

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 8659/09

Plaintiff: **CLASUL PTY LTD ACN 010 173 029**

AND

Defendant: **COMMONWEALTH OF AUSTRALIA**

REQUEST FOR FURTHER AND BETTER PARTICULARS

The defendant requests that the plaintiff provide the following further and better particulars of the statement of claim as set out below. In this document, a request for the "Usual Particulars" of a communication or representation is a request that the plaintiff, in respect of the relevant communication or representation, identify:

- (a) whether it was wholly or partly in writing, oral or to be implied;
 - (b) insofar as it was in writing, each document constituting the same (and provide a copy of such document pursuant to UCPR r.222);
 - (c) insofar as it was oral, the substance of each conversation constituting the same and say when, where and between which actual persons each such conversation took place; and
 - (d) insofar as it was to be implied, the facts, matters and circumstances giving rise to such implication.
1. In relation to subparagraph 1.4, please identify the document or documents constituting the written declaration. Pursuant to UCPR r.222, the defendant hereby asks that you provide a copy of that document.
 2. In relation to subparagraph 1.5, please provide the Usual Particulars of the alleged delegation.
 3. In relation to paragraph 4 please state the facts, matters and circumstances upon which the plaintiff relies to allege Jenni Gordon was "aware" of the views expressed by Phillip Widders as set out in paragraph 3 of the statement of claim, including the date on which, and the means of communication by which, Jenni Gordon was so made aware.

REQUEST FOR FURTHER AND BETTER PARTICULARS

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4. In relation to paragraph 8, please provide the Usual Particulars of the advice pleaded in this paragraph.
5. In relation to paragraph 9, please state the facts, matters and circumstances upon which the plaintiff relies to allege that each of:
 - (a) the defendant;
 - (b) the Minister;
 - (c) the Director of Quarantine;knew each of matters in subparagraphs 9.1 to 9.6 of the statement of claim, including the date on which, and the means by which, each obtained that knowledge. To the extent such matters are already pleaded, please identify each paragraph of the statement of claim on which the plaintiff relies for each of the defendant, the Minister and the Director of Quarantine.
6. Further in relation to paragraph 9, please identify:
 - (a) the relevant individuals within AQIS who it is alleged knew each of matters in subparagraphs 9.1 to 9.6 of the statement of claim, including the date on which, and the means by which, each obtained that knowledge; and
 - (b) the relevant individuals within Biosecurity who it is alleged knew each of matters in subparagraphs 9.1 to 9.6 of the statement of claim, including the date on which, and the means by which, each obtained that knowledge.
7. In relation to paragraph 10, please:
 - (a) provide particulars of the class of persons of which the plaintiff is said to have been a member;
 - (b) state the facts, matters and circumstances upon which the plaintiff relies to allege the plaintiff was a member of this class; and
 - (c) state the facts, matters and circumstances upon which the plaintiff relies to allege that the defendant owed the class of persons identified in response to the request in subparagraph 7(a) each of the duties in subparagraphs 10.1 to 10.4 of the statement of claim.
8. In relation to paragraph 11, please:
 - (a) confirm the class referred to in paragraph 11 of the statement of claim is the same class of persons referred to in paragraph 10;

- (b) if the class is not the same, please provide particulars of the class of persons of which the plaintiff is said to have belonged and state the facts, matters and circumstances upon which the plaintiff relies to allege the plaintiff belonged to this class; and
 - (c) state the facts, matters and circumstances upon which the plaintiff relies to allege that each of the defendant, the Minister, the Director of Quarantine, AQIS and Biosecurity owed the relevant class of persons each of the duties in subparagraphs 11.1 to 11.5 of the statement of claim.
- 9. In relation to paragraph 12, please state the facts, matters and circumstances upon which the plaintiff relies to allege that the defendant owed the plaintiff each of the duties in subparagraphs 12.1 to 12.4 of the statement of claim.
- 10. In relation to subparagraph 13.2:
 - (a) is it alleged that there was no training regime for AQIS officials attending airports when horses arrived from abroad; or
 - (b) is it alleged that there was a training regime, but such regime was not "established", and if the latter, please provide particulars of that training regime and state the facts, matters and circumstances upon which the plaintiff relies to allege that such training regime was not "established".
- 11. In relation to subparagraph 13.3, please:
 - (a) identify the nationally promulgated and documented work instructions for the quarantine of horses that are alleged not to have been implemented at ECQS; and
 - (b) state the facts, matters and circumstances upon which the plaintiff relies to allege that such work instructions were not being implemented.
- 12. In relation to subparagraph 13.4, please:
 - (a) identify who prepared the draft operations manual;
 - (b) state the facts, matters and circumstances upon which the plaintiff relies to allege that the operations manual was "not finalised".
- 13. In relation to subparagraph 13.5, please:
 - (a) identify the documented procedures referred to in that subparagraph;
 - (b) identify the manager and those staff of ECQS who were allegedly unaware of the documented procedures required to be followed; and

- (c) state the facts, matters and circumstances upon which the plaintiff relies to allege that those persons were unaware of such procedures.

14. In relation to subparagraph 13.6, please:

- (a) identify the work instruction referred to in this paragraph; and
- (b) state the facts, matters and circumstances upon which the plaintiff relies to allege that the New South Wales Regional Manager of AQIS was unaware of that work instruction;
- (c) state the facts, matters and circumstances upon which the plaintiff relies to allege a failure by the New South Wales Regional Manager of AQIS to ensure that quarantine officers were aware of that work instruction;
- (d) state the facts, matters and circumstances upon which the plaintiff relies to allege a failure by the New South Wales Regional Manager of AQIS to ensure that quarantine officers had access to that work instruction.

15. In relation to subparagraph 13.7 please identify the representatives of the defendant, AQIS, Biosecurity, and the Director of Quarantine who allegedly failed to take steps to ensure that a work instruction for the clearance of live horses was being implemented and state the steps which are alleged ought to have been, but were not, taken by each such representative.

16. In relation to subparagraph 13.8, please:

- (a) identify those grooms, farriers and veterinarians who attended ECQS between 10 and 18 August 2007; and
- (b) state the facts, matters and circumstances upon which the plaintiff relies to allege that "basic quarantine procedures" were not undertaken by those persons.

17. In relation to subparagraph 13.9:

- (a) is it alleged that no instructions were provided to those grooms, farriers and veterinarians who entered and left ECQS between 10 and 18 August 2007; or
- (b) that instructions were provided which were unclear and if the latter, provide particulars of the instructions that were provided and state the facts, matters and circumstances upon which the plaintiff alleges that those instructions were unclear;
- (c) further, please identify the "details" which it is alleged were not provided to those grooms, farriers and veterinarians who entered and left ECQS between 10 and 18 August 2007.

18. In relation to subparagraph 13.10, please:
- (a) identify the "various aspects of quarantine" said to have been described to the grooms, farriers and veterinarians who entered and left ECQS between 10 and 18 August 2007;
 - (b) provide the Usual Particulars of the description of such procedures to them;
 - (c) please state the facts, matters and circumstances upon which the plaintiff relies to allege that no representative of the defendant, the Minister, the Director of Quarantine, AQIS or Biosecurity enforced the "various aspects of quarantine" between 10 and 18 August 2007 that are referred to in paragraph (a) above;
 - (d) please identify each individual at AQIS who the plaintiff says failed to enforce the "various aspects of quarantine" between 10 and 18 August 2007; and
 - (e) please identify each individual at Biosecurity who the plaintiff says failed to enforce the "various aspects of quarantine" between 10 and 18 August 2007.
19. In relation to subparagraph 13.11, please:
- (a) identify the "work instruction" and "procedures" referred to in that subparagraph;
 - (b) insofar as it is alleged that any of the work instruction or procedures in place were not "appropriate", state the respects in which each was not appropriate; and
 - (c) identify the "steps that were required to be taken to enforce the relevant instruction and procedures"; and
 - (d) state the facts, matters and circumstances upon which the plaintiff relies to allege that the quarantine officers had not been so trained.
20. In relation to paragraph 16 please state the facts, matters and circumstances upon which the plaintiff relies to allege that "at least one of the Japanese horses had become infected with equine influenza at some stage prior to 13 August 2007."
21. In relation to subparagraph 17.2, please state the facts, matters and circumstances upon which the plaintiff relies to allege that the shared housing and facilities at ECQS was the reason the equine influenza virus infected other horses at ECQS.
22. In relation to subparagraph 17.4, please state the facts, matters and circumstances upon which the plaintiff relies to allege that each such groom, farrier, and veterinarian was not required by the defendant to take the action set out in subparagraph 17.4.

23. In relation to subparagraph 17.5, please state the facts, matters and circumstances upon which the plaintiff relies to allege that the defendant permitted each groom, farrier, and veterinarian to leave ECQS without taking the action set out in subparagraph 17.5, and please provide the Usual Particulars of such permission.
24. In relation to paragraph 19, please:
- (a) state the facts, matters and circumstances upon which the plaintiff relies to allege that the virus escaped from the ECQS on the person, clothing, or equipment of one of the grooms, veterinarians or farriers; and
 - (b) state the facts, matters and circumstances upon which the plaintiff relies to allege that such cleaning or disinfecting as was undertaken was not adequate.
25. In relation to paragraph 20 please state whether it is alleged that each of the defendant, the Minister, the Director of Quarantine, AQIS and Biosecurity was obliged, and failed, to take each of the steps particularised at subparagraphs 20.1 to 20.11, if not, identify by reference to the subparagraph, the step(s) that each of the Minister, the Director of Quarantine, AQIS and Biosecurity was obliged and failed to take.
26. In relation to subparagraph 21.1, please identify the respects in which it is alleged the regime or system of cleaning, disinfecting and decontaminating was not adequate.
27. In relation to subparagraph 21.2, please identify the respects in which it is alleged each of the plan and the set of instructions in relation to the cleaning, disinfecting and decontamination of people, clothing, equipment and vehicles leaving the premises were respectively, ill-defined, undocumented and inadequate.
28. In relation to subparagraph 21.3, please identify the respects in which it is alleged that the measures and systems in relation to the cleaning, disinfecting and decontamination of people, clothing, equipment and vehicles leaving the premises were not adequate.
29. In relation to subparagraph 21.4, please identify the respects in which it is alleged the instructions to the operators of the quarantine station were not adequate.
30. In relation to subparagraph 21.5, please state all the facts, matters and circumstances upon which the plaintiff relies to allege the defendant, as occupier, owed a duty of care to the plaintiff to warn the plaintiff of the risk of equine influenza escaping from the premises.
31. In relation to subparagraphs 21.6 and 21.7, please:
- (a) identify the respects in which it is alleged the biosecurity measures at the ECQS were not adequate or current; and

- (b) identify the respects in which it is alleged that the facility was not operating in conformity with a current and adequate series of biosecurity measures.
32. In relation to paragraph 23, please provide the Usual Particulars of the advice pleaded in this paragraph.
33. In relation to paragraph 24, please:
- (a) identify the three horses on the stud that were infected with equine influenza;
 - (b) state the dates on which each horse:
 - (i) was first observed as showing clinical signs of infection with equine influenza, and the person who made the observation; and
 - (ii) was diagnosed with equine influenza and the person who made the diagnosis and particulars of that diagnosis.
34. In relation to paragraph 25, what are the facts matters and circumstances relied upon to allege that the spread of equine influenza onto the plaintiff's stud and the infection of the horses referred to in paragraph 24 of the statement of claim, was caused or contributed to by each breach of duty referred to, and say which breach of duty is there referred to.
35. In relation to paragraph 26, please:
- (a) confirm whether the reference to the "defendant's premises" ought to be a reference to the plaintiff's premises; and
 - (b) confirm that the "ensuing 14 days" is the period from 25 September 2007 to 9 October 2007 inclusive.
36. In relation to paragraph 27, please:
- (a) identify the date on which, and the means by which, the plaintiff's premises was put into quarantine;
 - (b) provide the Usual Particulars of the notice imposing the quarantine, and the notice lifting the quarantine; and
 - (c) provide particulars of the movement restrictions that remained in place following the lifting of the quarantine (and the Usual Particulars in respect of the communication of such movement restrictions) and the period for which such restrictions remained in place.

37. In relation to paragraph 28, please:

- (a) state the date on which, and the means by which, the plaintiff received notice that the movement restrictions were lifted; and
- (b) provide the Usual Particulars of such notice.

Signed:

Blake Dawson.

Description:

Solicitor for the defendant

Dated:

2 September 2009