



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1375/2017

PAWEL KUTERBA and another named in the schedule
Applicant

SIRTEX MEDICAL LIMITED (ACN 78 166 122)
Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 01 June 2018

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

Provision of Missing and Incomplete Documents

1. By 22 June 2018, the Respondent (**Sirtex**) produce to the first and second applicants (**Applicants**) any missing or incomplete documents and a response to the substantive concerns raised in the Applicants' letter to Respondents dated 17 May 2018.

Pleadings

2. The Applicants have leave to file and serve a second further amended statement of claim (**SFASC**) in the form of the draft document attached to the letter from the Applicants' solicitors to Sirtex's solicitors dated 29 May 2018 by 4 June 2018.
3. The Applicants pay Sirtex's costs thrown away by reason of the amendment of the statement of claim referred to in order 3.
4. Vacate order 4 of the orders made 30 April 2018 (concerning Sirtex filing a defence to the further amended statement of claim).
5. Sirtex is to file and serve its defence to the SFASC by 29 June 2018.
6. The Applicants are to file and serve any reply to the defence by 27 July 2018.



Application for further discovery

7. By 8 June 2018 the solicitors for the Applicants and Sirtex confer in respect of further discovery.
8. By 12 June 2018 the Applicants file and serve any amended application in respect of further discovery.
9. By 18 June 2018 Sirtex file and serve any affidavit in respect of the Applicants' application for further discovery.
10. The Applicants' application for further discovery be listed for hearing on 27 June 2018 at 10.15 am.

Lay evidence

11. By 28 June 2018, the Applicants file and serve any further affidavit of evidence of the second applicant.
12. By 16 November 2018, Sirtex file and serve affidavits of the evidence of all lay witnesses that it intends to call at the initial trial.
13. By 25 January 2019, the Applicants file and serve any lay evidence in reply.

Expert evidence and documentary case

14. By 9 July 2018, the Applicants file and serve any further expert evidence on which they intend to rely at the initial trial.
15. By 16 November 2018, Sirtex file and serve any expert evidence on which it intends to rely at the initial trial.
16. By 25 January 2019 the Applicants file and serve any expert evidence in reply on which they intend to rely at the initial trial. .

Scope of initial trial

17. Subject to further order, and without prejudice to the right of the Applicants to seek to amend their Further Amended Originating Application to claim an award of aggregate damages on behalf of the group members at a second stage trial, the Court will hear and determine at the initial trial:



- (a) all of the Applicants' claims for relief as identified in prayers 1 to 5 of the Further Amended Originating Application dated 21 May 2018; and
- (b) each of the questions of law or fact in the proceeding common as between the group members.

Opt out and group member registration

- 18. By 16 August 2018 the Applicants are to file and serve an interlocutory application and supporting evidence seeking Court approval of the form and manner of distribution of a notice informing group members of their right to opt out of the proceeding, and any orders in respect of group member registration.
- 19. By 16 August 2018, Sirtex is to file and serve any application (and supporting evidence) for orders in respect of class closure or group member registration.
- 20. The Applications be made returnable on 20 September 2018 at 10.15 am.


Mediation

- 21. The matter be listed for mediation by National Operations Registrar Lagos on 12 and 13 December 2018. NOR Lagos is authorised to give directions as to the conduct of the mediation including as to the attendance of any persons she considers necessary for an effective mediation, and the provision of appropriate documents and/or position papers.

Other Orders

- 22. The parties have liberty to apply on 48 hours' written notice.
- 23. The matter be listed for a further case management hearing on 20 September 2018 at 10.15 am.

Date that entry is stamped: 1 June 2018


Registrar



Schedule

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Second Applicant TODD HAYWARD