

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 28 June 2023**

2018/00310118-001 / Statement of Claim: Komlotex Pty Ltd v AMP LIMITED

The following hearing dates are vacated:

28 Jul 2023 10:00 AM

Reason: Application to vacate granted

Other Reason:

HH makes orders in terms of short minutes of order initialled and dated today's date.

Short Minutes of Order

The Court orders that:

1 Order 10 made on 26 August 2022 be amended such that the defendant is to file and serve any expert evidence by 9 June 2023.

2 Order 11 made on 26 August 2022 be amended such that the plaintiffs are to file and serve any lay or expert evidence in reply by 30 June 2023.

HH makes orders in terms of short minutes of order initialled and dated today's date.

Short Minutes of Order

The Court notes that:

Schedule A to these orders sets out the relevant timetabling orders in this proceeding made on 30 January 2023, and in the proposed orders set out below, or provided to the Court on 7 June 2023.

The Court orders that:

1 Order 13 made on 26 August 2022 be vacated.

Expert evidence and conclaves

2 On or before 14 July 2023, the parties' experts:

(a) meet and confer with any opposing expert of a like specialisation and/or field of knowledge (which may be via videoconference) in the absence of the parties and their employees or agents (including legal representatives) and conducted in accordance with the guidelines stated in Annexure 3 of the Supreme Court Equity Division – Commercial List and Technology and Construction List Practice Note (Practice Note SC Eq 3); and

(b) cooperate to deliver to the parties' legal representatives by 30 July 2023, a joint report identifying:

- i. the areas of agreement and disagreement between them; and
- ii. where there is disagreement – a short statement explaining the bases of the disagreement.

3 On or before 7 August 2023, the plaintiffs provide a copy of any joint expert reports to the eTrial Provider, along with copies of any documents referred to in those reports which were not included in the Consolidated Index in accordance with Order 9 of the Orders made on 30 January 2023 (Additional Documents). Any Additional Documents be accompanied by an electronic index in the form described in Order 10 of the Orders made on 30 January 2023.

List of Common Issues

4 By 4 August 2023, the plaintiffs prepare and provide to the defendant a joint list of factual and legal issues to be determined at the initial trial in the proceeding which are common to the claims of the applicants and group members (Common Issues).

5 By 9 August 2023, the parties confer and seek to agree on a list of proposed Common Issues.

6 If the parties agree on a list of Common Issues, the parties file and provide to the Associate to Ball J a document listing the proposed Common Issues by 11 August 2023.

7 If the parties are unable to agree on a list of Common Issues, by 11 August 2023, each party provide to Associate to [Ball J] a document setting out that party's proposed list of Common Issues together with submissions not exceeding four pages in length. Either party may request that an oral hearing occur in relation to any dispute as to the Common Issues. If the Court determines a hearing is warranted, the Court will allocate a hearing date.

8 The initial trial will decide the Common Issues, as agreed or determined, and the issues in the plaintiffs' claim.

Opening submissions and authorities

9 By 7 August 2023, the plaintiffs:

- (a) file and serve a written outline of opening submissions;
- (b) provide the defendant with a list of authorities referred to in their written outline of opening submissions; and
- (c) provide the eTrial Provider with an electronic copy of each authority referred to in their written outline of opening submissions.

10 By 14 August 2023, the defendant:

- (a) file and serve a written outline of opening submissions;
- (b) provide the plaintiffs with a list of authorities referred to in their written outline of opening submissions; and
- (c) provide the eTrial Provider with an electronic copy of each authority referred to in their written outline of opening submissions (other than those provided by the plaintiffs in accordance with Order 9(c) above).

Trial plan

11 On or by 24 July 2023, the parties notify each other of any witnesses who they intend to call to give evidence at trial.

12 On or by 31 July 2023, the parties notify each other of the witnesses who they require for cross-examination.

13 By 14 August 2023, counsel briefed to appear at the trial of this proceeding confer and jointly prepare a document (Trial Plan) which sets out:

(a) the proposed order of lay evidence;

(b) the proposed order and structure of expert evidence;

(c) each witness to be called by each party to the proceeding;

(d) the estimated time allocated to each witness for examination in chief, cross-examination and re-examination;

(e) the estimated time allocated for opening submissions and closing submissions; and

(f) any time allocated for other issues or matters which it is proposed should be dealt with during the trial of the proceeding.

14 By 4.00pm on 14 August 2023, the plaintiffs must provide the Trial Plan to the Associate to Ball J by email. If there is any disagreement between counsel, this should be stated in the Trial Plan and the respective positions or estimates set out.

Objections to evidence

15 On or by 31 July 2023, the parties exchange a written list of any objections to the lay or expert evidence (other than the joint expert report(s)), which shall include a short summary stating the grounds for every such objection and whether the party agrees to the evidence being relied upon for a limited purpose or otherwise.

16 On or by 9 August 2023, the parties exchange any response to the objections to the evidence made pursuant to Order 15.

17 On or by 14 August 2023, the parties confer with a view to resolving any disagreement in relation to the admissibility of the evidence.

18 On or by 16 August 2023, the parties file a joint list of any outstanding objections to the admissibility of evidence, including in each case the basis for the objection and any response.

19 Any objections to evidence be determined at an appropriate time during the trial, before each witness is sworn or affirmed.

20 The parties have liberty to apply on 3 days' notice.

Justice M Ball

Signed

Date

Schedule A

Order	Date
The Plaintiffs are to file and serve any lay and expert evidence in reply.	30 June 2023
<p>The Plaintiffs are to:</p> <ol style="list-style-type: none"> a. serve upon the Defendant and provide the e-trial provider with an electronic index of the Plaintiffs' Part A, B, C and D documents referred to in order 6 of the orders made on 30 January 2023 (Plaintiffs' Index); and b. provide the e-trial Provider with copies of all documents referred to in the electronic index in accordance with the Electronic Hearing Protocol referred to in order 1 of the orders made on 30 January 2023 (Protocol); and c. serve upon the Defendant copies of any document not previously discovered that the Plaintiffs propose to include in the Part C or Part D Index referred to in order 6 of the orders made on 30 January 2023, processed in accordance with the Protocol. 	10 July 2023
<p>The parties' experts meet and confer with any opposing expert of a like specialisation and/or field of knowledge (which may be via videoconference) in the absence of the parties and their employees or agents (including legal representatives) and conducted in accordance with the guidelines stated in Annexure 3 of the Supreme Court Equity Division – Commercial List and Technology and Construction List Practice Note (Practice Note SC Eq 3).</p>	14 July 2023
<p>The Defendant is to:</p> <ol style="list-style-type: none"> a. serve upon the Plaintiffs and the e-trial Provider an electronic index of any further documents referred to in Order 6 of the orders made on 30 January 2023, that were not included in the Plaintiffs' Index; b. provide the e-trial provider with copies of all further documents referred to in the electronic index in accordance with the Protocol; and c. serve upon the Plaintiffs copies of any document not previously 	24 July 2023

Order

Date

discovered that the Defendant proposes to include in the Part C or Part D Index referred to in order 6 of the order made on 30 January 2023, processed in accordance with the Protocol.

The parties notify each other of any witnesses who they intend to call to give evidence at trial. 24 July 2023

The parties' experts cooperate to deliver to the parties' legal representatives a joint report identifying: 30 July 2023

- a. the areas of agreement and disagreement between them; and
- b. where there is disagreement – a short statement explaining the bases of the disagreement.

The parties to notify each other of the witnesses who they require for cross-examination. 31 July 2023

The parties exchange a written list of any objections to the lay or expert evidence (other than the joint expert report(s)), which shall include a short summary stating the grounds for every such objection and whether the party agrees to the evidence being relied upon for a limited purpose or otherwise. 31 July 2023

The e-trial provider provide the Plaintiffs and Defendant with a consolidated electronic index to the Electronic Court Book identifying all documents set out at Order 6(a)-(d) of the orders made on 30 January 2023. 31 July 2023

The plaintiffs prepare and provide to the defendant a joint list of factual and legal issues to be determined at the initial trial in the proceeding which are common to the claims of the applicants and group members (**Common Issues**). 4 August 2023

Order	Date
The Electronic Court Book be made available to the parties and to the Court by the e-trial provider.	5.00pm, 4 August 2023
<p>The plaintiffs:</p> <ol style="list-style-type: none"> a. file and serve a written outline of opening submissions; b. provide the defendant with a list of authorities referred to in their written outline of opening submissions; and c. provide the eTrial Provider with an electronic copy of each authority referred to in their written outline of opening submissions. 	7 August 2023
Joint expert reports to be provided to Epiq along with any additional documents.	7 August 2023
The parties exchange any response to the objections to the evidence.	9 August 2023
The parties are to confer and seek to agree on a list of proposed common issues.	9 August 2023
If the parties agree on a list of Common Issues, the parties file and provide to the Associate to Ball J a document listing the proposed Common Issues.	11 August 2023
If the parties are unable to agree on a list of Common Issues, each party provide to Associate to Ball J a document setting out that parties' proposed list of Common Issues together with submissions not exceeding four pages in length. Either party may request that an oral hearing occur in relation to any dispute as to the Common Issues. If the Court determines a hearing is warranted, the Court will allocate a hearing date.	11 August 2023
The parties confer with a view to resolving any disagreement in relation to	14 August 2023

Order

Date

the admissibility of the evidence.

The Defendant:

14 August 2023

- a. file and serve a written outline of opening submissions;
 - b. provide the plaintiffs with a list of authorities referred to in their written outline of opening submissions; and
 - c. provide the eTrial Provider with an electronic copy of each authority referred to in their written outline of opening submissions (other than those provided by the applicants in accordance with Order 12.c above).
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Counsel briefed to appear at the trial of this proceeding confer and jointly prepare a document (**Trial Plan**) which sets out:

14 August 2023

- a. the proposed order of lay evidence;
 - b. the proposed order and structure of expert evidence;
 - c. each witness to be called by each party to the proceeding;
 - d. the estimated time allocated to each witness for examination in chief, cross-examination and re-examination;
 - e. the estimated time allocated for opening submissions and closing submissions; and
 - f. any time allocated for other issues or matters which it is proposed should be dealt with during the trial of the proceeding.
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The plaintiffs must provide the Trial Plan to the Associate to Ball J by email.

4:00pm, 14 August 2023

If there is any disagreement between counsel, this should be stated in the Trial Plan and the respective positions or estimates set out.

The parties file a joint list of any outstanding objections to the admissibility of evidence, including in each case the basis for the objection and any response.

16 August 2023