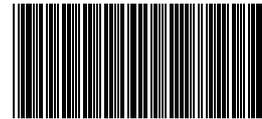




Filed: 6 February 2025 4:44 PM



D00023GMX5

Form 3A/B
Rule 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Supreme Court Sydney
Case number	2024/00300823

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	Maurice Lynch
Legal representative reference	
Telephone	80357975
Your reference	3743154

ATTACHMENT DETAILS

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

Amended Statement of Claim (Amended Statement of Claim - Signed.pdf)

[attach.]

Form 3A (version 7)
UCPR 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	General List
Registry	Sydney
Case number	2024/00300823

TITLE OF PROCEEDINGS

Plaintiff	Baiada Pty Ltd (ABN 47 000 426 808)
First Defendant	Blenner's Transport QLD Pty Ltd t/as Blenner's Transport (ABN 36 169 008 495) <u>Blenner's Transport Pty Ltd</u> (ACN 052 473 051)
Number of defendants (if more than two)	3 <u>2</u>

FILING DETAILS

Filed for	Baiada Pty Ltd , the Plaintiff
Legal representative	Maurice Lynch, Mills Oakley
Legal representative reference	3743154
Contact name and telephone	Henry Holland, 02 8035 7807
Contact email	hholland@millsOakley.com.au

TYPE OF CLAIM

Other – Judge (Common Law)

Note: The proceedings are to be listed for an initial directions hearing in accordance with [15] of the Supreme Court General Practice Note 17 (**SC Gen 17**).

RELIEF CLAIMED

Relief claimed by the Plaintiff in its own behalf and on behalf of the Group Members:

- 1 Damages.
- 2 Interest.
- 3 Costs.

PLEADINGS AND PARTICULARS

REPRESENTATIVE PROCEEDING

- 1 The Plaintiff brings this proceeding as a representative party under Part 10 of the *Civil Procedure Act 2005* (NSW).
- 2 The group members to whom this proceeding relates are those persons who:
 - a. were:
 - i. the owners or persons entitled to possession, of cargo or property that comprised, or was present on, Pacific National Train 7SP5, and which was damaged on or about 31 December 2023; or
 - ii. the owners, operators or persons responsible for the repair of transport infrastructure, being road or railway tracks, on or near the Cutana 309X level crossing on the Barrier Highway near Bindarra, South Australia on or about 31 December 2023. and
 - b. suffered damage or loss to the cargo, ~~or~~ property, road or railway tracks as the result of a collision between Train 7SP5 and a truck at the Cutana 309X level crossing on the Barrier Highway near Bindarra, South Australia.

(the **Group Members**).
- 3 The proceedings are commenced for Group Members as an open class as not all group members are the clients of the Plaintiff's solicitor.

COMMON QUESTIONS OF FACT OR LAW

- 4 The common questions of fact or law to the claims of the Plaintiff and the Group Members are:
 - a. with respect of the First Defendant ~~and Second Defendant~~:

- i. whether the ~~Third Defendant~~ Mr Kevin Maxwell Pearson (~~Third Defendant Truck Driver~~) was an employee of the First Defendant and/or the ~~Second Defendant~~; and
 - ii. whether the First Defendant and/or the ~~Second Defendant~~ are is vicariously liable for any negligence of the ~~Third Defendant~~ Truck Driver,
- b. with respect to the Second Defendant:
- i. whether the Truck Driver was:
 - 1. the agent of the Second Defendant in carrying out the Journey, as defined in [33] of the Amended Statement of Claim; or
 - 2. further or in the alternative, carried out the Journey at the direction, order, request or instruction of the Second Defendant,
 - ii. whether the Truck Driver's negligence was done:
 - 1. in carrying out the agency relationship between the Second Defendant and the Truck Driver; or
 - 2. further or in the alternative, at the direction, order request or instruction of the Second Defendant,
 - iii. whether the Second Defendant is liable for any negligence of the Truck Driver,
- c. with respect to the ~~Third Defendant~~ Truck Driver:
- i. whether the ~~Third Defendant~~ Truck Driver owed a duty of care to the Plaintiff and the Group Members to exercise reasonable skill, care and diligence in the operation of the truck that collided with Train 7SP5;
 - ii. whether the ~~Third Defendant~~ Truck Driver breached their duty of care to the Plaintiff and Group Members; and
 - iii. whether the ~~Third Defendant~~ Truck Driver's breaches of their duty of care were causative of the loss suffered by the Plaintiff and/or Group Members.

PLAINTIFF'S CLAIM

5 The Plaintiff is and was at all material times:

- a. a duly incorporated company and entitled to sue and be sued in its corporate name and style; and
 - b. domiciled and registered in the state of New South Wales.
- 6 The First Defendant is and was at all material times a duly incorporated company and able to sue and be sued in its corporate name and style.
- 7 The Second Defendant is and was at all material times:
- ~~a. the trustee of the The Blennerhassett Family Trust trading as Blenner's Transport (ABN 85 727 648 916); and~~
 - ~~b. a duly incorporated company and able to sue and be sued in its corporate name and style; or~~
 - ~~c. further and in the alternative, a natural person able to sue and be sued.~~
 - a. a duly incorporated company and able to sue and be sued in its corporate name and style; and
 - b. the registered owner of a 2018 Kenworth T659 prime mover, coupled to 2 FTE3A model refrigerated semi-trailers in an A-double road train configuration truck (**the Truck**).
- 8 The First Defendant ~~and/or Second Defendant~~ was, at all material times, a provider of trucking and logistics services.
- 9 The ~~Third Defendant~~ Truck Driver was at all material times:
- a. a natural person able to sue and be sued;
 - b. an employee of the First Defendant; and
 - ~~c. Further and in the alternative, an employee of the Second Defendant; and~~
 - d. required as part of their duties of employment to drive trucks and transport goods for the First Defendant and/or the Second Defendant.
- 10 The Plaintiff was the owner of 42 pallets of frozen chicken products (**the Consignment**).

Particulars

- a. The Consignment was comprised of 3,516 cartons weighing 14,078.60 kgs.
- 11 The Plaintiff contracted Lindsay Transport Pty Ltd to carry the Consignment from Lineage Logistics' cold store in Lurnea, New South Wales to Bartter Enterprises at Golden West Logistics in Perth, Western Australia.

- 12 Lindsay Transport Pty Ltd sub-contracted Pacific National Pty Ltd to carry the Consignment from Lurnea to Perth.
- 13 The Consignment was carried in refrigerated container LTCD462114 (**the Container**).
- 14 Pacific National Pty Ltd was the operator of Train 7SP5, which was scheduled to travel from Sydney to Perth, via Broken Hill and Port Augusta.

Particulars

- a. Train 7SP5 consisted of two locomotives, being lead locomotive NR41 and trailing locomotive NR79, and 27 wagons loaded with 143 dry and refrigerated containers.
 - b. The 27 wagons comprised a mixture of five pack double stacked wagons, three pack double stacked wagons and single deck wagons.
- 15 On or about 28 December 2023, the Container was loaded to wagon RRRY07014S on Train 7SP5.

Particulars

- a. Lineage Logistics Summary Release Advice No. 02904585.
 - b. Lindsay consignment note 03187600.
 - c. Lindsay booking form dated 28 December 2023.
- 16 On or about 31 December 2023:
- a. ~~a 2018 Kenworth T659 prime mover, coupled to 2 FTE3A model refrigerated semi-trailers in an A-double road train configuration truck (the Truck), was owned and/or operated by:~~
 - i. operated by the First Defendant as part of its business offering transport and logistics services; and/or
 - ii. ~~further or in the alternative, owned by the Second Defendant, and~~
 - b. the Truck was being driven by the ~~Third Defendant Truck Driver~~ in the course of his employment with the First Defendant ~~and/or the Second Defendant~~.
- 17 On 31 December 2023 at about 10:15am, the Truck collided with Train 7SP5 at the Cutana 309X level crossing at Bindarra on the Barrier Highway (**the Collision**).
- 18 The Collision caused Train 7SP5 to derail, which resulted in significant damage to:
- a. the locomotives,

- b. the wagons; ~~and~~
- c. the cargo that was being carried aboard Train 7SP5;
- d. railway tracks; and
- e. road.

19 The Barrier Highway featured warnings to alert drivers (**the Warning Alerts**) to the approaching Cutana 309X level crossing (**the Crossing**).

Particulars

- a. The warnings included passive road markings, two passive level crossing advanced warning signs, and an active advance warning sign.
- b. Passive warning signs are not activated during the approach or passage of a train, and rely on the road user detecting the approaching train by direct observation.
- c. Active warning signs include devices, alone or in combination, such as flashing signs/signals, gates or barriers which are activated prior to and during the passage of a train through a crossing.
- d. The Crossing had active level crossing traffic control devices in the form of flashing red light level crossing controls and bells, which consisted of two RX-5 style active level crossing traffic control devices on either side of the track and road.
- e. The active level crossing traffic control devices were comprised of light-emitting diode type lights with hooded housings and target boards to enhance visibility and were focused to provide warning to each road approach.
- f. There was an electronic interface between the various electrical infrastructure at the site to enable coordination of the active advanced warning signs with the active level crossing traffic control devices.

20 The Truck failed to stop prior to reaching the Crossing, despite multiple warnings to do so.

Particulars

- a. As Train 7SP5 approached the Crossing, the active advanced warning sign and level crossing traffic control devices began operating.
- b. Recorded video from the Truck as it approached the Crossing confirmed that the active advanced warning signs (flashing amber lights) and the active traffic control devices (flashing red lights) were operating.

- c. Recording information from the locomotives confirmed that, during the approach to the Crossing, Train 7SP5's headlight was on and its horn was activated.
- d. The activation of the horn also commenced operation of oscillating ditch lights in front of the locomotive intended for enhancing the visibility of the leading vehicle of a train from the perspective of a driver of a motor vehicle approaching a level crossing.

21 As a result of the Collision and derailment, the Consignment was damaged and there was no possibility of salvage, which meant that the Consignment had to be destroyed.

NEGLIGENCE

Third Defendant Truck Driver

22 The ~~Third Defendant~~ Truck Driver was under a duty to the Plaintiff and the Group Members to:

- a. exercise reasonable skill, care and diligence in the operation of the Truck;
- b. operate the Truck consistent with the laws governing the use of roads in South Australia;
- c. operate the Truck in a reasonable manner near or around railway crossings;
- d. keep clear lookout for alerts and warnings for railway crossings;
- e. adhere, take heed and follow all alerts and warnings for railway crossings;
- f. keep clear lookout for trains on railway crossings; and
- g. avoid collisions with trains on railway crossings.

23 A reasonable person in the position of the ~~Third Defendant~~ Truck Driver would have taken reasonable precautions to ensure that they:

- a. kept a clear lookout for the Warning Alerts relating to railway crossings;
- b. adhered to the laws governing the use of roads in South Australia;
- c. operated the Truck in a reasonable manner such that any collision with the Train could have been avoided or the risk reduced;
- d. stopped or slowed the Truck in the presence of the Warning Alerts of potential trains at the Crossing;
- e. stopped or slowed the Truck in the presence of active Warning Alerts of the Train at the Crossing;

- f. kept a clear lookout for trains on railway crossings;
- g. avoided entering the Crossing when the Warning Alerts were active; and
- h. avoided entering the Crossing when it was otherwise reasonable for the ~~Third Defendant~~ Truck Driver to have been aware that a train was or was likely to be present at the Crossing.

24 It was reasonably foreseeable to a person in the position of the ~~Third Defendant~~ Truck Driver that damage or injury could be caused to the Plaintiff and Group Members, or a person in the position of the Plaintiff or Group Members, by:

- a. failing to take the precautions set out in paragraph 23 above; and
- b. failing to avoid a collision with a train on the Crossing.

25 The risk of harm to the Plaintiff and Group Members, or a person in the position of the Plaintiff or Group Members, was not insignificant from:

- a. failing to take the precautions pleaded at paragraph 23 above; and
- b. a collision at the Crossing.

26 Negligently and in breach of their aforesaid duties, the ~~Third Defendant~~ Truck Driver failed to exercise reasonable care and skill in or about the operation of the Truck.

Particulars

- a. Failing to stop the Truck before the Crossing.
- b. Failing to avoid a collision with Train 7SP5.
- c. Failing to keep a proper lookout.
- d. Failing to travel at an appropriate speed for the conditions.
- e. Failing to adhere to the ~~warnings alerting~~ Warning Alerts to the approaching crossing.
- f. Failing to keep the Truck under proper control and management.
- g. Failing to yield to Train 9E56.
- h. Failing to adhere to the applicable road rules and regulations.
- i. Res ipsa loquitur.

27 As a consequence of the breaches of duty by the ~~Third Defendant~~ Truck Driver, the Plaintiff and/or the Group Members suffered loss and damage.

Particulars

- a. The losses known to the Plaintiff to be incurred by the Plaintiff and Group Members as at the date of the filing of this Amended Statement of Claim are as follows:

Entity	Claim value
Baiada Pty Ltd	\$115,107.51
<u>DeLonghi Australia Pty Ltd</u>	<u>\$109,367.71</u>
<u>Australian Postal Corporation</u>	<u>\$189,483.96</u>
<u>Star Track Express Pty Ltd</u>	<u>\$635,841.78</u>
<u>Manildra Flour Mills Pty Ltd / GOTW Pty Ltd / Honan Holdings Pty Ltd</u>	<u>\$124,721.72</u>
Frutex Australia Pty Ltd	\$27,959.12
Mayo Hardware Pty Ltd	\$246,539.19
General Carrying Pty Ltd	\$59,053.59
100% Bottling Company Pty Ltd	<u>\$108,612.56</u> 40,604.38
Leader Computers Pty Ltd	\$68,314.80
Milspec Services Pty Ltd	\$25,300.00
Lorna Jane Pty Ltd	\$9,407.31
Northline Nominee Co Pty Ltd as agent for Northline Partnership (ABN 18 677 809 229)	\$11,100.00

Woolworths Group Limited / Primary Connect	\$168,906.04
<u>Australian Bakels (Pty) Ltd</u>	<u>\$93,794.88</u>
Digital Imaging Express Pty Ltd	\$17,584.41
Eaton Industries Pty Ltd	\$56,475.88
<u>Ourea Pty Ltd</u>	<u>\$1,446.79</u>
Linfox Logistics – Damage to containers	\$422,379.00
Linfox Logistics – Claim by BevChain	\$300,000.00
Linfox Logistics – Claim by Coles Group Ltd / Grocery Holdings Pty Ltd / Coles Myer Ltd	<u>\$925,909.20</u> <u>993,917.48</u>
Dicker Data Limited	\$95,677.44
Total	<u>\$3,812,982.89</u> <u>2,658,326.15</u>

b. Further particulars of loss and damage will be provided in due course.

~~28~~ — ~~The Plaintiff and the Group Members claim from the Third Defendant Truck Driver:~~

- ~~a. Damages;~~
- ~~b. Interest; and~~
- ~~c. Costs.~~

VICAROUS LIABILITY

First Defendant ~~and/or~~ Second Defendant

29 On or about 31 December 2023:

- a. the ~~Third Defendant~~ Truck Driver was in the employ of the First Defendant;
- ~~b. further and in the alternative, the Third Defendant was in the employ of the Second Defendant;~~
- b. the operation of the Truck by the ~~Third Defendant~~ Truck Driver was in the course of their employment with the First Defendant ~~and/or the Second Defendant~~; and
- c. further and in the alternative, the operation of the Truck by the ~~Third Defendant~~ Truck Driver was acting as the servant, by contract or otherwise, of the First Defendant ~~and/or the Second Defendant~~, acting as master or principal.

30 The negligence of the ~~Third Defendant~~ Truck Driver pleaded in paragraph 26 above was done in the course of:

- a. the employment of the ~~Third Defendant~~ Truck Driver by the First Defendant ~~and/or the Second Defendant~~; or
- b. further and in the alternative, the ~~Third Defendant~~ Truck Driver carrying out the service for the First Defendant ~~and/or the Second Defendant~~ as principal or master.

31 The First Defendant ~~and/or the Second Defendant~~ are is vicariously liable for the loss and damage suffered by the Plaintiff, and Group Members, caused by the negligence of the ~~Third Defendant~~ Truck Driver.

32 The Plaintiff and the Group Members claim from the First Defendant ~~and/or Second Defendant~~:

- a. Damages;
- b. Interest; and
- c. Costs.

AGENCY

33 On or about 22 December 2023, the Second Defendant directed the Truck Driver to operate the Truck for the transport of goods between Tully, Queensland and Perth,

Western Australia, and the return trip from Perth, Western Australia to Port Augusta, South Australia and from Port August, South Australia to Brisbane, Queensland between 22 – 31 December 2023 (Journey).

34 The Truck Driver was undertaking the Journey on behalf of the Second Defendant:

- a. as their agent;
- b. further and in the alternative, at their direction;
- c. further and in the alternative, on their order;
- d. further and in the alternative, on their instruction; or
- e. further and in the alternative, at their request.

35 On or about 22 December 2023, the Truck Driver accepted the duty or task to undertake the Journey on behalf of the Second Defendant.

36 In the premises of paragraphs [22] – [27], the Truck Driver acted negligently:

- a. in carrying out the conduct pleaded in paragraphs [33] – [34]; and
- b. caused the loss of damage to the Plaintiff and the Group Members.

37 In the premises of paragraphs [36], the Second Defendant is liable to the Plaintiff and Group Members for the negligence of the Truck Driver.

38 The Plaintiff and the Group Members claim from the Second Defendant:

- a. Damages;
- b. Interest; and
- c. Costs.

SIGNATURE OF LEGAL REPRESENTATIVE

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

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

Signature



Capacity

Solicitor on the record

Date of signature

6 February 2025

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.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of 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.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street, Sydney NSW 2000
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Mark Barn
 Address Level 19, 20 Martin Place, Sydney NSW 2000
 Occupation International Marine Claims Manager
 Date 6 February 2025

I affirm:

- 1 I am an officer of HDI Global SE, Australia (**HDI**), being the insurer of the Plaintiff.
- 2 HDI is conducting these proceedings in the Plaintiff's name pursuant to a right of subrogation.
- 3 I believe that the allegations of fact in the statement of claim are true.

AFFIRMED at Level 7, 151 Clarence Street Sydney

Signature of deponent



Name of witness

Kasia Emily Czarnota

Address of witness

Level 7, 151 Clarence Street Sydney

Capacity of witness

Solicitor

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

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

NSW DRIVERS LICENCE NO. 07577405

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

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiff****Baiada Pty Ltd**

(ABN 47 000 426 808)

Plaintiff

Defendants**~~Blenner's Transport QLD Pty Ltd t/as~~****~~Blenner's Transport~~**~~(ABN 36 169 008 495)~~**Blenner's Transport Pty Ltd (ACN 052 473 051)**

First Defendant

~~The Trustee for The Blennerhassett Family Trust t/as Blenner's Transport~~~~(ABN 85 727 648 916)~~**Blenner's Truck Hire Pty Ltd (ACN 155 324 735)**

Second Defendant

~~Kevin Maxwell Pearson~~~~Third Defendant~~**FURTHER DETAILS ABOUT PLAINTIFF****Plaintiff**

Name Baiada Pty Ltd (ABN 47 000 426 808)

Address 642 Great Western Highway

Girraween NSW 2145

Legal representative for Plaintiffs

Name Maurice Lynch

Practising certificate number 54508

Firm Mills Oakley

Contact solicitor Henry Holland

Address Level 7, 151 Clarence Street, Sydney NSW 2000

Telephone 02 8035 7807

Email hholland@millsoakley.com.au

Electronic service address hholland@millsoakley.com.au

DETAILS ABOUT DEFENDANTS

First defendant

Name **~~Blenner's Transport QLD Pty Ltd t/as Blenner's Transport~~ (ABN 36 169 008 495)**
Blenner's Transport Pty Ltd (ACN 052 473 051)

Address 75 Ann Road
Tully QLD 4854

Second defendant

Name **~~The Trustee for The Blennerhassett Family Trust t/as Blenner's Transport~~ (ABN 85 727 648 916)**
Blenner's Truck Hire Pty Ltd (ACN 155 324 735)

Address 75 Ann Road
Tully QLD 4854

Third Defendant

Name **~~Kevin Maxwell Pearson~~**

Address 75 Ann Road
Tully QLD 4854