

2 SUPREME COURT OF NEW SOUTH WALES
ASSOCIATE'S RECORD OF PROCEEDINGS

Reference:

CLASS ACTION

FILE NO: 2017/353017

PARTIES: Kimley Lloyd Whisson v Subaru (Aust) Pty Limited

DATE: 19 September 2019 – CHAMBERS/no appearances

CORAM: SACKAR J

APPEARANCES: Counsel:

Plf: Mr J Sheahan QC, Ms R Mansted

Def: M Darke SC

Solicitors: Plf: Quinn Emanuel Urquhart & Sullivan (Damian Scattini)

Def: Clayton Utz (Greg Williams)

Adjourned:

To: 25 October 2019 – 2pm

For: Hearing

Before: Sackar J

MATTER LISTED FOR HEARING – August 2020

VERDICT/ORDER/DIRECTION

Consent short minutes of order which Sackar J signs, and places with the papers. The Court orders:

1. Pursuant to rule 21.2(1)(a) of the Uniform civil Procedure rules 2005, the defendant is to give discovery to the plaintiff of documents within the classes described in Annexure A to these orders by 8 November 2019.
2. Such further or other order as the court sees fit.

CONSENT ORDER

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General (Class Action)
Registry	Supreme Court Sydney
Case number	2017/00353017

TITLE OF PROCEEDINGS

Plaintiff	KIMLEY LLOYD WHISSON
Defendant	SUBARU (AUST) PTY LTD ABN 95 000 312 792

PREPARATION DETAILS

Prepared for	Subaru (Aust) Pty Ltd, Defendant
Legal representative	Greg Williams, Clayton Utz
Legal representative's reference	798/14241/80192455
Contact's name and telephone	Greg Williams, (02) 9353 4677
Contact email	gwilliams@claytonutz.com

TERMS OF ORDER MADE BY THE COURT BY CONSENT

1. Pursuant to rule 21.2(1)(a) of the *Uniform Civil Procedure Rules 2005*, the defendant is to give discovery to the plaintiff of documents within the classes described in Annexure A to these orders by 8 November 2019.
2. Such further or other order as the Court sees fit.

SIGNATURES

Plaintiff

Kimley Lloyd Whisson, plaintiff, consents.

Signature of legal representative

Capacity Solicitor on the record

Date

Defendant

Subaru (Aust) Pty Ltd, defendant, consents.

Signature of legal representative

Capacity Solicitor on the record

Date

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date



NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

ANNEXURE A

1. All correspondence between Takata and the defendant, its related entities, and/or Subaru during the period 1 November 2008 to 22 November 2017, inclusive, referring to or in respect of Takata Airbags (and/or their components) of the type fitted, or to be fitted, to Subaru Vehicles and any one or more of the following:
 - (a) the safety, and/or the functionality or operation on deployment, of those Takata Airbags (and/or their components) insofar as they relate to failures of the following types:
 - (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly; or
 - (iii) the airbag deploying with excessive force;
 - (b) the defects or potential defects in those Takata Airbags (and/or their components), insofar as they relate to:
 - (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant;
 - (c) the malfunction or potential malfunction of those Takata Airbags (and/or their components) on deployment insofar as they relate to:
 - (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant.
2. All documents, including correspondence, memoranda, file notes and business records brought into existence or modified by the defendant, its related entities, and/or Subaru during the period 1 November 2008 to 22 November 2017, inclusive, recording or constituting any consideration, analysis or review by the defendant, its related entities or Subaru (or any employees or contractors of the defendant, its related entities or Subaru) of Takata Airbags (and/or their components) of the type fitted, or to be fitted, to Subaru Vehicles in connection with:
 - (a) the safety, and/or the functionality or operation on deployment, of those Takata Airbags (and/or their components) insofar as they relate to failures of the following types:

- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly; or
 - (iii) the airbag deploying with excessive force;
- (b) the defects or potential defects in those Takata Airbags (and/or their components), insofar as they relate to:
- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant;
- (c) the malfunction or potential malfunction of those Takata Airbags (and/or their components) on deployment insofar as they relate to:
- (i) the airbag exploding or demonstrating a propensity to explode;
 - (ii) the airbag deploying too rapidly;
 - (iii) the airbag deploying with excessive force; and/or
 - (iv) arising from or related to degradation of the propellant.
3. All correspondence between Takata and the defendant, its related entities, and/or Subaru during the period 1 November 2008 to 22 November 2017, inclusive, referring to or in respect of any danger or potential danger that meant a vehicle fitted with Takata Airbags (and/or their components) by reason of:
- (a) the airbag exploding or demonstrating a propensity to explode;
 - (b) the airbag deploying too rapidly;
 - (c) the airbag deploying with excessive force; and or
 - (d) the degradation of the propellant,
- was, or was potentially:
- A. not safe to drive; and/or
 - B. if driven, would expose the driver or passengers to danger and harm.
4. All documents, including correspondence, memoranda, file notes and business records brought into existence or modified by the defendant, its related entities, and/or Subaru during the period 1 November 2008 to 22 November 2017, inclusive, recording or constituting any consideration, analysis or review by the defendant, its related entities or Subaru (or any employees or contractors of the defendant, its related entities or Subaru) of

any danger or potential danger that meant a vehicle fitted with Takata Airbags (and/or their components) by reason of:

- (a) the airbag exploding or demonstrating a propensity to explode;
- (b) the airbag deploying too rapidly;
- (c) the airbag deploying with excessive force; and/or
- (d) degradation of the propellant,

was, or was potentially:

- A. not safe to drive; and/or
- B. if driven, would expose the driver or passengers to danger and harm.

In respect of the above classes of documents:

- A. the term “**document**” means any record of information (including any part or copy of a document or part thereof) and includes:
 - (i) anything on which there is writing;
 - (ii) anything on which there are marks, figures, symbols or perforations that have a meaning for persons qualified to interpret them;
 - (iii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, including but not limited to audio recordings, video recordings, computer databases containing information which can be converted into a readable;
- B. unless otherwise defined in this Annexure A, all capitalised terms have the meaning ascribed to them in the SFASOC filed 4 September 2018 or the Defence;
- C. anything that is mentioned after the word “including” does not limit any other documents that might be included;
- D. no class of documents limits any other class of documents;
- E. all dates and time periods referred to are inclusive;
- F. **Defence** means the Defence to the SFASOC filed 17 September 2018;
- G. **Proceeding** means *Kimley Lloyd Whisson v Subaru Australia Pty Ltd*, Supreme Court of New South Wales proceeding no. 2017/00353017;
- H. **SFASOC** means the Second Further Amended Statement of Claim filed 4 September 2018;
- I. **Subaru** means Subaru Corporation and Subaru of Indiana Automotive, Inc., and their related entities. For the avoidance of any doubt, the defendant is not a related entity of Subaru;
- J. **Takata** means Takata Corporation and its related entities or subsidiaries, including TK Holdings, Inc.