

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/05/2020 3:15:40 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Non-Prescribed Pleading
File Number: NSD544/2019
File Title: JONES ASIRIFI-OTCHERE v SWANN INSURANCE (AUST) PTY LTD
ABN 80 000 886 680 & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 12/05/2020 3:15:45 PM 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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 33
Rule 16.32

Rejoinder

NSD544 of 2019

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

Jones Asirifi-Otchere

Applicant

Swann Insurance (Aust) Pty Ltd (ABN 80 000 886 680) and another

Respondents

- 1 The Respondents deny every allegation in the reply filed on 16 April 2020 (**Reply**), and join issue with the Applicant in respect of each matter raised in the Reply, except for:
 - (a) the admissions in the Reply of matters alleged in the Amended Defence; and
 - (b) the allegations in the Reply that are otherwise specifically pleaded to below.

- 2 As to paragraph 7A of the Reply, the Respondents:
 - (a) say that some training materials for LPI, Gap, MBI and Tyre & Rim from time to time referred to the “standard loan package” or “protected loan package” or “protected loan”; and
 - (b) otherwise join issue with the Applicant as to the matters pleaded therein.

Filed on behalf of Swann Insurance (Aust) Pty Ltd and Insurance Australia Limited, the First and Second Respondents

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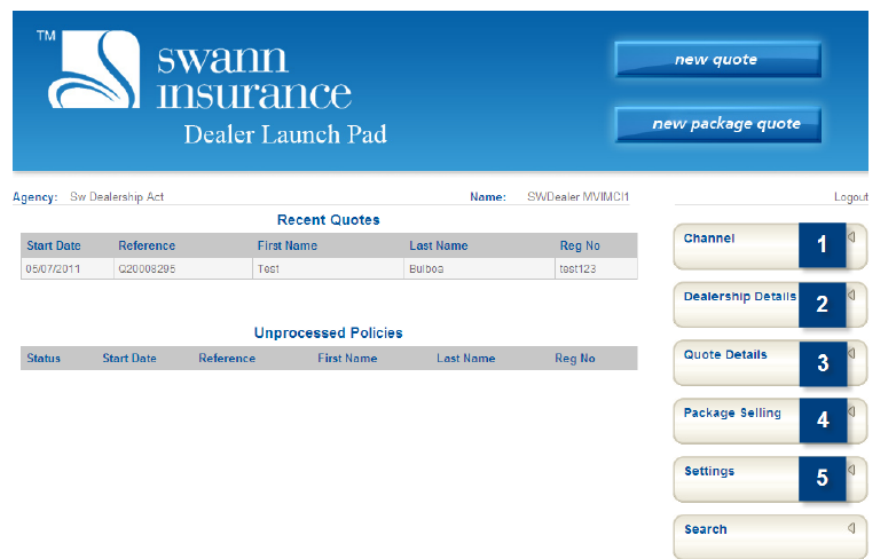
Level 61 Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
Ref: MLS:602-0042807

Form approved 01/08/2011

3 As to paragraph 7B of the Reply, the Respondents:

(a) as to paragraph 7B(a):

- (i) refer to and repeat paragraphs 26(b), 28A and 28C of the Amended Defence;
- (ii) say that Authorised Representatives could choose to use menu selling or a standard quote process, which were accessible by selecting “new quote” (for a standard quote process) or “package quote” (for package or menu selling) in a prompt screen similar to the screen below; and



- (iii) otherwise join issue with the Applicant as to the matters (other than admissions) pleaded therein,

(b) as to paragraph 7B(b):

- (i) refer to and repeat paragraph 28A(e) and paragraph 31 of the Amended Defence;
- (ii) say that there was no legal obligation for Authorised Representatives to ensure that customers had read and properly understood the PDS before they communicated their agreement to purchase the relevant Add On Insurance Products;
- (iii) otherwise do not know and therefore cannot admit the matters in paragraph 7B.b.ii and paragraph 7B.b.iii of the Reply; and
- (iv) otherwise join issue with the Applicant as to the matters pleaded therein.

- 4 As to paragraph 7C of the Reply, the Respondents:
- (a) refer to and repeat paragraphs 14C, 15, 15A, 24, 26(f), 26(h), 26(i), 26(k), 26(l), 26(m), 26(n), 27A and 30 of the Amended Defence;
 - (b) say that Swann promoted to some potential Authorised Representatives that Swann's training "delivers improved Finance & Insurance results" and that a Swann account manager would provide a monthly review of "all aspects of Finance & Insurance (i.e. penetrations, income, etc) and plan training and areas of attention required" and provide a quarterly review of "all aspects of Finance & Insurance using a comparison graph format";
 - (c) say that the Activ8 Sales System facilitated payment for Add On Insurance Products by way of finance or cash;
 - (d) say that Swann from time to time referred to "strategic alliances" with St George, AMP, Commonwealth Bank, Macquarie Bank and Bank of Melbourne in its national sales strategies but say that these alliances did not authorise Motor Vehicle Dealers, acting as an Authorised Representative of the Respondents, to offer the Applicant or Group Members the opportunity to obtain finance, take applications for finance from the Applicant or Group Members or enter into a finance agreement with the Applicant or Group Members on behalf of any of the "strategic alliance" entities or any other finance company; and
 - (e) otherwise join issue with the Applicant as to the matters pleaded therein.
- 5 As to paragraph 8(e) of the Reply, the Respondents:
- (a) refer to and repeat paragraph 28A(c) and 31(s) of the Amended Defence;
 - (b) say that Swann paid commissions and/or bonuses to Authorised Representatives;
 - (c) do not know and therefore cannot admit what the Applicant and Group Members were told by Authorised Representatives regarding the quantum of the commission received by Authorised Representatives in respect of the sale of any Add On Insurance Products to the Applicant or Group Members;
 - (d) say that Swann was not required by law to disclose the quantum of commission or bonuses paid to Authorised Representatives for the sale of Add On Insurance

Products and further say that there was no market practice in the general insurance industry of disclosing the quantum of commission or bonuses; and

(e) otherwise join issue with the Applicant as to the matters pleaded therein.

6 As to paragraph 8(f) of the Reply, the Respondents:

(a) refer to and repeat paragraph 31(v) of the Amended Defence;

(b) say that on or about December 2010, Swann took steps to notify all Authorised Representatives:

(i) that the Australian Consumer Law prohibited false or misleading representations concerning the requirement to pay for a contractual right that is wholly or partly equivalent to any condition, warranty, guarantee, right or remedy that a person has under a law of the Commonwealth, State or Territory; and

(ii) that they must not infer, imply, or express to a consumer that:

(A) their rights and remedies under the Australian Consumer Law cease when a standard manufacturer's warranty period ends; or

(B) it is necessary to purchase a Swann Warranty Insurance product to be protected against faulty part beyond the expiration of a manufacturer's warranty

Particulars

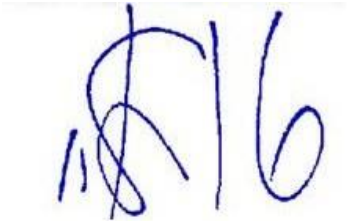
Swann Dealer Bulletin - ACL dated 1 December 2010 [IAG.800.261.0035]

Swann Motorcycle Dealer Bulletin - ACL dated 1 December 2010
[IAG.800.261.0036]

Presentation titled "Extended Warranty Insurance Consumer Protection.ppt" dated 1 December 2010 [IAG.800.261.0038]

(c) otherwise join issue with the Applicant as to the matters pleaded therein.

Date: 12 May 2020

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Moira Leonie Saville
Lawyer for the Respondents
King & Wood Mallesons

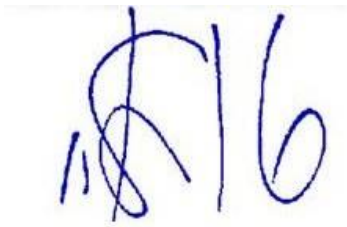
This pleading was prepared by Moira Leonie Saville and Alexander Basil Morris, lawyers, and settled by Jeremy Kirk SC and Fiona Roughley of counsel.

Certificate of lawyer

I Moira Leonie Saville certify to the Court that, in relation to the Rejoinder filed on behalf of the First and Second Respondents, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 12 May 2020

A handwritten signature in blue ink, appearing to be 'MS/16', is written on a light blue horizontal line.

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Lawyer for the First and Second Respondents