

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

S ECI 2020 01535

BETWEEN:

NERITA SOMERS & ORS
(according to the attached Schedule)

Plaintiffs

- and -

BOX HILL INSTITUTE & ANOR
(according to the attached Schedule)

Defendants

ORDER

JUDGE: The Honourable Associate Justice Matthews

DATE MADE: 25 May 2021

ORIGINATING PROCESS: Writ filed 26 March 2020

HOW OBTAINED: On return of the Plaintiffs' summons filed 21 May 2021

ATTENDANCE: Mr A Grech, Counsel for the Plaintiffs
Mr N Kotzman, Counsel for the First Defendant
Mr M Johns, Solicitor for the Liquidator of the Second Defendant



OTHER MATTERS:

A. The Court being satisfied that the technical requirements in section 42G of the *Evidence (Miscellaneous Provisions) Act 1958* (**'Evidence Act'**) are met and that all parties consent to the making of the direction, the Court orders under section 42E(1) of the Evidence Act that all persons shall appear, give evidence, and make submissions in this proceeding this day by audio-visual/audio link.

B. This Order is authenticated by the Associate Judge pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015* (**'the Rules'**).

THE COURT ORDERS THAT:

1. By **4:00 PM on Monday, 31 May 2021**, the First Defendant shall file and serve any notice pursuant to Order 44 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) in respect of expert evidence on which it intends to rely at trial.
2. By **4:00 PM on Friday, 25 June 2021**, the First Defendant shall make discovery, by affidavit, of the categories of documents set out in paragraphs 1 to 10 of Annexure A to this order and shall produce the discovered for inspection.
3. By **4:00 PM on Friday, 2 July 2021**, the First Defendant shall make discovery, by affidavit, of the categories of documents set out in paragraphs 11 to 12 of Annexure A to this order and shall produce their discovered documents for inspection.
4. Paragraph 3 of the summons filed 21 May 2021 is adjourned to 10.30 am on 28 May 2021 before Associate Justice Matthews.
5. Costs reserved.

DATE AUTHENTICATED: 26 May 2021



THE HON ASSOCIATE JUSTICE MATTHEWS

SCHEDULE OF PARTIES

BETWEEN:

NERITA SOMERS	First Plaintiff
ADEL HASSANEIN	Second Plaintiff
MATTHEW LAMONT	Third Plaintiff
FELIX OULDANOV	Fourth Plaintiff

-and-

BOX HILL INSTITUTE	First Defendant
GOBEL AVIATION PTY LTD (T/A SOAR ADVANCED FLIGHT TRAINING)	Second Defendant

AND BETWEEN:

GOBEL AVIATION PTY LTD (T/A SOAR ADVANCED FLIGHT TRAINING)	Plaintiff by Counterclaim
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-and-

BOX HILL INSTITUTE	Defendant by Counterclaim
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AND BETWEEN:

GOBEL AVIATION PTY LTD (T/A SOAR ADVANCED FLIGHT TRAINING)	Third Party by First Third Party Claim
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ANNEXURE A
Categories of documents to be discovered by the First Defendant

Documents requested as better discovery in letter dated 30 December 2020

1. The documents in the table below:

Reference document	Pinpoint	Description of the document to be discovered
BHI.002.001.0008		All attachments enclosed in BHI.002.001.0008.
BHI.002.001.0702	_0004	<i>"Schedule of fees - Appendix A"</i> .
BHI.002.001.0004		Produce this document in full.
BHI.001.001.1227	_0004	The attachment referred to as <i>"Attached is the TAS for AVI50219"</i> .
BHI.002.001.0973	_0002	<i>"List of invoice related grievances supplied by NK"</i> .
BHI.002.001.0973	_0005	<i>"Grievances shared in last meeting"</i> .
BHI.002.001.1193		All attachments.
BHI.002.001.1193		The ASQA complaint received by BHI on 4 June 2018, BHI's written response of 14 June 2018 (including all attachments), the request from ASQA for additional information received by BHI on 27 June 2018, and all evidence provided to ASQA by BHI in response to the 27 June 2018 request.
BHI.002.001.1189	_0001	The report that was provided to the BHI teaching faculty.
BHI.001.001.1235	_0045 and _0048	Documents E2, E3, E12, E21, E23, E27 and E34.
BHI.002.001.1050		The Board pack and attachments that were tabled at the 20 December 2019 Board meeting of Double Sunrise Holdings Ltd and its Controlled Entities.
BHI.002.001.1027		The text message from Don Grover to Vivienne King, and any reply.
BHI.002.001.1099		The attachment referred to in the email of Don Grover on 6 November 2019 at 3:03 pm titled <i>"SOAR AVIATION AND BOX HILL INSTITUTE ANNOUNCE PRESUMPTION OF</i>



Reference document	Pinpoint	Description of the document to be discovered
		<i>TRAINING FLIGHTS - Draft ReleaseDGVV1.docx</i> v.
BHI.002.001.1038		The attachment to the email of Irene Biris to Don Grover on 12 November 2019 at 11:58 am.
BHI.002.001.1037		The letter attached to the email of Irene Biris to Don Grover on 21 November 2019 at 4:15 pm, and the “ <i>appendix docs</i> ” referred to in Don Grover’s reply email on 21 November 2019 at 4:52 pm.
BHI.002.001.1025		The correspondence attached to the email of Irene Biris to Don Grover and Neel Khokhani on 20 December 2019 at 3:44 pm.
BHI.002.001.1032		The correspondence attached to the email from Irene Biris to Don Grover on 3 March 2020 at 1:17 pm.
BHI.001.001.1226	_0044	Attachments 1 to 3.
BHI.002.001.0004		Produce this document in full.
BHI.007.001.0011		The two “ <i>KPI reports</i> ”, dated for the periods of 20 December 2017 to 19 June 2018 and 20 June 2018 to 19 December 2018; and all documents relating to the “ <i>additional information provided by email on 14 June 2019</i> ”.
BHI.007.001.0017		The email and attachments sent from Neel Khokhani on 4 July 2019, providing the “ <i>KPI report for the period 20 December 2018 - 19 June 2019</i> ”.
BHI.007.001.0015		The “ <i>Power BI report</i> ”.
BHI.007.001.0003	_0004	The “ <i>Gantt chart processes that manage the process and timelines for students coming through the courses</i> ”.
BHI.007.001.0048		The attachment referred to emails from Michelle Tester on 16 May 2019, which refers to a list of students who are part of the May 2019 audit.
BHI.007.001.0051	_0003 and _0004	The “ <i>simplified spreadsheet titled “Aviation Evidence File Organisation”</i> ” (_0003), and the two attachments “ <i>AVI50215_Student Sample</i> ”



Reference document	Pinpoint	Description of the document to be discovered
		<i>File</i> ” and <i>“BHI_SOAR Summary of Audit Evidence Checklist”</i> (_0004).
BHI.007.001.0265		The <i>“attached report”</i> referred to in an email sent by Catherine Dunbar on 8 May 2018.
BHI.007.001.0222		The audit documents and outcomes, relating to the audit performed by Michelle Tester on 14 March 19.
BHI.007.001.0326		The <i>“issues register”</i> .

Further categories of discovery requested in letter dated 30 December 2020

2. All marketing materials of the CPL Diploma.
3. All iterations or versions of BHI’s Training and Assessment Strategy for the CPL Diploma.
4. All correspondence sent to CASA, excluding those of a purely administrative nature, regarding the CPL Diploma.
5. All correspondence sent to and received from RAAus, excluding those of a purely administrative nature, regarding the CPL Diploma.
6. All reports, file notes and memoranda, excluding those of a purely administrative nature, regarding RAAus.
7. The entire file, including Flight Training Records and records of assessment, held by the Aviation Faculty of BHI regarding any student or flight instructor who has been involved in an aircraft accident or incident giving rise to any safety concern.
8. All correspondence from and to the Commonwealth Ombudsman in relation to the CPL Diploma.
9. All correspondence from and to the Victorian Ombudsman in relation to the CPL Diploma.

Documents previously listed as subject to legal professional privilege

10. The following documents which were undertaken to be provided in redacted form:



- a. BHI.001.001.1220; and
- b. BHI.003.001.0249.

Further categories of discovery requested on 23 April 2021

11. Correspondence sent by the Box Hill Institute to CPL Diploma students between 1 March 2021 and 22 April 2021 confined to the costs to students directly or indirectly associated with the resumption of flight training through Moorabbin Flying Services, Tristar Aviation, Basair Aviation College and Sydney Flight Training.
12. Any documents received by BHI in relation to the correspondence set out in Item 11 above.

