



Form 9 (version 6)
UCPR 9.1

A handwritten signature in blue ink, appearing to read 'COO...', enclosed in a rectangular box.

Principal Registrar &
Chief Executive Officer

SIXTEENTH DEFENDANT'S CROSS-CLAIM STATEMENT OF CROSS-CLAIM

COURT DETAILS

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

TITLE OF PROCEEDINGS

First plaintiff	AMY RICKHUSS
Number of plaintiffs	12
First defendant	THE COSMETIC INSTITUTE PTY LTD (IN LIQUIDATION) (ACN 153 061 155)
Number of defendants	19

TITLE OF THIS CROSS-CLAIM

Cross-claimant	Sri Balakrishnan Darshn
First cross-defendant	The Cosmetic Institute Pty Ltd (in liquidation) ACN 153 061 155
Second cross-defendant	The Cosmetic Institute Parramatta Pty Ltd (in liquidation) ACN 144 469 036
Number of cross-defendants	8

FILING DETAILS

Filed for	Sri Balakrishnan Darshn , cross-claimant
Filed in relation to	Cross-claimant's claim
Legal representative	Robert Ishak, William Roberts Lawyers
Legal representative reference	702000416
Contact name and telephone	Effie Dimos (02) 9552 2111
Contact email	effie.dimos@williamroberts.com.au

RELIEF CLAIMED

- 1 An order *nunc pro tunc* that Dr Darshn (**Dr Darshn**) have leave to proceed against The Cosmetic Institute Pty Ltd ACN 153 061 155 (**The Cosmetic Institute**) under s 500(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- 2 An order for contribution and/or indemnity in equity against The Cosmetic Institute in favour of Dr Darshn.
- 3 Further or alternatively, an order for contribution and/or indemnity under s 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) (**LRMPA**) and/or under s 6 of the *Law Reform Act 1995* (QLD) (**LRA**) against The Cosmetic Institute in favour of Dr Darshn.
- 4 An order for costs against The Cosmetic Institute.
- 5 An order for interest on costs against The Cosmetic Institute.
- 6 An order *nunc pro tunc* that Dr Darshn have leave to proceed against The Cosmetic Institute Parramatta Pty Limited ACN 144 469 036 (**TCI Parramatta**) under s 500(2) of the *Corporations Act*.
- 7 An order for contribution and/or indemnity in equity against TCI Parramatta in favour of Dr Darshn.
- 8 Further or alternatively, an order for contribution and/or indemnity under s 5(1)(c) of the LRMPA and/or s 6 of the LRA against TCI Parramatta in favour of Dr Darshn.
- 9 An order for costs against TCI Parramatta.
- 10 An order for interest on costs against TCI Parramatta.
- 11 An order *nunc pro tunc* that Dr Darshn have leave to proceed against TCI Bondi Junction Pty Limited ACN 165 531 895 (**TCI Bondi Junction**) under s 500(2) of the *Corporations Act*.
- 12 An order for contribution and/or indemnity in equity against TCI Bondi Junction in favour of Dr Darshn.
- 13 Further or alternatively, an order for contribution and/or indemnity under s 5(1)(c) of the LRMPA and/or s 6 of the LRA against TCI Bondi Junction in favour of Dr Darshn.
- 14 An order for costs against TCI Bondi Junction.
- 15 An order for interest on costs against TCI Bondi Junction.

- 16 An order *nunc pro tunc* that Dr Darshn have leave to proceed against TCI Southport Pty Ltd ACN 605 603 423 (**TCI Southport**) under s 500(2) of the Corporations Act.
- 17 An order for contribution and/or indemnity in equity against TCI Southport in favour of Dr Darshn.
- 18 Further or alternatively, an order for contribution and/or indemnity under s 5(1)(c) of the LRMPA and/or under s 6 of the LRA against TCI Southport in favour of Dr Darshn.
- 19 An order for costs against TCI Southport.
- 20 An order for interest on costs against TCI Southport.
- 21 An order for contribution and/or indemnity in equity against Dr Eddy Dona (**Dr Dona**) in favour of Dr Darshn.
- 22 Further or alternatively, an order for contribution and/or indemnity under s 5(1)(c) of the LRMPA and/or s 6 of the LRA against Dr Dona in favour of Dr Darshn.
- 23 An order for costs against Dr Dona.
- 24 An order for interest on costs against Dr Dona.
- 25 An order *nunc pro tunc* that Dr Darshn have leave to proceed against Newline under sub-ss 5(1) & (2) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW).
- 26 An order under s 4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) that Newline is obliged to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport, and Dr Dona, against:
- a. the claims for contribution and/or indemnity in equity made by Dr Darshn against them; and
 - b. further or alternatively, the claims for contribution and/or indemnity under s 5(1)(c) of the LRMPA and / or s 6 of the LRA made by Dr Darshn against them.
- (together the "Claims")
- 27 An order under s4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) that Newline pay to Dr Darshn contribution and/or indemnity.
- 28 With respect to Newline, declarations that:

- a. Newline is liable to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport, and Dr Dona for claims made by group members which were notified to it during the policy periods for the 2014/15 Policy and the 2015/16 Policy;
- b. Further or in the alternative, declarations that:
 - i. The alleged breaches of duty of care referred to in the relief sought at 7(a) and 7(b) in the Fourth Further Amended Statement of Claim (**4FASOC**) filed in Supreme Court Proceedings 2017/279308 on 31 May 2022 fall within the definition of Malpractice in the Provision of Healthcare Services as those terms are defined in the 2014/15 Policy and the 2015/16 Policy;
 - ii. The alleged contraventions of the ACL referred to in the relief sought at 7(p)-(s) in the 4FASOC fall within the indemnity cover in Clause 1C 'Misleading and Deceptive Conduct' in the 2014/15 Policy and the 2015/16 Policy;
 - iii. The alleged injuries and damages suffered by the group members fall within the definition of Loss as those terms are defined in the 2014/15 Policy and the 2015/16 Policy.

29 An order *nunc pro tunc* that Dr Darshn have leave to proceed against Allied World under sub-ss 5(1) & (2) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW).

30 An order under s 4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) that Allied World is obliged to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport, and Dr Dona, against:

- a. the claims for contribution and/or indemnity in equity made by Dr Darshn against them; and
- b. further or alternatively, the claims for contribution and/or indemnity under s 5(1)(c) of the LRMPA and/or s 6 of the LRA made by Dr Darshn against them.

(together the "Claims")

31 An order under s4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) that Allied World pay to Dr Darshn contribution and/or indemnity.

32 With respect to Allied World, declarations that:

- a. Allied World is liable to indemnify TCI, TCI Parramatta, TCI Bondi, TCI Southport, and Dr Dona for claims made by group members which were notified to it during the policy period for the Allied World Policy;
- b. Further or in the alternative, declarations that:
 - i. The alleged breaches of duty of care referred to in the relief sought at 7(a) and 7(b) in the 4FASOC fall within the definition of Incident as that term is defined in the Allied World Policy;
 - ii. The alleged contraventions of the ACL referred to in the relief sought at 7(p)-(s) in the 4FASOC fall within the definition of Incident as that term is defined in the Allied World Policy;
 - iii. The alleged injuries and damages suffered by the group members fall within the definitions of Patient Injury and Damages as those terms are defined in the Allied World Policy.

33 An order *nunc pro tunc* that Dr Darshn have leave to proceed against MDANI under sub-ss 5(1) & (2) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW).

34 An order under s 4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) that MDANI is obliged to indemnify Dr Dona, against:

- a. the claims for contribution and/or indemnity in equity made by Dr Darshn against him; and
- b. further or alternatively, the claims for contribution and/or indemnity under s 5(1)(c) of the LRMPA and / or s 6 of the LRA made by Dr Darshn against him.

(together the "Claims")

35 An order under s4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) that MDANI pay to Dr Darshn contribution and/or indemnity.

36 With respect to MDANI, declarations that:

- a. MDANI is liable to indemnify Dr Dona for claims made by group members which were notified to it during the policy period for the MDANI Policy;
- b. Further or in the alternative, declarations that:
 - i. The alleged breaches of duty of care referred to in the relief sought at 7(b) in the 4FASOC filed in Supreme Court Proceedings 2017/279308

on 31 May 2022 occurred during the provision of Healthcare Services as that term is defined in the MDANI Policy;

- ii. The alleged contraventions of the ACL referred to in the relief sought at 7(p)-(s) in the 4FASOC occurred during the provision of Healthcare Services as that term is defined in the MDANI Policy;
- iii. The alleged injuries and damages suffered by the group members arose directly out of Dr Dona's provision of Healthcare Services and are Claims as those terms are defined in the MDANI Policy.

37 Such further or other order as the Court considers appropriate.

PLEADINGS AND PARTICULARS

Parties

- 1 The first cross-claimant (**Dr Darshn**) at all material times:
 - a. is and was a natural person capable of suing and being sued.
- 2 The first cross-defendant (**The Cosmetic Institute**) at all material times:
 - a. was a company incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**) entitled to be sued by its corporate name;
 - b. was a corporation within the meaning of section 4 of the *Competition and Consumer Act 2010* (Cth) and section 2 of the *Australian Consumer Law (ACL)*;
 - c. was a company placed into liquidation on or about 10 July 2018 pursuant to a creditors' voluntary winding up; and
 - d. was the subject of an order made under s 500(2) of the *Corporations Act* on 14 December 2018 in New South Wales Supreme Court Proceedings No. 2017/279308 (the **Class Action Proceeding**), granting leave to the plaintiffs in the Class Action Proceeding to proceed against the company in liquidation.

Particulars

For the purposes of this cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), Dr Darshn repeats and relies upon paragraph 9 of the 4FASOC.

Rickhuss v The Cosmetic Institute Pty Ltd (No.2) [2018] NSWSC 2000.

- 3 The second cross-defendant (**TCI Parramatta**) at all material times:
- a. was a company incorporated under the Corporations Act entitled to be sued by its corporate name;
 - b. was a corporation within the meaning of section 4 of the *Competition and Consumer Act 2010* (Cth) and section 2 of the ACL;
 - c. was a subsidiary of the first cross-defendant;
 - d. was a company placed into liquidation on or about 5 October 2016 pursuant to a creditors' voluntary winding up; and
 - e. was the subject of an order made under s 500(2) of the Corporations Act on 28 August 2017 granting leave to the plaintiffs in the Class Action Proceeding to proceed against the company in liquidation.

Particulars

For the purposes of this cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), Dr Darshn repeats and relies upon paragraphs 10-11 of the 4FASOC.

Rickhuss v The Cosmetic Institute Pty Ltd [2018] NSWSC 1848 at [6].

- 4 The third cross-defendant (**TCI Bondi**) at all material times:
- a. was a company incorporated under the Corporations Act entitled to be sued by its corporate name;
 - b. was a corporation within the meaning of section 4 of the *Competition and Consumer Act 2010* (Cth) and section 2 of the ACL;
 - c. was a subsidiary of the first cross-defendant;
 - d. was a company placed into liquidation on or about 10 July 2018 pursuant to a creditors' voluntary winding up; and
 - e. was the subject of an order made under s 500(2) of the Corporations Act on 14 December 2018 granting leave to the plaintiffs in the Class Action Proceeding to proceed against the company in liquidation.

Particulars

For the purposes of this cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials

contained therein), Dr Darshn repeats and relies upon paragraph 12 of the 4FASOC.

Rickhuss v The Cosmetic Institute Pty Ltd (No.2) [2018] NSWSC 2000.

- 5 The fourth cross-defendant (**TCI Southport**) at all material times:
- a. was a company incorporated under the Corporations Act entitled to be sued by its corporate name;
 - b. was a corporation within the meaning of section 4 of the *Competition and Consumer Act 2010* (Cth) and section 2 of the ACL;
 - c. was a subsidiary of the first cross-defendant;
 - d. was a company placed into liquidation on or about 10 July 2018 pursuant to a creditors' voluntary winding up; and
 - e. was the subject of an order made under s 500(2) of the Corporations Act on 14 December 2018 granting leave to the plaintiffs in the Class Action Proceeding to proceed against the company in liquidation.

Particulars

For the purposes of this cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), Dr Darshn repeats and relies upon paragraph 13 of the 4FASOC.

Rickhuss v The Cosmetic Institute Pty Ltd (No.2) [2018] NSWSC 2000.

- 6 The fifth cross-defendant (**Dr Dona**) at all material times:
- a. is and was a natural person capable of being sued;
 - b. is and was a registered medical practitioner practising as a plastic and reconstructive surgeon;
 - c. was a director of TCI Parramatta, TCI Bondi and TCI Southport;
 - d. was a director and beneficial shareholder of Dona Family Pty Limited (CAN 123 469 723), which was a company incorporated under the Corporations Act and a shareholder of The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport; and
 - e. was the surgical director of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport.

Particulars

For the purposes of this cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), Dr Darshn repeats and relies upon paragraph 14 of the 4FASOC

- 7 The sixth cross-defendant (**Newline**) is:
- a. a Lloyds Syndicate made up of Certain Members at Lloyds subscribing to policy number 04012;
 - b. able to be sued in its own name; and
 - c. entitled to carry on the business of underwriting insurance in Australia via its coverholder Newline Syndicate 1218 at Lloyd's via Newline Australia Insurance Pty. Ltd.
- 8 The seventh cross-defendant (**Allied World**):
- a. is a duly incorporated company entitled to be sued by its corporate name; and
 - b. carries on business as a general insurer and is entitled to provide insurance products in Australia.
- 9 The eight cross-defendant (**MDANI**):
- a. is a duly incorporated company entitled to be sued by its corporate name; and
 - b. carries on business as an insurer offering professional liability insurance to healthcare professionals.

Claim against Dr Darshn

- 10 On the grounds alleged in the Fourth Further Amended Statement of Claim filed on 31 May 2022 (**4FASOC**), the Plaintiffs (Ms Sanchez in particular) and Group Members (the Darshn Sub-Group in particular) seek, *inter alia*, orders that Dr Darshn pay the Plaintiffs and Group Members:
- a. damages at common law;
 - b. further or alternatively, damages pursuant to:
 - i. the *Civil Liability Act 2002* (NSW) and/or *Civil Liability Act 2003* (Qld); and/or

- ii. ss 236, 237, 238, 267(3) and/or 267(4) of the Australian Consumer Law (**ACL**) comprising schedule 2 of the *Competition and Consumer Act 2010* (Cth)

(the **Claimed Damages**).

- 11 Dr Darshn has denied liability for the Claimed Damages on the grounds set out in his defence to the Fourth Further Amended Statement of Claim dated 26 October 2022 (**Defence**).
- 12 If, contrary to his denial of liability set out in the Defence, Dr Darshn is liable for the Claimed Damages (or part thereof), Dr Darshn seeks relief from the Cross-Defendants as set out in this Statement of Cross-Claim.

Contribution and/or Indemnification from the First-Fifth Cross-Defendants

Alleged claims arising in negligence from the provision of BAS by Dr Darshn

- 13 In the 4FASOC, the Plaintiffs and Group Members have made allegations that:
- a. the First-Fourth Cross-Defendants provided BAS services and facilities to the Plaintiffs and Group Members at the TCI Premises;
 - b. further or alternatively, the First Cross-Defendant controlled and directed the provision of BAS services and facilities by the Second-Fourth Cross-Defendants;
 - c. further or alternatively, the First-Fourth Cross-Defendants controlled and directed the provision of BAS services and facilities by the TCI Surgeons (including Dr Darshn) to the Plaintiffs and Group Members;
 - d. the First-Fourth Cross-Defendants applied the One Size Fits All Approach to BAS to the Plaintiffs and Group Members;
 - e. the TCI Surgeons (including Dr Darshn) were the servants and/or agents of the First-Fourth Cross-Defendants; and
 - f. the First-Fourth Cross-Defendants breached their duty of care owed to the Plaintiffs and Group Members and caused injury, loss or damage.

Particulars

4FASOC at [9]-[13], [14K], [15]-[19], [21]-[22], [78], [79]-[81], [81M], [96]-[96C]

- 14 In the 4FASOC, the Plaintiffs and Group Members have made allegations that the Fifth Cross-Defendant:

- a. devised and conducted the training of the TCI Surgeons (including Dr Darshn) to carry out for or on behalf of The Cosmetic Institute, TCI Parramatta, TCI Bondi and/or TCI Southport various duties or activities relating to the provision of BAS services;
- b. devised, designed, implemented, performed, supervised or assisted in the performance of the One Size Fits All Approach to BAS at the TCI Premises;
- c. performed himself, or supervised or assisted the TCI Surgeons (including Dr Darshn) in the performance of, the One Size Fits All Approach to BAS at the TCI Premises;
- d. monitored the BAS complications associated with the performance of the One Size Fits All Approach to BAS at the TCI Premises;
- e. made himself available to consult with the TCI Surgeons (including Dr Darshn) about BAS complications associated with their performance of the One Size Fits All Approach to BAS at the TCI Premises;
- f. treated or assisted in the treatment of BAS complications associated with the TCI Surgeons' (including Dr Darshn) performance of the One Size Fits All Approach to BAS at the TCI Premises;
- g. supervised or directed nursing staff, cosmetic consultants, administrative staff and management at The Cosmetic Institute, TCI Parramatta, TCI Bondi and TCI Southport in the provision of services, representations and advice to women about BAS and the implementation of the One Size Fits All Approach to BAS at the TCI Premises;
- h. further advised the First-Fourth Cross-Defendants in respect of various matters in relation to the provision of BAS services and facilities; and
- i. breached his duty of care owed to the Plaintiffs and Group Members and caused injury, loss or damage

Particulars

4FASOC at [14], [14K], [17], [24B]-[24C], [78]-[78A], [79]-[79B], [81B], [81M], [96]-[96C]

- 15 In the 4FASOC, the Plaintiffs and Group Members have further made allegations that the system under which BAS was performed at TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd

Private Hospital (including as performed by Dr Darshn, which have been denied by Dr Darshn as set out in the Defence) was:

- a. devised, designed, and implemented by the First Cross-Defendant and/or Fifth Cross-Defendant;
- b. at all material times under the control and direction of the First Cross-Defendant and/or Fifth Cross-Defendant;
- c. conducted in accordance with a standardised approach as devised, designed, and implemented by the First Cross-Defendant and/or Fifth Cross-Defendant; and
- d. characterised by a number of features which fell below the standard of care and caused injury, loss and/or damage to the Plaintiffs and Group Members.

Particulars

4FASOC at [15]-[17], [21]-[22], [24]-[24A], [78]-[78A], [79]-[81A], [81L]-[81M], [81X], [89]-[89A], [89L]-[92], [96]-[96C], [96AH]-[96AJ]

16 In the 4FASOC, the Plaintiffs and Group Members have made allegations (which have been denied by Dr Darshn, as set out in the Defence) that Dr Darshn in providing BAS services to the Plaintiffs and Group Members:

- a. performed those BAS services for or on behalf of the First-Fourth Cross-Defendants;
- b. performed those BAS services in accordance with a standardised approach as devised, designed, and implemented by the First Cross-Defendant and/or Fifth Cross-Defendant;
- c. performed those BAS services at facilities operated and maintained by the First-Fourth Cross-Defendants; and
- d. breached his duty of care to the Plaintiffs and Group Members and caused them injury, loss or damage.

Particulars

4FASOC at [14K], [21]-[22], [77LG]-[77LL], [78L], [79]-[79B], [81L], [81X], [89]-[89A], [89L]-[92], [96AH]-[96AJ]

17 By reason of the matters pleaded in paragraphs 13-16 above, the Plaintiffs and Group Members allege that the First to Fifth Cross-Defendants are tortfeasors liable

in respect of the same damage for which Dr Darshn is alleged to be liable (which he denies on the grounds set out in the Defence) (the **Other Tortfeasors**).

- 18 In the premises, if Dr Darshn is a tortfeasor liable to the Plaintiffs and Group Members for the Claimed Damages (which is denied by Dr Darshn) then Dr Darshn claims, from each of the Other Tortfeasors who is liable in respect of the same loss or damages, contribution and/or indemnity:
- a. in equity;
 - b. further, or alternatively, pursuant to:
 - i. s 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) which applies by virtue of s 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW); and/or
 - ii. s 6 of the *Law Reform Act 1995* (Qld).

Alleged claims arising under the ACL from the provision of BAS by Dr Darshn

- 19 In the 4FASOC, the Plaintiffs and Group Members have made allegations that:
- a. the First-Fifth Cross-Defendants supplied services (namely, BAS) to the Plaintiffs and Group Members as consumers within the meaning of s 3 of the ACL;
 - b. the BAS that was supplied by the First-Fifth Cross-Defendants was not reasonably fit for the Plaintiffs and Group Members' BAS Purpose;
 - c. the BAS that was supplied by the First-Fifth Cross-Defendants was not of a nature, quality, state or condition, that might reasonably be expected to achieve the BAS Results sought by the Plaintiffs and Group Members;
 - d. the First-Fifth Cross-Defendants have supplied services to the Plaintiffs and Group Members in breach of the statutory guarantees in sections 60-61 of the ACL; and
 - e. the breaches of the statutory guarantees by the First-Fifth Cross-Defendants were major failures within the meaning of the ACL and caused loss and damage to the Plaintiffs and Group Members.

Particulars

4FASOC at [9]-[13], [15]-[19], [21]-[22], [24]-[24C], [78]-[78A], [79]-[81A], [81L]-[81M], [81X], [82]-[89A], [89L]-[92], [96]-[96C], [96AH]-[96AJ]

For the purposes of the cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), Dr Darshn further repeats and relies on the matters pleaded at paragraphs 13-15 above

- 20 In the 4FASOC, the Plaintiffs and Group Members have further made allegations (which have been denied by Dr Darshn, as set out in the Defence) that:
- a. Dr Darshn supplied services (namely, BAS) to the Plaintiffs and Group Members as consumers within the meaning of s 3 of the ACL;
 - b. the BAS that was supplied by Dr Darshn was not reasonably fit for the Plaintiffs and Group Members' BAS Purpose;
 - c. the BAS that was supplied by Dr Darshn was not of a nature, quality, state or condition, that might reasonably be expected to achieve the BAS Results sought by the Plaintiffs and Group Members;
 - d. Dr Darshn has supplied services to the Plaintiffs and Group Members in breach of the statutory guarantees in sections 60-61 of the ACL;
 - e. the breaches of the statutory guarantees by Dr Darshn were major failures within the meaning of the ACL and caused loss and damage to the Plaintiffs and Group Members.

Particulars

4FASOC at [14K], [21]-[22], [77LG]-[77LL], [82]-[87], [89L], [90]-[92], [96]-[96C], [96AH]-[96AJ]

- 21 By reason of the matters pleaded in paragraphs 19-20 above, the Plaintiffs and Group Members allege that the First to Fifth Cross-Defendants are wrongdoers liable in respect of the same damages for which Dr Darshn is alleged to be liable (which he denies on the grounds set out in the Defence) (**Concurrent Wrongdoers**)
- 22 In the premises, if Dr Darshn is liable to the Plaintiffs and any Group Members for the Claimed Damages (which is denied on the grounds in the Defence), Dr Darshn claims from each of the Concurrent Wrongdoers who is liable in respect of the same loss or damages, contribution and/or indemnity:
- a. in equity:
 - b. further, or alternatively, pursuant to:

- i. s 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) which applies by virtue of s 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW); and/or
- ii. s 6 of the *Law Reform Act 1995* (Qld).

Alleged claims arising under the ACL from the making of Representations

- 23 In the 4FASOC, the Plaintiffs and Group Members have also made allegations that:
- a. the First-Fifth Cross-Defendants made various representations to the public concerning the provision of BAS at the TCI Parramatta Premises, TCI Bondi Premises, TCI Southport Premises, Concord Private Hospital and Holroyd Private Hospital (**Representations**) which were relied upon by the Plaintiffs and Group Members and which were misleading or deceptive;
 - b. Dr Darshn made the Representations and acquiesced to, participated in, and/or otherwise did not resile from the Representations as made by the Cross-Defendants (all of which is denied by Dr Darshn in the Defence); and
 - c. the Plaintiffs and Group Members have suffered injury, loss and/or damage caused by the Representations from Dr Darshn and from the First-Fifth Cross-Defendants.

Particulars

4FASOC at [24D]-[24K], [24AF]-[24AG], [77HA]-[77HE], [77HGA], [77HGC], [77LA]-[77LAE], [77LE]-[77LFC], [81], [94]-[94A], [94L]-[95A], [95L]-[96C], [96AH]-[96AJ]

- 24 By reason of the matters pleaded in paragraph 23 above, the Plaintiffs and Group Members allege that the First to Fifth Cross-Defendants are wrongdoers liable in respect of the same damages for which Dr Darshn is alleged to be liable (which he denies on the grounds set out in the Defence) (**Concurrent Wrongdoers**).
- 25 In the premises, if Dr Darshn is liable to the Plaintiffs and any Group Members for the Claimed Damages (which is denied on the grounds in the Defence), Dr Darshn claims from each of the Concurrent Wrongdoers who is liable in respect of the same loss or damages, contribution and/or indemnity:
- a. in equity:
 - b. further, or alternatively, pursuant to:

- i. s 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) which applies by virtue of s 12 of the *Law Reform (Miscellaneous Provisions) Act 1965* (NSW);
- ii. s 6 of the *Law Reform Act 1995* (Qld).

Contribution and/or Indemnification from the Sixth Cross-Defendant

- 26 In the 4FASOC, the Plaintiffs and Group Members have made claims that the Sixth Cross-Defendant is obliged to indemnify the First-Fifth Cross-Defendants for:
- a. their respective liabilities to Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love and Ms Turner for damages and costs in the Class Action Proceeding; and
 - b. their respective liabilities to Group Members (other than to Ms Rickhuss, Ms Pollock, Ms Bruen, Ms Rowlands, Ms Love and Ms Turner) for damages and costs in the Class Action Proceeding.

Particulars

4FASOC at [97]-[107]

- 27 For the purposes of the cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), the Cross-Claimant repeats and relies on the claims against the Sixth Cross-Defendant as made in the 4FASOC at [97]-[107].
- 28 Further, by reason of the matters pleaded at paragraphs 26-27, the Court should order pursuant to s 4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) that:
- a. the Sixth Cross-Defendant is obliged to indemnify the First-Fifth Cross-Defendants in respect of the claims made by Dr Darshn for contribution and/or indemnity from them in this cross claim (as pleaded at paragraphs 13-25 above);
 - b. if (which is denied), Dr Darshn is liable to the Plaintiffs and any Group Members, the Sixth Cross-Defendant pay contribution and/or indemnity to Dr Darshn.

Contribution and/or Indemnification from the Seventh Cross-Defendant

- 29 In the 4FASOC, the Plaintiffs and Group Members have made claims that the Seventh Cross-Defendant is obliged to indemnify the First-Fifth Cross-Defendants for:

- a. their respective liabilities to Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse and Ms Sanchez for damages and costs in the Class Action Proceeding; and
- b. their respective liabilities to Group Members (other than to Ms Knowland, Ms Zahr, Ms Rutherford, Ms Axen, Ms Gielisse and Ms Sanchez) for damages and costs in the Class Action Proceeding.

Particulars

4FASOC at [108]-[116]

- 30 For the purposes of the cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), the Cross-Claimant repeats and relies on the claims against the Sixth Cross-Defendant as made in the 4FASOC at [108]-[116].
- 31 By reason of the matters pleaded at paragraphs 29-30, the Court should order pursuant to s 4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW):
- a. that the Seventh Cross-Defendant is obliged to indemnify the First-Fifth Cross-Defendants in respect of the claims made by Dr Darshn for contribution and/or indemnity from them in this cross-claim (as pleaded at paragraphs 13-25 above);
 - b. if (which is denied), Dr Darshn is liable to the Plaintiffs and any Group Members, the Seventh Cross-Defendant pay contribution and/or indemnity to Dr Darshn.

Contribution and/or Indemnification from the Eighth Cross-Defendant

- 32 In the 4FASOC, the Plaintiffs and Group Members have made claims that the Eight Cross-Respondent is obliged to indemnify the Fifth Cross-Respondent for:
- a. his respective liability to each of the Plaintiffs for damages and costs in the Class Action Proceeding; and
 - b. his respective liability to Group Members (other than the Plaintiffs) for damages and costs in the Class Action Proceeding.

Particulars

4FASOC at [117]-[131]

- 33 For the purposes of the cross-claim only and without prejudice to any matters in the Defence (including the non-admissions and denials contained therein), the Cross-Claimant repeats and relies on the claims against the Eighth Cross-Defendant as made in the 4FASOC at [117]-[131].
- 34 By reason of the matters pleaded at paragraphs 32-33, the Court should order pursuant to s 4(1) of the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW):
- a. that the Eighth Cross-Defendant is obliged to indemnify the Fifth Cross-Defendant in respect of the claims made by Dr Darshn for contribution and/or indemnity from him in this cross-claim (as pleaded at paragraphs 13-25 above);
 - b. If (which is denied), Dr Darshn is liable to the plaintiffs and any group members, the Eighth Cross-Defendant pay contribution and/or indemnity to Dr Darshn.

SIGNATURE OF LEGAL REPRESENTATIVE

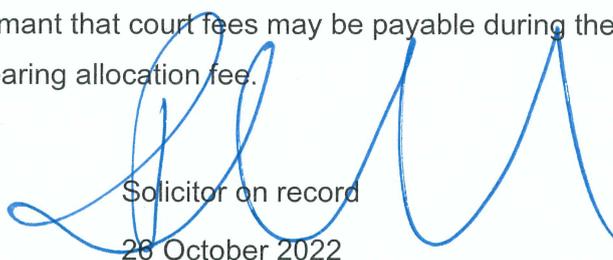
This statement of cross-claim does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

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

Signature

Capacity

Date of signature


Solicitor on record
28 October 2022

NOTICE TO CROSS-DEFENDANT

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.

HOW TO RESPOND

Please read this statement of cross-claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the cross-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 cross-claim or part of the cross-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 cross-claimant all of the money and interest claimed.
 - 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 cross-claimant 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 <http://www.ucprforms.nsw.gov.au/> or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip Street, Sydney
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001, Australia
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Sri Balakrishnan Darshn
 Address 1102/187 Liverpool Street SYDNEY NSW 2000
 Occupation Cosmetic Surgeon
 Date 26 October 2022

I affirm:

- 1 I am the cross-claimant.
- 2 I believe that the allegations of fact in the statement of cross-claim are true.

AFFIRMED at SYDNEY
 Signature of deponent 
 Name of witness Euphemia Dimos
 Address of witness Level 22, 66 Goulburn Street, Sydney NSW 2000
 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 known the deponent for at least 12 months.

Signature of witness



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

PARTY DETAILS

A list of parties must be filed and served with this statement of cross-claim.

PARTIES TO THIS CROSS-CLAIM

Cross-claimant

Sri Balakrishnan Darshn, cross-claimant

Cross-defendants

The Cosmetic Institute Pty Ltd (in liquidation)

(ACN 153 061 155), first cross-defendant

The Cosmetic Institute Parramatta Pty Ltd (in

liquidation) (ACN 144 469 036), second

cross-defendant

TCI Bondi Junction Pty Ltd (in liquidation)

(ACN 165 531 895), third cross-defendant

TCI Southport Pty Ltd (in liquidation) (ACN

605 603 423), fourth cross-defendant

Eddy Dona, fifth cross-defendant

Certain underwriters at Lloyd's subscribing to

policy no. 04012, sixth cross-defendant

Allied World Assurance Company Ltd,

seventh cross-defendant

MDA National Insurance Pty Ltd, eighth

cross-defendant