

**AMENDED DEFENCE TO SECOND FURTHER AMENDED
STATEMENT OF FIRST CROSS CLAIM**

(Filed pursuant to orders made by Ball J on 25 May 2018)

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/171592

TITLE OF PROCEEDINGS

Plaintiff	John Smith and Rosemary Smith
Defendant	Australian Executor Trustees Limited (ACN 007 869 794)

TITLE OF CROSS CLAIM

First Cross-Claimant	Australian Executor Trustees Limited
Second Cross-Claimant	IOOF Holdings Limited
First Cross-Defendant	Swiss Re International SE ABN 38 138 873 211
Second Cross-Defendant	Willis Australia Limited

FILING DETAILS

Filed for	Swiss Re International SE
Legal representative	Patrick Boardman, Wotton + Kearney
Legal representative reference	PJB 6154 RJS
Contact name and telephone	Richard Shankland, (02) 8273 9863

PLEADINGS AND PARTICULARS

In answer to the Pleadings and Particulars contained in the First Cross-Claim Second Further Amended Statement of Cross Claim filed on 25 May 2017 (**First Cross Claim**) the First cross defendant (**Swiss Re**) relies on the following facts and assertions:

Parties

- 1 Swiss Re admits paragraph 1 of the First Cross Claim.
- 2 Swiss Re admits paragraph 2 of the First Cross Claim.
- 3 Swiss Re admits paragraph 3 of the First Cross Claim.

- 4 Swiss Re admits paragraph 4 of the First Cross Claim.
- 4A Swiss Re admits paragraph 4A of the First Cross Claim.
- 4B Swiss Re admits paragraph 4B of the First Cross Claim.
- 4C Swiss Re admits paragraph 4C of the First Cross Claim.
- 4D Swiss Re admits paragraph 4D of the First Cross Claim.
- 4E Swiss Re admits paragraph 4E of the First Cross Claim.
- 4F Swiss Re admits paragraph 4F of the First Cross Claim.

Professional indemnity policies of insurance

- 5 Swiss Re admits paragraph 5 of the First Cross Claim.
- 6 Swiss Re admits paragraph 6 of the First Cross Claim.
- 7 As to paragraph 7 of the First Cross Claim, Swiss Re also relies on the terms of the 2011/2012 AXIS policy as if they were set out in full herein.
- 8 As to paragraph 8 of the First Cross Claim, Swiss Re:
 - a. says that the 2014/2015 AXIS policy was issued by AXIS Speciality Europe SE (AXIS) and Chubb Insurance Company of Australia Ltd (Chubb) in the following proportions:
 - i. AXIS – 90%; and
 - ii. Chubb – 10%;
 - b. says that its limit of liability under the 2014/2015 AXIS policy is limited to 90%; and
 - c. otherwise admits paragraph 8.
- 9 Swiss Re admits paragraph 9 of the First Cross Claim.
- 10 As to paragraph 10 of the First Cross Claim, Swiss Re also relies on the terms of the 2014/2015 AXIS policy as if they were set out in full herein.
- 11 Swiss Re admits paragraph 11 of the First Cross Claim.

12 Swiss Re admits paragraph 12 of the First Cross Claim.

13 Swiss Re admits paragraph 13 of the First Cross Claim.

14 Swiss Re admits paragraph 14 of the First Cross Claim.

15 Swiss Re admits paragraph 15 of the First Cross Claim.

16 Swiss Re admits paragraph 16 of the First Cross Claim.

17 Swiss Re admits paragraph 17 of the First Cross Claim.

18 Swiss Re admits paragraph 18 of the First Cross Claim.

19 [not used]

20 [not used]

Provident Capital Limited

21 Swiss Re admits paragraph 21 of the First Cross Claim.

22 Swiss Re admits paragraph 22 of the First Cross Claim.

23 Swiss Re admits paragraph 23 of the First Cross Claim.

23A In further answer to paragraphs 21 to 23 of the First Cross Claim, Swiss Re says that by reason of the fact that Provident is insolvent within the meaning given by section 95A of the Corporations Act 2001 (Cth) (**the Act**):

- a. The holders of debentures issued by Provident under the Trust Deed, which were unpaid as at 18 September 2012, have not received a full return on their investments in the administration of Provident.
- b. On or about 16 April 2015, the receivers of Provident estimated that the likely return of principal to debenture holders of Provident would be in the region of 12 cents of every dollar invested.

24 Swiss Re admits paragraph 24 of the First Cross Claim.

25 Swiss Re admits paragraph 25 of the First Cross Claim. ~~As to paragraph 25 of the First Cross Claim, Swiss Re:~~

- a. ~~will rely on the whole of Amended Statement of Claim filed in the Smith proceeding on 17 July 2015 (ASOC) for its full terms and effect; and~~
- b. ~~otherwise admits paragraph 25.~~

25A In further answer to paragraph 25 of the First Cross Claim, the following matters are pleaded in the ASOC:

- a. the plaintiffs (hereafter “**the Smiths**”) are, and have been since 13 September 2010, holders of debentures issued by Provident evidenced by Debenture Certificate no. D001263151 dated 14 September 2010 in the sum of \$100,000 for a 2 year period;

Particulars

- i. Para. 2 of the ASOC.
- b. Provident at all material times carried on the business of borrowing money from the public by issuing debentures under Chapter 2L of the Corporations Act;

Particulars

- i. Para. 3(d) of the ASOC.
- c. Provident was placed into receivership on 29 June 2012 by order of the Federal Court;

Particulars

- i. Para. 3(f) of the ASOC.
- d. Provident entered into voluntary administration on 18 September 2012;

Particulars

- i. Para. 3(g) of the ASOC.
- e. Provident entered into liquidation pursuant to a creditors’ voluntary winding up on 24 October 2012;

Particulars

- i. Para. 3(h) of the ASOC.

- f. the members of the group to whom the Smith proceeding relates are all those persons and entities:
- i. who were a holder of debentures issued by Provident as at 29 June 2012; and
 - ii. who have suffered loss and damage by reason of the conduct of AETL as pleaded in the ASOC; and
 - iii. have signed a relevant funding agreement with Litman Holdings Pty Limited by 5pm on 16 June 2015.

Particulars

1. Para. 4 of the ASOC.

- g. at all material times, the Trust Deed provided that following the occurrence of an “*event of default*”, Australian Executor Trustee Limited (AETL) was entitled to take action to enforce the Charge either itself or by the appointment of a receiver or apply to wind up Provident;

Particulars

- i. Paras. 8(m)(ii) and (iii) of the ASOC.
- h. in December 2011, the Australian Securities and Investment Commission (**ASIC**) raised concerns about Provident’s financial affairs and its disclosures in documents that it had issued to the public for the purposes of raising funds;

Particulars

- i. Para. 34 of the ASOC.
- i. on 8 June 2012, AETL commenced proceedings seeking orders under s283HB(1) of the Act to make the Charge immediately enforceable and to appoint receivers to Provident;

Particulars

- i. Para. 35 of the ASOC.
- j. on 29 June 2012, the Federal Court ordered that a receiver be appointed to Provident;

Particulars

- i. Para. 36 of the ASOC.
- k. on 3 July 2012, Messrs Marcus Ayres, Anthony Simms and Philip Carter of PPB (NSW) were appointed as joint and several receivers of Provident, and on 10 July 2012 as joint and several receivers and managers of Provident (**Receivers and Managers**);

Particulars

- i. Para. 37 of the ASOC.
- l. since their appointment, the Receivers and Managers have set about realising the assets of Provident, and have given an estimate that the likely return to debenture holders will be about 12 cents of every dollar invested;

Particulars

- i. Para. 38 of the ASOC.
- m. the Group Members and each of them have suffered loss and damage;

Particulars

- i. Para. 39 of the ASOC.

Claims for indemnity and damages against Swiss Re, Liberty and CIAL

2011/2012 AXIS policy

26 As to paragraph 26 of the First Cross Claim, Swiss Re:

- a. admits that on 27 June 2012 AETL (through Willis) notified AXIS of certain circumstances (**the Notification**);
- b. says that the Notification consisted of:
 - i. an email from Pegah Vaghaye of Willis to Olympia Samolis of AXIS (**27 June Email**) which forwarded an email from Michael Stanelos, the Commercial Manager and Assistant Company Secretary of IOOF Holdings Pty Limited, to Pegah Vaghaye of Willis (**the Stanelos Email**); and

- ii. the documents that were attached to the Stanelos Email;
- c. will rely on the whole of 27 June Email for its full terms and effect; and
- d. otherwise does not admit paragraph 26. that:
 - i. ~~the circumstances in the notification constituted facts that might give rise to the claim made against AETL in these proceedings; or~~
 - ii. ~~AETL gave notice of such facts as soon as was reasonably practicable after AETL became aware of them.~~

26A As to paragraph 26A of the First Cross Claim, Swiss Re:

- (a) admits that on 25 July 2012 at 10.52am Andrew Dawson of Willis sent an email to Olympia Samolis of AXIS (**25 July Email**) which forwarded an email dated 24 July 2012 at 1.37pm from Michael Stanelos, the Commercial Manager and Assistant Company Secretary of IOOF Holdings Pty Limited, to Andrew Dawson of Willis (**the 24 July Email**); and
- (b) will rely on the whole of the 24 July Email for its full terms and effect;
- (c) will rely on the whole of the 25 July Email for its full terms and effect;
- (d) ~~does not admit~~ that the matters set out in the 24 25 July Email constituted notice in writing of facts which might give rise to a professional indemnity claim against AETL, relating to AETL's role as trustee for debenture holders in Provident; and that might give rise to the claim made against AETL in these proceedings.
- (e) otherwise does not admit paragraph 26A.

26B As to paragraph 26B of the First Cross Claim, Swiss Re:

- (a) repeats paragraphs 26 and 26A of this Defence;
- (b) otherwise does not admit paragraph 26B.

26C. As to paragraph 26C of the First Cross Claim, Swiss Re:

- (a) admits that on 27 March 2014 at 11.57am Kelly Butler of Willis sent an email to Olympia Samolis of AXIS (**27 March Willis Email**) which forwarded an email dated 27 March 2014 at 10.43am from Michael Stanelos, the

Commercial Manager and Assistant Company Secretary of IOOF Holdings Pty Limited, to Kelly Butler of Willis (**the 27 March IOOF Email**); and

- (b) will rely on the whole of the 27 March Willis Email for its full terms and effect;
- (c) will rely on the whole of the 27 March IOOF Email for its full terms and effect;-
- (d) says that the contents of the 27 March IOOF Email concerned subject matter that was subject of the Notification and the 25 July Email;
- (e) otherwise admits paragraph 26C.

27 As to paragraph 27 of the First Cross Claim, Swiss Re:

- a. admits that on 4 August 2014 Kelly Butler of Willis sent an email to Robyn Fraser of AXIS (**4 August 2014 Email**);
- b. Says that the 4 August 2014 Email consisted of:
 - i. an email from Kelly Butler of Willis to Robyn Fraser of AXIS which forwarded an email dated 4 August 2014 from Michael Stanelos of IOOF Holdings Pty Limited to Kelly Butler of Willis (**the 4 August 2014 Stanelos Email**); and
 - ii. the documents that were attached to the 4 August 2014 Stanelos Email which included:
 - 1. a letter dated 28 July 2014 from Meridian Lawyers addressed to the "Debenture Holder, Provident Capital Debenture Scheme, Operated by Provident Capital Limited (Receivers & Managers Appointed) (in liquidation)"; and
 - 2. attached documents referred to in the letter from Meridian.
- c. will rely on the whole of 4 August 2014 Email for its full terms and effect;
- d. says that the contents of the 4 August 2014 Email concerned subject matter that was the subject of the Notification and the 25 July Email;
- e. otherwise admits denies-para. 27.

28 As to paragraph 28 of the First Cross Claim, Swiss Re:

- a. admits that on 28 August 2014 Kelly Butler of Willis sent an email to Robyn Fraser of AXIS (**28 August 2014 Email**);
- b. Says that the 28 August 2014 Email consisted of:
 - i. an email from Kelly Butler of Willis to Roby Fraser of AXIS which forwarded an email dated 28 August 2014 from Michael Stanelos, the Commercial Manager and Assistant Company Secretary of IOOF Holdings Pty Limited, to Kelly Butler of Willis (**the 28 August 2014 Stanelos Email**); and
 - ii. the document that was attached to the 28 August 2014 Stanelos Email being a letter dated 18 August 2014 from Slater + Gordon addressed to the "Dear Debenture Holder" and bearing the subject line "Provident Capital Limited (Receivers & Managers Appointed) (In Liquidation)";
- c. will rely on the whole of 28 August 2014 Email for its full terms and effect;
- d. says that the contents of the 28 August 2014 Email concerned subject matter that was the subject of the Notification and the 25 July Email;
- e. otherwise admits ~~denies~~ para. 28.

29 As to paragraph 29 of the First Cross Claim, Swiss Re:

- a. admits that AXIS sent a letter to Willis dated 3 September 2015 (**3 September 2015 Letter**);
- b. will rely on the whole of the 3 September 2015 Letter for its full terms and effect;
- c. otherwise admits para. 29.

30 As to paragraph 30 of the First Cross Claim, Swiss Re denies paragraph 30 of the First Cross Claim, and says that:

- a. admits that the facts notified in the 25 July Email gave rise to the claim made against AETL in the Smith proceeding; the claim was not first made against AETL during the term of the 2011/2012 AXIS policy;
- b. refers to and repeats the matters pleaded in paragraphs 22, 23 and 41 of the First Cross Claim and paragraphs 23A, 25A and 30A of this Defence; on its

~~proper construction, exclusion clause 3.16 of the 2011/2012 AXIS policy does apply with respect to the Smith proceeding; and~~

- ~~c. says that Provident was the issuer of unlisted and/or unrated debentures; it is not liable to indemnify AETL under the 2011/2012 AXIS policy with respect to the Smith proceeding.~~
- ~~d. says that the claim against AETL in the Smith proceeding arises directly or indirectly from the insolvency or external administration of Provident;~~
- ~~e. says that, in the premises, on its proper construction exclusion 3.16 of the 2011/2012 AXIS policy operates to exclude the claim against AETL in the Smith proceeding from the scope of cover provided by the 2011/2012 AXIS policy; and~~
- ~~f. otherwise denies paragraph 30.~~

30A In further answer to paragraph 30 of the First Cross Claim, Swiss Re repeats paras. 23A and 25A of this Defence and says as follows:

- a. Pursuant to clause 2.1 of the Trust Deed, Provident could at any time issue debentures to any person who applied for them under the Trust Deed.
- b. Prior to 18 September 2012 pursuant to the Trust Deed Provident had issued debentures to over approximately 3,000 Debenture holders, including the Smiths and the group members described in paragraph 4 of the ASOC.
- c. At the time they were issued and at all times thereafter, all of the debentures that Provident issued pursuant to the Trust Deed were unlisted.

Particulars

- i. AETL has made this admission in para. 41 of the First Cross Claim.
- ii. The debentures were not listed or quoted on a market or exchange.
- iii. The debentures were not listed or quoted on a securities market or exchange.
- iv. The debentures were not listed or quoted on the Australian Securities Exchange (**ASX**).
- v. The debentures were not traded on a secondary market or exchange.

- vi. The debentures could not be traded on a secondary market or exchange.
 - vii. The debentures were not and could not be traded on the ASX.
- d. Further or in the alternative to sub-para. 30A(c), at the time they were issued and at all times thereafter the debentures that were issued by Provident pursuant to each debenture prospectus that was issued by Provident on and after 19 November 2004, were unlisted.

Particulars

- i. Debenture Prospectus 7 dated 19 November 2004 at page 7;
 - ii. Debenture Prospectus 8 dated 25 November 2005 at page 8;
 - iii. Debenture Prospectus 9 issued in 2006 (precise date not known);
 - iv. Debenture Prospectus 10 dated 18 December 2007;
 - v. Supplementary Prospectus for Prospectus 10 dated 29 February 2008.
 - vi. Debenture Prospectus 11 dated 23 December 2008 pages 8, 21;
 - vii. Debenture Prospectus 12 dated December 2009 pages 6, 21;
 - viii. Provident Capital Prospectus 2011 dated 22 December 2010 pages 4, 20;
 - ix. Provident Capital Prospectus 14 dated 16 December 2011 page 4, 20;
 - x. Swiss Re also repeats the particulars to para. 30A(c).
- e. Further or in the alternative to sub-para. 30A(c) and (d), at the time they were issued and at all times thereafter the debentures that are referred to in para. 2 the ASOC were unlisted.

Particulars

- xi. Swiss Re repeats the particulars to para. 30A(c) and (d).
- f. Further or in the alternative to paras. 30A(c), (d) and (e), at the time they were issued and at all times thereafter the debentures that are referred to in para. 4(a) of the ASOC were unlisted.

Particulars

- i. Swiss Re repeats the particulars to para. 30A(c) and (d).

- g. At the time they were issued and at all times thereafter, all of the debentures that Provident issued pursuant to the Trust Deed were unrated.
 - i. AETL has made this admission in para. 41 of the First Cross Claim.
 - ii. The debentures had not received a credit rating from a credit rating agency or an organisation that provides a credit rating (**CRA**).
 - iii. The debentures had not received a credit rating from a CRA which at the relevant times held an exemption for their credit rating services under ASIC Class Order [CO 03/1093] *Credit rating Agencies* as amended by ASIC Class Order [CO 05/415].
 - iv. The debentures had not received a credit rating from a CRA a credit rating agency operating in Australia which held an Australian Financial Services (**AFS**) license.
- h. Further or in the alternative to sub-para. 30A(g), at the time they were issued and at all times thereafter the debentures that were issued by Provident pursuant to every debenture prospectus that was issued by Provident on and after 19 November 2004, were unrated.

Particulars

- i. Swiss Re repeats the particulars to para. 30A(d) and (g).
- i. Further or in the alternative to sub-para. 30A(g) and (h), at the time they were issued and at all times thereafter the debentures that are referred to in para. 2 the ASOC were unrated.
 - i. Swiss Re repeats the particulars to sub-para. 30A(d), (g).
- j. Further or in the alternative to paras. 30A(g), (h) and (i), at the time they were issued and at all times thereafter the debentures that are referred to in para. 4(a) of the ASOC were unrated.
 - ii. Swiss Re repeats the particulars to sub-para. 30A(d) and (g).

31 Swiss Re admits paragraph 31 of the First Cross Claim.

32 As to paragraph 32 of the First Cross Claim, Swiss Re:

- a. denies that the withdrawal of indemnity that is referred to was wrongful;

- b. Otherwise denies paragraph 32.

2014/2015 Axis Policy

33 Swiss Re denies paragraph 33 of the First Cross Claim.

33A. In further answer to paragraph 33 of the First Cross Claim, Swiss Re:

- a. ~~says that on its proper construction, exclusion clause 3.11 of the 2014/2015 AXIS policy applies with respect to the Smith proceedings; and~~
- b. says that Swiss Re is not liable to indemnify AETL under the 2014/2015 AXIS policy with respect to the Smith proceedings;
- c. says that further, Swiss Re is not liable to indemnify AETL under the 2014/2015 AXIS policy with respect to the Smith proceeding for the reasons set out in paragraph 34(e) of this Defence;
- d. repeats paragraphs 30(b) and 30(c) of this Defence;
- e. says that the claim against AETL in the Smith proceeding arises directly from the insolvency or external administration of Provident; and
- f. says that, in the premises, on its proper construction exclusion clause 3.11 of the 2014/2015 AXIS policy operates to exclude the claim against AETL in the Smith proceeding from the scope of cover provided by the 2014/2015 AXIS policy.

34 As to paragraph 34 of the First Cross Claim, Swiss Re:

- a. Admits that on 30 November 2015, Andrew Dawson of Willis sent an email to Heather Ballantyne and Tony Hynes of AXIS (**the 30 November 2015 Email**);
- b. Says that attached to the 30 November 2015 Email was a letter dated 30 November 2015 from AETL (Stanelos) to Willis (Dawson) concerning the Smith proceeding (**30 November 2015 Letter**);
- c. ~~Says that that the 30 November 2015 Letter said in part:~~

~~"I refer to the Financial Institution's Professional Indemnity policy of insurance in force for the period of insurance from 30 November 2014 to 30 November 2015 insuring IOOF Holdings Ltd (IOOF) and its subsidiaries (the policy).~~

~~Australian Executor Trustees Ltd (AET) a subsidiary of IOOF and is therefore an Insured pursuant to the policy.~~

~~...~~

~~This notification is without prejudice to any notifications made by AET under earlier policies of insurance with respect to the facts and matters recorded in this notification.~~

~~2 Background~~

~~In the period from about 7 December 2004 to 18 September 2012, AET was the trustee appointed under a Debenture Trust Deed between AET and Provident Capital Limited (Provident).~~

~~The Debenture Trust Deed was governed by Chapter 2L of the Corporations Act 2001 (Cth) (Act).~~

~~Provident issued debentures to members of the public.~~

~~On 18 September 2012, Provident entered voluntary administration.~~

~~The holders of debentures issued by Provident, which were unpaid as at the date of administration, have not received a full return on their investments in the administration of Provident."~~

- ~~d. will rely on the whole of the 30 November 2015 Email and the 30 November 2015 Letter for their full terms and effect;~~
- ~~e. says that the contents of the 30 November 2015 Letter concerned subject matter that was the subject of the Notification and in the circumstances did not constitute the giving by AETL of written notice to AXIS of a "Claim" (as defined) under clause 5.1 of the 2014/2015 AXIS policy;~~
- ~~f. says that the Smith proceeding arose from facts and circumstances that were notified to AXIS in the Notification and the 25 July Email;~~
- ~~g. otherwise denies para. 34.~~

35 As to paragraph 35 of the First Cross Claim, Swiss Re:

- ~~a. repeats paragraph 26 of this Defence;~~

- b. denies that AETL is entitled to be indemnified under both the 2011/2012 AXIS policy and ~~or~~ the 2014/2015 AXIS policy with respect to the Smith proceeding as alleged or at all;
- c. says that, by reason of the matters pleaded in paragraphs 26A, 30(a) and 34(f) of this Defence the claim made in the Smith proceeding is a claim first made against AETL during the 2011/2012 AXIS policy; otherwise admits paragraph 35.
- d. says further that:
 - i. the claim made against AETL in the Smith proceeding arises directly from the facts and circumstances notified by AETL in the 25 July Email;
 - ii. the notification of facts and circumstances made by the 25 July Email was made under the 2011/2012 AXIS policy; and
 - iii. in the premises, clause 3.10 of the 2014/2015 AXIS policy operates to exclude the claim against AETL in the Smith proceeding from the scope of cover provided by the 2014/2015 AXIS policy;
- e. otherwise does not admit paragraph 35.

36 Swiss Re admits paragraph 36 of the First Cross Claim ~~and repeats paragraphs 33A and 34 of this Defence.~~

37 As to paragraph 37 of the First Cross Claim, Swiss Re:

- a. repeats paragraphs 30(a), 30(b), 30(c), 33A and 34 of this Defence; and
- b. ~~denies that the 2014/2015 AXIS policy applies with respect to the Creighton proceeding as alleged or at all; and~~
- c. otherwise denies paragraph 37.

38 Swiss Re denies paragraph 38 of the First Cross Claim. As to paragraph 38 of the First Cross Claim, Swiss Re:

- a. ~~repeats paragraphs 33A and 34 of this Defence;~~
- b. ~~denies that the declinature of indemnity that is referred to was wrongful; and~~

c. ~~otherwise denies paragraph 38.~~

2011/2012 Liberty Policy

38A Swiss Re does not admit paragraph 38A of the First Cross Claim.

38B In answer to paragraph 38B of the First Cross Claim, Swiss Re:

a. repeats its answer to paragraphs 26, 26A and 30 of the First Cross Claim;

b. ~~does not admits~~ paragraph 38B(b) of the First Cross Claim;

c. denies paragraphs 38B(c) and 38B(d) of the First Cross Claim;

d. ~~denies paragraph 38B(d) of the First Cross Claim insofar as it asserts that AXIS was and Swiss Re is liable to indemnify AET under the 2011/2012 AXIS policy; and~~

e. otherwise does not admit paragraph 38B of the First Cross Claim.

38C Swiss Re does not admit paragraph 38C of the First Cross Claim.

38D Swiss Re ~~does not admits~~ paragraph 38D of the First Cross Claim.

38E Swiss Re denies paragraph 38E of the First Cross Claim.

38F Swiss Re ~~does not admits~~ paragraph 38F of the First Cross Claim.

38G Swiss Re does not admit paragraph 38G of the First Cross Claim.

2014/2015 Liberty policy

38H Swiss Re does not admit paragraph 38H of the First Cross Claim.

38I Swiss Re does not admit paragraph 38I of the First Cross Claim.

38J Swiss Re does not admit paragraph 38J of the First Cross Claim.

38K Swiss Re ~~does not admits~~ paragraph 38K of the First Cross Claim.

38L Swiss Re denies paragraph 38L of the First Cross Claim.

38M Swiss Re does not admit paragraph 38M of the First Cross Claim.

2011/2012 Chubb policy

38N Swiss Re does not admit paragraph 38N of the First Cross Claim.

38O In answer to paragraph 38O of the First Cross Claim, Swiss Re:

- a. repeats its answer to paragraphs 26, 26A and 30 of the First Cross Claim;
- b. ~~does not admit~~ paragraph 38O(b) of the First Cross Claim;
- c. denies paragraphs 38O(c) and 38O(d) of the First Cross Claim;
- d. ~~denies paragraph 38O(d) of the First Cross Claim insofar as it asserts that AXIS was and Swiss Re is liable to indemnify AET under the 2011/2012 AXIS policy; and~~
- e. otherwise does not admit paragraph 38O of the First Cross Claim.

38P Swiss Re does not admit paragraph 38P of the First Cross Claim.

38Q Swiss Re ~~does not admit~~ paragraph 38Q of the First Cross Claim.

38R Swiss Re denies paragraph 38R of the First Cross Claim.

38S Swiss Re ~~does not admit~~ paragraph 38S of the First Cross Claim.

38T Swiss Re does not admit paragraph ~~38T~~ of the First Cross Claim.

2014/2015 Chubb/AXIS policy

38U Swiss Re denies paragraph 38U of the First Cross Claim.

38V As to paragraph 38V of the First Cross Claim, Swiss Re does not admit paragraph 38V of the First Cross Claim.

- a. repeats paragraphs 34 and 35 of this Defence; and
- b. otherwise denies paragraph 38V.

38W As to paragraph 38W of the First Cross Claim, Swiss Re denies paragraph 38W of the First Cross Claim.;

- a. repeats paragraph 35 of this Defence; and
- b. otherwise denies paragraph 38W.

38X Swiss Re admits paragraph 38X of the First Cross Claim.

38Y Swiss Re denies paragraph 38Y of the First Cross Claim.

38Z Swiss Re denies paragraph 38Z of the First Cross Claim.

Alternative basis of claim under Section 54

39 ~~Swiss Re denies paragraph 39 of the First Cross Claim. As to paragraph 39 of the First Cross Claim, Swiss Re:~~

~~a. repeats paras. 23A, 25A and 30A of this Defence; and~~

~~b. Otherwise denies paragraph 39.~~

~~c. Says that:~~

~~i. On its proper construction, exclusion clause 3.16 of the 2011/2012 AXIS policy does apply with respect to the Smith proceeding; and~~

~~ii. Swiss Re is not liable to indemnify AETL under the 2011/2012 AXIS policy with respect to the Smith proceeding.~~

40 As to paragraph 40 of the First Cross Claim, Swiss Re:

a. admits that the effect of exclusion 3.16 of the 2011/2012 AXIS policy is that Swiss Re will not indemnify AETL under the 2011/2012 AXIS policy for any "Claim" (as defined) directly or indirectly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures or promissory notes;

b. repeats paragraph 39(e) of the Defence;

c. otherwise does not admit paragraph 40.

41 ~~As to paragraph 41 of the First Cross Claim, Swiss Re does not admit paragraph 41 of the First Cross Claim but says that:~~

~~a. it agrees admits that the debentures were not listed or rated; and~~

~~b. otherwise does not admit paragraph 41. Provident did not omit to obtain a listed or rating of the debentures (as the term "omit" would be understood).~~

42 Swiss Re denies paragraph 42 of the First Cross Claim ~~and says that there was no such omission.~~

43 Swiss Re denies paragraph 43 of the First Cross Claim and says that:

- a. there was no such omission; and
- b. if (which is denied) there was such an omission as pleaded in paragraph 41, then such omission could reasonably be regarded as being capable of causing or contributing to the loss.

44 Swiss Re denies paragraph 44 of the First Cross Claim.

44A In answer to paragraph 44A of the First Cross Claim Swiss Re:

- a. repeats its answers to paragraphs 39 to 44 of the First Cross Claim;
- b. otherwise does not admit paragraph 44A of the First Cross Claim.

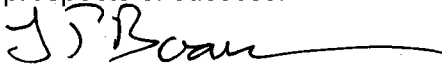
Claims against Willis

45 Swiss Re does not plead to paragraphs 45 to 56 (inclusive) of the First Cross Claim as no allegations are made against it in those paragraphs.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

SOLICITOR ON THE RECORD

Date of signature

28 May June 2017 2018

AFFIDAVIT VERIFYING

Name Georgina Haddad

Address Level 36, Tower Two International Towers, 200 Barangaroo Avenue, Sydney NSW 2000

Occupation Claims Expert

Date 28 May 2018

I say on oath:

- 1 I am employed as a Claims Expert of the First Cross-Defendant and I am authorised to make this affidavit on its behalf.
- 2 As to any allegations of fact in this Amended Defence to Second Further Amended Statement of First Cross Claim (**Defence**), I believe that the allegations are true.
- 3 As to any allegations of fact that the Defence denies, I believe that the allegations are untrue.
- 4 As to any allegations of fact that the Defence does not admit, after reasonable inquiry I do not know whether or not the allegations are true.

SWORN AT SYDNEY

Signature of deponent *GH*

Name of witness RICHARD JOHN SHANKLAND

Address of witness 26/85 CATTLE REACH ST, SYDNEY 2000

Capacity of witness SOLICITOR

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

No

Identification document relied on (may be original or certified copy)

Signature of witness

Richard Shankland

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.