde Weigang;
 - (B) Allied World relies on the entire content of that email and the attachment for their full meaning and effect as if set out in this defence;

- (xx) in relation to Michelle Wollerman (known group member listed at item 1109 of the List):
 - (A) Carly Robinson received an email from Emma Walter on 26 July 2017 attaching a notification and supporting documentation in relation to Michelle Wollerman;
 - (B) Allied World relies on the entire content of that email and the attachments for their full meaning and effect as if set out in this defence;

- (xxi) in relation to Alice Wynne (known group member listed at item 1117 of the List):
 - (A) Carly Robinson received an email from Richard Ossington on 10 February 2017 attaching a notification in relation to Alice Wynne;
 - (B) Allied World relies on the entire content of that email and the attachments for their full meaning and effect as if set out in this defence;

- (d) says that, other than for the facts pleaded in paragraphs 25(c)(i) to 25(c)(xxi) above, no claim made by any person listed in the list of all known group members as at 3 February 2021 nor the circumstances of any claim by any person listed in the list of all known group members as at 3 February 2021 were notified to Allied World during the Allied World Policy Period or within 30 days after the end of the Allied World Policy Period in accordance with Notice and Conduct of Claims Condition 4;
- (e) otherwise denies each allegation in that paragraph.
26. Allied World denies each allegation in paragraph 116 of the 4FASOC by reason of the facts pleaded in paragraphs 25(a) to 25(d) above and paragraphs 27 to 41 below.
27. On 4 May 2016, Allied World received a submission from Lockton, as agent for and acting on behalf of TCI, TCI Parramatta, TCI Bondi and TCI Southport, requesting that Allied World offer terms to underwrite the Allied World Policy (**TCI Submission**).

Particulars

The TCI Submission comprised an email sent by Richard Jane of Lockton to Emma Lisi and Peter Ford of Allied World on 4 May 2016 attaching: a quote slip from Lockton (**Quote Slip**) prepared for TCI for the Allied World Policy ;

- (ii) a proposal form completed on behalf of TCI, TCI Parramatta, TCI Bondi and TCI Southport (**Proposal Form**);
- (iii) an addendum disclosing various matters about the elective procedures performed by TCI entities (**Addendum**); and
- (iv) an Excel spreadsheet (**Excel Spreadsheet**).
28. The Proposal Form contained a written notice setting out the general nature and effect of TCI, TCI Parramatta, TCI Bondi and TCI Southport's duty of disclosure under s21 of the *Insurance Contracts Act 1984* (Cth).

Particulars

The following words appeared on the first page of the Proposal Form:

IMPORTANT NOTICE

Your duty of disclosure

Before you enter into an insurance contract you have a duty to tell us anything that you know, or could reasonably know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- *reduces the risk we insure you for; or*
- *that is common knowledge; or*
- *we know or should know as an insurer; or*
- *we waive your duty to tell us about.*

If you do not tell us something

If you not tell us anything you are required to, we may cancel your contract to reduce the amount we will pay if you make a claim, or both.

If you do not understand any part of this Proposal Form, seek advice from your professional insurance adviser.

Non-Disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce their liability under the contract in respect of a claim. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

29. The TCI Submission contained representations made on behalf of the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport to the effect that TCI, TCI Parramatta, TCI Bondi and TCI Southport did not employ medical practitioners.

Particulars

- (a) Richard Jane said in his email to Emma Lisi and Peter Ford on 4 May 2016 'Please find attached a ... Confirmation of Fees paid to contract doctors for your records';
- (b) The Excel Spreadsheet contained the word 'yes' next to the names of each surgeon under a column titled 'contracted';
- (c) The Proposal Form:
- (i) contained the question and answer:

Please state the total numbers of:

<i>Principal/Directors</i>	4	<i>Other Technical Staff</i>	<i>See attachment</i>
<i>Qualified staff</i>	<i>See attachment</i>	<i>Administrative/other staff</i>	<i>See attachment</i>

- (ii) the attachment referred to in the question and answer pleaded in paragraph 29(c)(i) above was the Excel Spreadsheet;
 - (iii) contained a question which asked whether TCI, TCI Parramatta, TCI Bondi and TCI Southport used the services of independent consultants, contractors or agents, to which the answer was 'yes';
 - (iv) contained a question which asked the names of the independent consultants, contractors or agents, to which the answer was '*As provided to underwriter*', being a reference to the Excel Spreadsheet;
 - (v) contained a question which asked whether TCI, TCI Parramatta, TCI Bondi and TCI Southport required their independent consultants, contractors or agents to maintain their own medical indemnity insurance, to which the answer was 'yes';
 - (vi) contained a question which asked what percentage of TCI, TCI Parramatta, TCI Bondi and TCI Southport's income related to contracted work, to which the answer was '100%';
 - (vii) contained a question which asked for details of all medical practitioners engaged in the business, to which the response was to see an attachment, being a reference to the Excel Spreadsheet; and
 - (viii) contained a question which asked for details of all staff engaged in the business to which the response was to see an attachment, being a reference to the Excel Spreadsheet;
- (d) the Addendum contained a question which asked how patients are informed of the nature of the surgery or treatment, risks involved, side effects, results and how long they will last, to which the answer was '*Through consultation with the doctor and in-house consulting and nursing staff*';
- (e) the Excel Spreadsheet contained a table:
- (i) which listed, in a column with the heading '*Surgeons*', the names:
 - (A) Ali Farheen;

(B) Charles Duong;

(C) Daniel Kwok;

(D) Dash Dashn;

(E) Huy Tang;

(F) Jim Kenny;

(G) Napoleon Chiu;

(H) Van Nguyen;

(I) Victor Lee;

- (ii) which said, in a column with the heading '*Contracted*', the word 'yes' next to each name listed in paragraphs 29(e)(i)(A) to 29(e)(i)(I) above;
- (iii) which listed, in a column with the heading '*Staffing*', various names that were not the names listed in paragraphs 29(e)(i)(A) to 29(e)(i)(I) above, none of whom were stated to be medical practitioners.

30. On 20 May 2016, Allied World provided proposed terms to Lockton to underwrite TCI, TCI Parramatta, TCI Bondi and TCI Southport on a 100% basis in response to the TCI Submission (**First Allied World Proposal**).

Particulars

The terms were set out in an email sent by Emma Lisi to Richard Jane on 20 May 2016.

31. During the course of negotiating the terms of the First Allied World Proposal, Lockton, as agent for and on behalf of TCI, TCI Parramatta, TCI Bondi and TCI Southport, proposed to Allied World that Allied World underwrite TCI, TCI Parramatta, TCI Bondi and TCI Southport on a co-insurance basis with Dale Underwriting Partners (**Dale**) and provided Allied World with a number of documents (**Dale Proposal**).

Particulars

The Dale Proposal comprised an email sent by Phillip Smith of Lockton to Peter Ford on 4 May 2016 attaching, among other things, the emails pleaded in paragraphs 32(a), 32(b) and 32(c) below.

32. The Dale Proposal contained representations made on behalf of TCI, TCI Parramatta, TCI Bondi and TCI Southport to the effect that TCI, TCI Parramatta, TCI Bondi and TCI Southport did not employ medical practitioners.

Particulars

- (a) The Dale Proposal contained an email sent by Charlie Mundy of Lockton to Thomas Wagstaff of Dale on 10 May 2016, in which Charlie Mundy wrote '*the chances of a claims arising against TCI or the contractor surgeon are minimal*';
- (b) The Dale Proposal contained an email sent by Thomas Wagstaff to Charlie Mundy on 16 May 2016, in which Thomas Wagstaff said '*Are the surgeons included in the cover or do they buy their own insurance separately?*'; and
- (c) The Dale Proposal contained an email sent by Charlie Mundy to Thomas Wagstaff in reply on 17 May 2016, in which Charlie Mundy said '*Can confirm, the Surgeons all have their own insurance cover and are contractors as are the Anaesthetists*'.
33. On 10 June 2016, Richard Jane sent an email to Emma Lisi in which he requested that Allied World provide a proposed wording for the Allied World Policy to be underwritten wholly by Allied World rather than on a co-insurance basis with Dale.
34. On 10 June 2016, Emma Lisi sent an email to Richard Jane which attached a proposed wording for the Allied World Policy.
35. The proposed wording pleaded in paragraph 34 above contained a written notice setting out the general nature and effect of TCI, TCI Parramatta, TCI Bondi and TCI Southport's duty of disclosure under s21 of the *Insurance Contracts Act 1984* (Cth).

Particulars

The following words appeared on page (ii) of the proposed wording:

INSURED'S DUTY OF DISCLOSURE

Section 21 of the Insurance Contracts Act 1984 (Cth) provides that before an Insured enters into an insurance contract, they have a duty to tell the

insurer, Allied World, anything that they know, or could reasonably be expected to know, that may affect Allied World's decision to insure them and on what terms. The Insured has this duty until Allied World agrees to insure the Insured. The Insured has the same duty to disclose before they renew, extend, vary or reinstate an insurance contract.

However, the Insured does not need to tell Allied World anything that:

- *reduces the risk Allied World insures the Insured for; or*
- *is common knowledge; or*
- *Allied World knows or, should know as an insurer; or*
- *Allied World waives the Insured's duty to tell them about.*

If you the Insured do not tell Allied World something

If you do not tell Allied World anything you are required to, Allied World may cancel your contract or reduce the amount it will pay you if you make a Claim or both. If your failure to tell Allied World is fraudulent, Allied World may refuse to pay a Claim and treat the contract as if it had never existed.

36. Allied World entered into the Allied World Policy with TCI, TCI Parramatta, TCI Bondi and TCI Southport on 30 June 2016.

Particulars

- (a) Richard Jane sent an email to Emma Lisi on 29 June 2016, in which he said:
- (i) he had '*received instructions to place the Cosmetic Institutes Professional Indemnity Medical Mal Practice program with Allied World Assurance Company Ltd (Australia Branch) for the period 30th June 2016 – 30th June 2017;*
 - (ii) '*Would you be able to sign and stamp the attached slip as confirmation cover has been bound and all is in order by return?*'
- (b) Christopher Sheather of Allied World sent an email to Richard Jane on 30 June 2016 attaching placing slip.

37. At all relevant times before the Allied World Policy was entered into, each of the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport had a duty to disclose to Allied World every matter that was known to each of them that:

- (a) TCI, TCI Parramatta, TCI Bondi and/or TCI Southport knew was a matter relevant to Allied World's decision whether to insure them and, if so, on what terms; and

- (b) a reasonable person in the circumstances could be expected to know was a matter relevant to Allied World's decision whether to insure them and if so on what terms.

Particulars

The duty was imposed by s21 of the *Insurance Contracts Act 1984* (Cth).

38. At the time that Lockton, as agent for and on behalf of the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport, provided the TCI Submission and Dale Proposal to Allied World, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport employed surgeons to perform breast augmentation surgery at premises Smith Street Parramatta, New South Wales (**TCI Parramatta Premises**) and intended to continue to employ surgeons to perform breast augmentation surgery at premises from which the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport carried on business (**Non-Disclosed Fact**).

Particulars

- (a) ~~TCI Paramatta employed the tenth defendant pursuant to an employment agreement between TCI Parramatta and the tenth defendant with a commencement date of 13 September 2012.~~ TCI Paramatta employed the fourteenth defendant pursuant to an employment agreement between TCI Paramatta and the fourteenth defendant with a commencement date of 14 September 2012.
- (b) Further particulars may be provided following production of documents in answer to subpoenas.
39. The Non-Disclosed Fact was:
- (a) known to the fifth defendant, TCI, TCI Parramatta, TCI Bondi and TCI Southport to be a matter relevant to Allied World's decision whether to accept the risk and, if so, on what terms; and
- (b) alternatively, a matter that a reasonable person in the circumstances could be expected to know was a matter relevant to Allied World's decision whether to accept the risk and if so on what terms.

Particulars

Allied World repeats paragraphs 29 and 32 above.

40. The fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport failed to disclose the Non-Disclosed Fact to Allied World (either directly or through Lockton) and consequentially did not comply with their duty of disclosure in relation to the Allied World Policy.
41. If the fifth defendant, TCI, TCI Parramatta, TCI Bondi and/or TCI Southport had disclosed the Non-Disclosed Fact to Allied World and complied with its duty of disclosure, Allied World would not have entered into the Allied World Policy.
42. By reason of the facts pleaded in paragraphs 32(a), 32(b) and 32(c) above and the operation of s28(3) of the *Insurance Contracts Act 1984* (Cth), Allied World's liability to indemnify TCI, TCI Parramatta, TCI Bondi and/or TCI Southport under the Allied World Policy is reduced to nil.

C Claim against MDANI

43. Allied World does not plead to paragraphs 117 to 131 of the 4FASOC because they do not contain any allegations against Allied World.

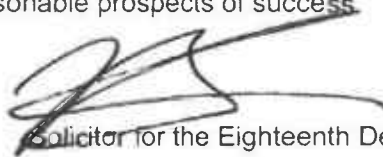
SIGNATURE OF LEGAL REPRESENTATIVE

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

Date of signature



Solicitor for the Eighteenth Defendant (by his employed solicitor)

15 November 2022

AFFIDAVIT VERIFYING

Name Carly Robinson
 Address Level 21, Australia Square, 264 George Street, SYDNEY NSW 2000
 Occupation Assistant Vice President – Claims
 Date 15 November 2022

I do solemnly, sincerely and truly affirm and declare:

1. I am an officer of Allied World Assurance Company, Ltd and am authorised to verify this defence on its behalf.
2. I believe that the allegations of fact contained in the defence are true.
3. I believe that the allegations of fact that are denied in the defence are untrue.
4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

AFFIRMED at SYDNEY

Signature of deponent



Name of witness

James Richard Stanton

Address of witness

Level 40, Governor Macquarie Tower, 1 Farrer Place,
 SYDNEY, NSW 2000

Capacity of witness

Solicitor

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

1. I saw the face of the deponent
2. I have confirmed the deponent's identity using the following identification document:

Driver Licence

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

Signature of witness:



FURTHER DETAILS ABOUT FILING PARTY**Filing party**

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