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Details of Filing

Document Lodged: Non-Prescribed Pleading
File Number: NSD406/2018
File Title: RACHAEL ABBOTT v ZOETIS AUSTRALIA PTY LTD
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

Dated: 18/09/2019 9:39:01 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Amended Points of Claim

No. NSD406 of 2018

Federal Court of Australia
District Registry: New South Wales
Division: General Division

RACHAEL ABBOTT

Applicant

ZOETIS AUSTRALIA PTY LTD ACN 156 476 425

Respondent

References herein to paragraphs of the Second Further Amended Statement of Claim (2FASOC) are references to the material facts and legal consequences pleaded therein. The same definitions and terms as used in the 2FASOC are used and adopted herein.

A. INTRODUCTION

1. Kelly Hinton (**Hinton**):
 - (a) was the owner of Gypsy Elite Anthony's Quinn (**Quinn**), a stallion;
 - (b) resided at the relevant times at a property in Worongary, Queensland.
2. This Points of Claim repeats paragraphs 4 to 64 of the 2FASOC.

B. CONSUMER GUARANTEE CONTRAVENTION

3. In the Relevant Period, Zoetis supplied Equivac HeV to registered veterinary surgeons practicing at Gold Coast Equine Clinic (**GCEC**) within the meaning of ss 2 and 3(12) of the ACL.

Particulars

Further particulars as to the identity of the practitioners at GCEC at the material times may be provided following service of evidence in chief.

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4. In the Relevant Period, each registered veterinary surgeon at GCEC to whom Zoetis supplied Equivac HeV, was a “consumer” of Equivac HeV within the meaning of s 3(1) of the ACL.

Particulars

The Applicant relies upon the statutory presumption in s 3(10) of the ACL.

C. CAUSATION, LOSS AND DAMAGE

C.1. Hinton

5. In or around July 2013, a registered veterinary surgeon from GCEC administered to Quinn the first treatment of Equivac HeV.
6. Quinn was treated with Equivac HeV as a “booster” treatment thereafter:
 - (a) every six months until 2015;
 - (b) from 2015, every 12 months,by a registered veterinary surgeon from GCEC.
7. On 28 January 2016, Quinn was treated with Equivac HeV for the fifth time by Dr Rachel Wilson, a registered veterinary surgeon practising at GCEC, in accordance with the annual booster procedure referred to at paragraph 6 above.
8. Prior to each inoculation Quinn showed no signs of ill-health.
9. In her decision to consent to the treatment of Quinn with Equivac HeV, Hinton:
 - (a) relied on, alone and/or in combination:
 - (i) the Geographic Spread Representation; and
 - ~~(ii) the Geographic Spread Statements;~~
 - (iii) the No Serious Side Effects Representation;
 - ~~(iv) the No Serious Side Effects Statements; and~~

- (b) would not have caused or allowed her horse or horses to be treated with Equivac HeV had she had known some or all of the information pleaded and particularised in paragraph 46 of the FASOC.

Particulars

- (a) *Hinton attended an information seminar on or around June/July 2012 at the Town and Country Motel in Nerang, during which a Zoetis representative repeated the No Serious Side Effects Representation ~~and/or No Serious Side Effects Statements~~.*
- (b) *Hinton registered on the Health4Horses website in or around 2012 and was sent various advertisements and updates from time to time, including a copy of the Mythbusting Pamphlet.*
- (c) *Prior to the first administration of Equivac HeV, one or more registered veterinary surgeon/s practising at GCEC and/or staff of GCEC repeated to Hinton the No Serious Side Effects Representation ~~and/or No Serious Side Effects Statements~~.*
- (d) *It may be inferred by reason of the matters in paragraphs 15, 29, 30 and/or 65 to 67 of the FASOC that the equine organisations referred to in particular (b) and the practitioners and staff of GCEC were aware of the Contravening Representations ~~and Statements~~ and reasonably placed reliance upon some or all of them.*
- (f) *Hinton would not have had Quinn treated annually with Equivac HeV or at all if the representations ~~and statements~~ identified in particulars (a), (b), and/or (c) had not been made to her.*
10. Further, and in the alternative to paragraph 9, but for the Contravening Representations ~~and Statements~~, Quinn would not have been treated with Equivac HeV.

Particulars

- (a) *It may be inferred by reason of the matters in paragraphs 15, 29, 30 and 65 to 67 of the FASOC that equine organisations and the veterinarians practicing at GCEC and/or staff of GCEC were aware and reasonably placed reliance upon some or all of them.*
- (b) *Hinton received emails from the Queensland Horse Council and other equine organisations encouraging horse owners to treat their horses with Equivac HeV.*
- (c) *Prior to the first administration of Equivac HeV, one or more registered veterinary surgeon/s practising at GCEC and/or staff of GCEC encouraged Hinton to treat her horses (including Quinn) with Equivac HeV.*
- (d) *The making by Zoetis of the Contravening Representations ~~and Statements~~ (alone or in combination) induced and/or materially contributed to the decision of the equine organisations referred to in particulars (a) and (b) to recommend that horses be treated with Equivac HeV.*
- (e) *Further, the making by Zoetis of the Contravening Representations ~~and Statements~~ (alone or in combination) induced and/or materially contributed to the decision of veterinarians practicing at GCEC and/or staff of GCEC to recommend and/or provide the treatment of Quinn with Equivac HeV.*

(f) *As a result of particulars (b) and/or (c), Hinton obtained the treatment of Quinn with Equivac HeV.*

11. Immediately following the treatment identified at paragraph 7, Quinn developed a serious adverse reaction to the Equivac HeV treatment.

Particulars

- (a) *On 28 January 2016, Quinn experienced an elevated temperature following the injection of Equivac HeV. This persisted the following day and reached 41 degrees Celsius.*
- (b) *Quinn showed signs of pain and discomfort in the following days and was treated with painkillers and fluids at the Gatton University Equine Hospital. He did not recover and was euthanised on 2 February 2016*

C.2. Loss and damage

12. As a result of:

- (a) the Contravening Representations ~~and Statements~~; and, or in the alternative
- (b) the Consumer Guarantee Contravention,

Hinton suffered loss and damage.

Particulars

- (a) *Quinn was a Gypsy Cobb horse used as a breeding stud.*
- (b) *Hinton earnt an average of \$2,500 per year from breeding Quinn from 2009.*
- (d) *Prior to the injection and his death (at the age of 10), Quinn had a value of approximately \$50,000.*
- (e) *In treating Quinn, Hinton incurred costs of approximately \$4,000.*

C.3. Entitlement to relief

13. By reason of the matters pleaded in paragraphs 2 to 12 above, Hinton may recover the amount of the loss and damage suffered by her from Zoetis pursuant to:

- (a) s 236 of the ACL; and, or alternatively,
- (b) ss 271 and 272 of the ACL.

Date: 17 September 2019



Signed by Matthew Berenger

Solicitor on behalf of the Applicant

This points of claim was prepared by Alexander H Edwards

CERTIFICATE OF LAWYER

I Matthew Berenger certify to the Court that, in relation to the points of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the points of claim.

Date: 28 June 2019

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Signed by Matthew Berenger

Lawyer for the Applicant