

---

**IN THE DISTRICT COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY**

No. 13889/01

---

**FURTHER AMENDED SECOND CROSS  
CLAIM**

Filed for the **SALVATION ARMY** pursuant to leave granted by Judge Boyd-Boland on 22 August 2003

---

EP

Plaintiff

**LAWRENCE ALLAN WILSON**

First Defendant

**THE SALVATION ARMY**

Second Defendant

**THE SALVATION ARMY**

Cross Claimant

**ZURICH AUSTRALIAN  
INSURANCE LIMITED**

Cross Defendant

Teece Hodgson & Ward  
Solicitors  
1 Chifley Square  
SYDNEY NSW 2000  
Tel: (02) 9232 3733  
Fax: (02) 9231 6093

1. For the purposes of this cross claim only, the Cross Claimant repeats the whole of the allegations made by the Plaintiff in the Amended Statement of Claim.
- 1A. In proceedings numbers 20770/97, 20039/98, 20389/00 and 20388/00 in the Supreme Court of New South Wales the Plaintiff and three other persons, Mr REDA FV, Mr ET and Mr FR each respectively sued the Cross-Claimant alleging breaches of duty of care by the Cross-Claimant in respect of events which occurred between 30 September 1973 and 1985 and the Plaintiff and the three persons allege that each suffered personal bodily injuries as a result.
2. The Cross Claimant has filed a defence in which, amongst other things, the cross claimant denies the breach of the duties alleged by the Plaintiff against it.
2. In each of the said proceedings the Cross-Claimant filed a Defence which, in each case, amongst other things, denied the breaches of the duties alleged against it by the Plaintiff and the said three other persons.
- 2A. The Cross-Claimant has compromised and settled the claims of the Plaintiff and of the said three persons.

**CLAIM AGAINST FIRST CROSS DEFENDANT**

3. The Cross Defendant is a duly incorporated company liable to be sued in its corporate name and style which at all relevant times carried on business as an insurer.
4. By a policy of public liability insurance No. 26/3071713 between the Cross Claimant as insured and Atlas Assurance Company Limited as insurer ("the Atlas policy") in consideration of the premiums paid to it as therein mentioned, Atlas Assurance Company Limited agreed to pay to or on behalf of the Cross Claimant all sums which the Cross Claimant shall become liable to pay compensation up to an amount of \$200,000 in respect of, amongst other things, bodily injury as a result of an accident with the Commonwealth of Australia occurring at any time during the period from 30 September 1973 to 30 September 1974.
5. By a policy of public liability insurance No. 23/032159/9 between the Cross Claimant as insured and GRE Insurance Limited as insurer ("the GRE policy") in consideration of the premiums paid to it as therein mentioned, GRE Insurance Limited agreed to pay to or on behalf of the Cross Claimant all sums which the Cross Claimant shall become legally liable to pay for compensation up to a limit initially of \$200,000.00 and subsequently \$500,000.00, in respect of, amongst other things, bodily injury as a result of an accident within the Commonwealth of Australia occurring at any time during the period from 30 September 1974 to 1985.
6. In or about 1992, the Cross Defendant acquired from GRE Insurance Limited certain assets and liabilities and including the liability of GRE Insurance limited under the GRE policy and the liability of Atlas Assurance Company Limited under the Atlas policy.
7. In the premises, the Cross Defendant became and is liable to indemnify the Cross Claimant pursuant to the cover provided under the said policies of insurance.
8. The Cross Claimant has made a claim against the Cross Defendant under the Atlas policy and also has made a claim against the Cross Defendant under the GRE policy in respect of the claim made by the Plaintiff in the Amended Statement of Claim and the claims of the same three persons but the Cross Defendant has neglected or refused to indemnify the Cross Claimant in respect of the said claims or to provide the Cross Claimant with cover under the said policies of insurance.
9. The Cross Defendant has represented to the Cross Claimant that it is liable to indemnify the Cross Claimant under the GRE policy, subject to the GRE policy responding to the claim made by the Plaintiff.

**PARTICULARS**

Letter from the solicitors acting for the Cross Defendant to the solicitors acting for the Cross Claimant dated 6 November 1997.

10. Further, or in the alternative, the Atlas policy and the GRE policy each have implied in them a term requiring each party to the policy of insurance to act towards the other party in respect of any matter arising under the policy with the utmost good faith ("the duty of utmost good faith") and each of the parties to the policy were and are bound by a duty of utmost good faith.
11. The letter dated 6 November 1997 was sent and the representation made in it was made in the course of trade and commerce.
12. By the letter dated 6 November 1997 the Cross Defendant represented that GRE Insurance Limited did not acquire or otherwise assume the current or the contingent non-life liabilities of Atlas Assurance Company Limited in 1974 or at any other time.
13. The representation was false, misleading and deceptive in that
  - (a) All of the assets and liabilities in Australia of Atlas Assurance Company Limited were transferred to GRE Insurance Limited with effect from 30 June 1974.
  - (b) The Cross Claimant repeats paragraph 6

#### **PARTICULARS**

Minute of Atlas Assurance Company Limited dated 3 March 1976

14. The making of the representation was:
  - (a) A contravention of section 42 of the Fair Trading Act 1987 NSW
  - (b) A breach of the First Cross Defendant's duty of utmost good faith
15. Induced by the representation the Cross Claimant has expended considerable sums of money and has been put to inconvenience in investigating the truth or falsity of it and the matters set out in paragraph 12 hereof.
16. As a result of the First Cross Defendant's actions as alleged the Cross Claimant has suffered loss and damage.

#### **PARTICULARS**

- (a)
  - (i) Payment to the Plaintiff in the proceedings no. 20770/97 in the Supreme Court of New South Wales, Sydney Registry Common Law Division, of the sum of \$140 000 inclusive of interest and costs in settlement of the Plaintiff's claim in the proceedings no. 20770/97. Payment of the Second Defendant's costs in the proceedings in the sum of \$182,655.72.
  - (ii) Payment to the Plaintiff in the proceedings no. 20039/98 in the Supreme Court of New South Wales, Sydney Registry Common Law Division, of the sum of \$100,000 inclusive of interest and costs in settlement of the Plaintiff's claim in proceedings no. 20039/98.

Payment of the Second Defendant's costs in proceedings no. 20039/98 in the sum of \$41,807.65.

- (iii) Payment to the Plaintiff in the proceedings no. 20389 of 2000 in the Supreme Court of New South Wales, Sydney Registry, Common Law Division the sum of \$100,000 inclusive of interest and costs in settlement of the Plaintiff's claim in proceedings no. 20389 of 2000. Payment of the Second Defendant's costs in proceedings no. 20389 of 2000 in the amount of \$61,358.92.
  - (iv) Payment to the Plaintiff in the proceedings no. 20388 of 2000 in the Supreme Court of New South Wales, Sydney Registry, Common Law Division the sum of \$85,000 inclusive of interest and costs in settlement of the Plaintiff's claim in proceedings no. 20388 of 2000. Payment of the Second Defendant's costs in proceedings no. 20388 of 2000 in the amount of \$31,338.91.
- (b) The costs of the applications concerning the setting aside of a subpoena for production addressed to the Cross Defendant being the First Cross Defendant's costs in the amount of \$17 000 paid to the Cross Defendant by the Cross Claimant together with the Cross Claimant's own costs.
- (c) Expenses and costs incurred in investigating the representation.

TO  
 First Cross Defendant  
 Zurich Australian Insurance Limited  
 C/- Malcolm Johns & Company  
 Lawyers  
 Level 12, Skygarden  
 77 Castlereagh Street  
 SYDNEY NSW 2000

1. You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received by the Registry with (14) days after service of this amended cross claim upon you and you comply with the rules of the court relating to the defence.
2. A Corporation may not enter and appearance in, or defend, any proceedings otherwise than by a solicitor or by a director authorised in accordance with part 11 Rule A of the Supreme Court Rules 1970.
3. A copy of the Amended Statement of Claim and the Defence is served herewith.

Cross Claimant

The Salvation Army  
 140 Elizabeth Street  
 SYDNEY NSW 2000

Plaintiffs address for service:

EP

C/- Beliby Poulden Costello  
14th Floor, 82 Elizabeth Street  
SYDNEY NSW 2000  
DX 872 SYDNEY

First Defendant's Address for service:

Lawrence Allan Wilson  
7/99 Villier Road  
Padstow Heights  
SYDNEY NSW 2211

Cross Claimant's Address for service:

Teece, Hodgson & Ward  
Solicitors  
1 Chifley Square  
SYDNEY NSW 2000  
DX 562 SYDNEY

First Cross Defendant's

Zurich Australian Insurance Limited  
C/- Malcolm Johns & Company  
Level 12, Skygarden  
77 Castlereagh Street  
SYDNEY NSW 2000  
DX 840 SYDNEY

Address of Registry:

Level 5  
Supreme Court of New South Wales  
QUEENS SQUARE

Richard Neal  
Solicitor for the Cross Claimant

**CERTIFICATE UNDER SECTION 198L OF THE LEGAL PROFESSION ACT 198**

I, Richard John Neal certify that there are reasonable grounds for believing on the basis of provable facts and reasonably arguable view of the law that this Further Amended Second Cross Claim has reasonable prospects of success.

Dated 2003

Richard John Neal  
Solicitor for the Defendants