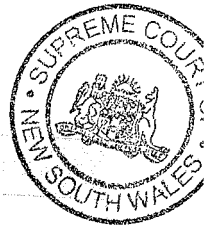


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SECOND CROSS-CLAIM STATEMENT OF CROSS-CLAIM

FILED
21 DEC 2016

D.E.



COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015 / 171592 -011

TITLE OF PROCEEDINGS

First Plaintiff	John SMITH
Second Plaintiff	Rosemary SMITH
Defendant	Australian Executor Trustees Limited

TITLE OF THIS CROSS-CLAIM

Cross-claimant	Australian Executor Trustees Limited
Cross-defendants	Marcus Jonathon Anderson Laithwaite and the others listed in Schedule 1

FILING DETAILS

Filed for	Australia Executor Trustees Limited, Cross-Claimant
Filed in relation to	Cross-claim
Legal representative	Brad Woodhouse, Corrs Chambers Westgarth
Legal representative reference	9116109
Contact name and telephone	Brad Woodhouse, (02) 9210 6859
Contact email	brad.woodhouse@corrs.com.au

RELIEF CLAIMED

- 1 Damages.
- 2 Damages pursuant to:
 - (a) s. 82 of the former *Trade Practices Act* 1974;
 - (b) s. 1041I of the *Corporations Act* 2001;
 - (c) s. 12GM of the *Australian Securities and Investments Commission Act* 2001;
 - (d) former s. 68 of the *Fair Trading Act* 1987 (NSW); or
 - (e) the corresponding provisions of the fair trading legislation of the other States and Territories.
- 3 Contribution pursuant to s. 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act* 1946 (NSW) or s. 23B of the *Wrongs Act* 1958 (Vic.) or the corresponding provisions of the contribution legislation of the other States and Territories, or in equity.
- 4 Interest.
- 5 Costs.

PLEADINGS AND PARTICULARS

The Cross-claimant is the Defendant to the Further Amended Statement of Claim filed by the Plaintiffs on 3 June 2016 (**Statement of Claim**), which is served with this Statement of Cross-claim. If, which is denied, the Cross-claimant is liable to the Plaintiffs or Group Members in the manner pleaded in the Statement of Claim, then, solely for the purpose of this Cross-claim, the Cross-claimant pleads as follows:

Parties

- 1 The cross-claimant, Australian Executor Trustees Limited (**AET**), is and was at all material times:
 - (a) a corporation duly incorporated in accordance with the laws of Australia; and
 - (b) entitled to sue and be sued in its corporate name and style.

- 2 From 24 November 2005 (alternatively, 7 December 2004) onwards, AET was the trustee for holders of debentures issued by Provident Capital Limited (**Provident**).
- 3 At all material times, PricewaterhouseCoopers (**PwC**) was a partnership who carried on business as a professional services firm that provided, amongst other things, audit services.
- 4 PwC were the auditors of Provident in the period from 21 October 1998 to 3 January 2008.
- 5 The cross-defendants were partners of PwC in the period from 21 October 1998 to 3 January 2008.
- 6 PwC audited the financial report of Provident for each of the financial years ended 30 June 2004 (**FY04**), 30 June 2005 (**FY05**), 30 June 2006 (**FY06**) and 30 June 2007 (**FY07**).
- 7 PwC reviewed the financial report of Provident for each of the half-years ended 31 December 2004 (**1H05**), 31 December 2005 (**1H06**) and 31 December 2006 (**1H07**).
- 8 Throughout the period from 29 September 2004 to 28 September 2007:
- (a) Provident had on issue debentures that were ED securities pursuant to s. 111AI of the Corporations Act.
 - (b) Provident was a disclosing entity pursuant to s. 111AC of the Corporations Act.
 - (c) Provident was required by s. 292 of the Corporations Act to prepare a financial report for each financial year.
 - (d) Provident was required by s. 301 of the Corporations Act to have its financial report for each financial year audited and to obtain an auditor's report.
 - (e) PwC, as the auditor who audited Provident's financial report for each of FY04, FY05, FY06 and FY07, was required by s. 308(1) of the Corporations Act to report to Provident's members on whether PwC was of the opinion that Provident's financial report was in accordance with the Corporations Act, including whether it complied with the accounting

standards and whether it gave a true and fair view of Provident's financial position and performance.

- (f) Pursuant to s. 313(1) of the Corporations Act, PwC was required to provide a copy of its audit report for each of FY04, FY05, FY06 and FY07 to the trustee for the holders of debentures issued by Provident.
- (g) Pursuant to s. 318(1) of the Corporations Act, Provident was required to provide a copy of PwC's audit report for each of FY04, FY05, FY06 and FY07 to the trustee for the holders of debentures issued by Provident.
- (h) Pursuant to s. 318(2) of the Corporations Act, the holder of a debenture issued by Provident was entitled to require Provident to provide the holder with a copy of PwC's audit report for the last financial year.
- (i) Provident was required by s. 302(a) of the Corporations Act to prepare a financial report for each half-year.
- (j) Provident was required by s. 302(b) of the Corporations Act to have its financial report for each half-year either audited or reviewed and (in either case) to obtain an auditor's report.
- (k) PwC, as the auditor who reviewed Provident's financial report for each of 1H05, 1H06 and 1H07, was required by s. 309(4) of the Corporations Act to report to Provident's members on whether PwC became aware of any matter in the course of the review that made PwC believe that the financial report did not comply with the accounting standards or did not give a true and fair view of Provident's financial position and performance.
- (l) Pursuant to s. 313(1) of the Corporations Act, PwC was required to provide a copy of its review report for each of 1H05, 1H06 and 1H07 to the trustee for the holders of debentures issued by Provident.
- (m) Pursuant to s. 318(4) of the Corporations Act, Provident was required to provide a copy of PwC's review report for each of 1H05, 1H06 and 1H07 to the trustee for the holders of debentures issued by Provident.
- (n) Pursuant to s. 313(2) of the Corporations Act, throughout the period from 21 October 1998 to 3 January 2008, PwC was required to give Provident a written report about any matter that:

- (A) PwC became aware of in conducting an audit or review of Provident's financial report for a financial year or half-year;
 - (B) in PwC's opinion was or was likely to be prejudicial to the interests of holders of debentures issued by Provident; and
 - (C) in PwC's opinion was relevant to the exercise of the powers of the trustee for holders of debentures issued by Provident, or the performance of the trustee's duties, under the Corporations Act or under the debenture trust deed.
- (o) Pursuant to s. 313(2) of the Corporations Act, PwC was required to give the trustee for holders of debentures issued by Provident a copy of any report referred to in sub-paragraph (n) above.

FY04 audit

Damages in negligence at common law

- 9 On 29 September 2004, Provident issued its financial report for FY04.
- 10 Provident's financial report for FY04 stated:
- (a) that Provident's assets, as at 30 June 2004, included loans and advances with a recoverable value of \$187,576,802;
 - (b) that, as at 30 June 2004, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**Past Due Loans**) was \$45,319,313;
 - (c) no specific provision had been made in respect of any of the Past Due Loans as at 30 June 2004 because the directors considered that the recovery of all amounts of principal and interest at the contractual rate was regarded as reasonably certain given the security cover;
 - (d) that Provident's total assets as at 30 June 2004 were \$202,703,562;
 - (e) that, as at 30 June 2004, Provident had on issue debentures with a principal of \$188,435,954;
 - (f) that Provident's net assets as at 30 June 2004 were \$6,215,848.
- 11 After auditing Provident's financial report for FY04, PwC issued an audit report in which PwC expressed the opinion that Provident's financial report for FY04:
- (a) gave a true and fair view of the financial position of Provident as at 30 June 2004 and of its performance for the year ended on that date; and

- (b) was presented in accordance with, amongst other things, the *Corporations Act 2001* and Australian Accounting Standards.
- 12 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY04 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.
- 13 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report, PwC knew or ought reasonably to have known:
- (a) that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;
 - (b) that there was a trustee for the holders of those debentures which trustee owed the duties set out in s. 283DA of the *Corporations Act*;
 - (c) that the trustee for debenture holders could be replaced with a new trustee.
- 14 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report, it was reasonably foreseeable by PwC:
- (a) that the trustee for debenture holders, or a replacement trustee for debenture holders, would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable skill and care;
 - (b) that the trustee for debenture holders, or a replacement trustee for debenture holders, would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY04;
 - (c) that the trustee for debenture holders, or a replacement trustee for debenture holders, would rely upon PwC's audit report in discharging the trustee's duties under section 283DA of the *Corporations Act*;
 - (d) that a failure by PwC properly to conduct its audit, or to prepare its audit report, might result in the trustee for debenture holders, or a replacement trustee for debenture holders, being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the *Corporations Act*;

- (e) that a failure by PwC properly to ensure that Provident's financial report for FY04 presented a true and fair view of Provident's financial position and performance, might result in the trustee for debenture holders, or a replacement trustee for debenture holders, being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
 - (f) that the failures pleaded above might cause the trustee for debenture holders, or a replacement trustee for debenture holders, to fail to discharge its duties under section 283DA, and result in its being liable to debenture holders under section 283F of the Corporations Act; and
 - (g) that, were that to occur, the trustee for debenture holders, or the replacement trustee for debenture holders, would suffer harm in the form of economic loss.
- 15 The risk of harm pleaded in paragraph 14 was not insignificant.
- 16 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report:
- (a) The trustee for debenture holders, or a replacement trustee for debenture holders, had no practical ability to protect itself from the risk of harm pleaded in paragraph 14.
 - (b) The trustee for debenture holders, or a replacement trustee for debenture holders, could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
 - (c) The trustee for debenture holders, and any replacement trustee for debenture holders, were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 14.
 - (d) The trustee for debenture holders, and any replacement trustee for debenture holders, were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

- 17 By reason of the matters pleaded in paragraphs 8 and 12 to 16 above, in auditing Provident's financial report for FY04 and in issuing PwC's audit report, PwC owed a duty to AET (as a future trustee for debenture holders) to take reasonable care:
- (a) in the conduct of its audit; and
 - (b) in the preparation of its audit report,
- to avoid the risk of harm pleaded in paragraph 14 above.
- 18 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY04 and in the preparation of PwC's audit report.

Particulars

The best particulars that AET can currently provide are as follows:

- (1) A competent auditor exercising reasonable care would have reviewed Provident's files for a sample of loans (sufficiently large to provide the auditor with comfort that the results were representative) in order to check:
 - (A) that a complete file was kept in respect of the loan;
 - (B) that the loan was being serviced in accordance with its terms or whether it was in arrears;
 - (C) that the amount advanced to the borrower did not exceed the agreed loan amount;
 - (D) that the loan satisfied the LVR Criteria Requirement pleaded at paragraph 8(d)(i) of the Statement of Claim;
 - (E) that Provident held a current valuation for the property securing the loan;
 - (F) whether any matter on the file indicated that there was reasonable doubt as to whether Provident would recover all principal and interest in accordance with the terms of the loan;
 - (G) whether any provision or impairment was warranted in respect of the loan;

- (H) that any refinance of the loan was not disguising the fact that the loan was, in substance, a Past Due Loan.
- (2) A competent auditor exercising reasonable care would have reviewed Provident's files for a sample of Past Due Loans (sufficiently large to provide the auditor with comfort that the results were representative) in order to check the matters in (1)(A) and (1)(C)-(H) above.
- (3) A competent auditor exercising reasonable care would have checked that Provident had a written policy for assessing whether it was necessary to make a provision or impairment in respect of a loan written by Provident, and would have checked that that policy provided objective criteria by which such provision or impairment was to be assessed, such that provisions and impairments were not apt to be understated by virtue of management bias.
- (4) A competent auditor exercising reasonable care would have reviewed Provident's loan arrears reports in order to ascertain the identity, frequency and amounts of loan arrears.
- (5) According to the report of Michael Potter dated 30 September 2016 and served by the Plaintiffs in this proceeding (**Potter Report**):
- (A) As at 30 June 2004, Provident only held assets sufficient to provide a return to debenture holders of between 77 cents and 86 cents in the dollar ([2.4]).
- (B) As at 31 December 2004, Provident only held assets sufficient to provide a return to debenture holders of between 79 cents and 87 cents in the dollar ([2.4]).
- (C) By 31 December 2004, an investigating accountant appointed to Provident would have concluded that debenture holders would not receive payment in full where recoveries were made from the realisation of the secured properties ([4.27]).
- (D) An investigating accountant appointed to Provident at any time between December 2004 and December 2007 would have concluded that loans that would otherwise have been

reported as in arrears were not being reported as in arrears because Provident had agreed to refinance the loans ([2.2.1]).

- (E) An investigating accountant appointed to Provident at any time between December 2004 and December 2007 would have concluded that the lending practices of Provident were such that there were many loans where the funds advanced, together with accumulated interest, exceeded the initial LVR limits ([2.2.2]).
- (F) An investigating accountant appointed to Provident at any time between December 2004 and December 2007 would have concluded that Provident's loan portfolio was high risk ([2.2.2]).
- (G) An investigating accountant appointed to Provident at any time between December 2004 and December 2007 would have concluded that some of Provident's loan practices were questionable ([2.2.2]).
- (H) An investigating accountant appointed to Provident at any time between December 2004 and December 2007 would have concluded that: there were instances where the same borrowers frequently appeared, disappeared and then reappeared in Provident's loan arrears reports issued in subsequent months; the removal of a borrower from a loan arrears report frequently coincided with a refinance of the facility, the commercial substance of which was unclear; prima facie, the refinance of loans, on occasion, had the effect of the borrower being removed from the loan arrears report and, in substance, understating the true percentage of loans that were Past Due and at risk of less than full recovery ([2.2.3]).
- (I) An investigating accountant appointed to Provident at any time between December 2004 and December 2007 would have concluded that the trustee for debenture holders should consider and, if deemed necessary, seek legal

advice as to what further actions should be implemented as a matter of urgency, including: preventing the issuance of further debentures; disclosing the likely shortfall to potential investors; and, appointing a receiver under the charge contained in the debenture trust deed ([2.2.4]).

- (6) If the conclusions in the Potter Report are accepted, then, having regard to:
- (A) what was stated in Provident's financial report for FY04, as pleaded at paragraph 10 above;
 - (B) the matters in (5)(A)-(I) above;
 - (C) the magnitude of the shortfalls in (5)(A) and (5)(B) above;
 - (D) in the case of the matters in (5)(B) to (5)(I) above – the proximity in time between September 2004 (when the FY04 audit report was issued) and December 2004;
 - (E) in the case of the matters in (5)(C) to (5)(I) above – the similarity between (1) to (4) above and the approach of the putative investigating accountant described in the Potter Report; and
 - (F) the opinion actually expressed by PwC in its audit report in respect of Provident's financial report for FY04, as pleaded at paragraph 11 above,

it may be inferred that PwC did not take the steps identified at (1) to (4) above.

Further particulars will be provided following disclosure of documents and issuance of subpoenas.

19 PwC's breach of duty pleaded in the previous paragraph has caused AET loss.

Particulars

If, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then, but for PwC's breach of duty, PwC would have:

- (1) not provided an audit report expressing the opinion that Provident's FY04 financial report gave a true and fair view of the financial

position of Provident as at 30 June 2004 and of its performance for the year ended on that date;

- (2) informed Provident, Provident's members and the then current trustee for debenture holders (IOOF Australia Trustees (NSW) Ltd) that:
- (A) Provident only held assets sufficient to provide a return to debenture holders of between 77 cents and 86 cents in the dollar;
 - (B) debenture holders would not receive payment in full where recoveries were made from the realisation of the secured properties;
 - (C) loans that would otherwise have been reported as in arrears were not being reported as in arrears because Provident had agreed to refinance the loans;
 - (D) the lending practices of Provident were such that there were many loans where the funds advanced, together with accumulated interest, exceeded the initial LVR limits;
 - (E) Provident's loan portfolio was high risk;
 - (F) some of Provident's loan practices were questionable;
 - (G) there were instances where the same borrowers frequently appeared, disappeared and then reappeared in Provident's loan arrears reports issued in subsequent months; the removal of a borrower from a loan arrears report frequently coincided with a refinance of the facility, the commercial substance of which was unclear; prima facie, the refinance of loans, on occasion, had the effect of the borrower being removed from the loan arrears report and, in substance, understating the true percentage of loans that were Past Due and at risk of less than full recovery;
 - (H) the trustee for debenture holders should consider and, if deemed necessary, seek legal advice as to what further actions should be implemented as a matter of urgency, including: preventing the issuance of further debentures;

disclosing the likely shortfall to potential investors; and, appointing a receiver under the charge contained in the debenture trust deed.

- (3) IOOF Australia Trustees (NSW) Ltd would have enforced the charge under the debenture trust deed by appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the debenture trust deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public. In those circumstances, AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, would not be liable to the Plaintiffs or group members (or would be liable in a lesser amount).
- (4) IOOF Australia Trustees (NSW) Ltd would have informed AET of the matters in (2) above upon AET's becoming the trustee for debenture holders. In those circumstances, AET would have enforced the charge under the debenture trust deed by appointing a receiver to the assets of Provident and/or otherwise exercised its powers under Chapter 2L of the Corporations Act or the debenture trust deed so as to require Provident to repay debenture holders and prevent it from borrowing further monies from the public. AET would not have consented to being named in any further debenture prospectus issued by Provident and, as a result, would not be liable to the Plaintiffs or group members (or would be liable in a lesser amount).

Statutory damages for misleading and deceptive conduct

- 20 PwC's conduct in issuing its audit report pleaded in paragraph 11 above was:
- (a) conduct in trade or commerce;
 - (b) conduct in relation to financial products, namely, the debentures issued by Provident.
- 21 PwC issued its audit report pleaded in paragraph 11 above by use of postal or telegraphic services.

22 By issuing its audit report pleaded in paragraph 11 above, PwC impliedly represented that:

- (a) it had conducted its audit in respect of Provident's financial report for FY04 with reasonable care;
- (b) PwC had reasonable grounds for its opinion that Provident's financial report for FY04 gave a true and fair view of the financial position of Provident as at 30 June 2004 and of its performance for the year ended on that date.

23 Contrary to the representation pleaded in paragraph 22(a), PwC had not conducted its audit in respect of Provident's financial report for FY04 with reasonable care.

Particulars

AET repeats the particulars to paragraph 18 above.

24 Contrary to the representation pleaded in paragraph 22(b), PwC did not have reasonable grounds for its opinion that Provident's financial report for FY04 gave a true and fair view of the financial position of Provident as at 30 June 2004 and of its performance for the year ended on that date.

Particulars

AET repeats the particulars to paragraph 18 above.

25 By virtue of the matters pleaded in paragraphs 20 to 24 above, by issuing its audit report pleaded in paragraph 11 above, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) former s. 52 of the former *Trade Practices Act 1974*;
- (b) s. 1041H of the *Corporations Act*;
- (c) s. 12DA of the *Australian Securities and Investments Commission Act 2001*;
- (d) former s. 42 of the *Fair Trading Act 1987 (NSW)*;
- (e) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.

- 26 PwC's conduct in issuing its audit report pleaded in paragraph 11 above has caused AET loss.

Particulars

If PwC had not issued its audit report, or had not made the representations in paragraph 22(a) and paragraph 22(b) above, then it would have been necessary for Provident to obtain another audit report. That other audit report would have identified the matters in (2) of the particulars to paragraph 19 above. AET otherwise repeats the remainder of the particulars to paragraph 19 above.

- 27 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
 - (b) s. 1041I of the Corporations Act;
 - (c) s. 12GM of the ASIC Act;
 - (d) former s. 68 of the *Fair Trading Act 1987* (NSW);
 - (e) the corresponding provisions of the fair trading legislation of the other States and Territories.
- 28 In its audit report for Provident's FY04 financial report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards.
- 29 The representation pleaded in paragraph 28 was made in:
- (a) in trade or commerce; and
 - (b) in connexion with the supply of PwC's audit services.
- 30 At the time PwC issued its audit report for Provident's FY04 financial report, the Australian Auditing Standards required:
- (a) that an audit be conducted with professional competence due care; and
 - (b) that an audit be conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

AUS 202.04(d) and AUS 202.08.

- 31 PwC's audit of Provident's FY04 financial report:
- (a) had not been conducted with professional competence due care; and
 - (b) had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

AET repeats the particulars to paragraph 18 above.

- 32 By virtue of the matters pleaded in the previous paragraph:
- (a) the representation pleaded in paragraph 28 was false.
 - (b) by issuing its audit report for Provident's FY04 financial report, PwC contravened:
 - (A) former s. 53(aa) of the former *Trade Practices Act 1974*;
 - (B) former s. 44(b) of the *Fair Trading Act 1987 (NSW)*;
 - (C) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.

- 33 PwC's conduct in issuing its audit report for Provident's FY04 financial report has caused AET loss.

Particulars

AET repeats the particulars to paragraph 26 above.

- 34 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former *Trade Practices Act*;
 - (b) former s. 68 of the *Fair Trading Act 1987 (NSW)*;
 - (c) the corresponding provisions of the fair trading legislation of the other States and Territories.

Contribution

35 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report, it was reasonably foreseeable by PwC:

- (a) that holders of debentures issued by Provident would rely on the trustee for debenture holders performing its duties under the trust deed and under s. 283DA of the Corporations Act;
- (b) that the trustee for debenture holders would rely on PwC to conduct its audit and prepare its audit report with reasonable skill and care in the manner pleaded at paragraph 14 above;
- (c) that, if PwC failed to conduct its audit and prepare its audit report with reasonable skill and care, then the trustee for debenture holders might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders;
- (d) that, were that to occur, debenture holders might suffer harm in the form of economic loss.

36 The risk of harm pleaded in paragraph 35 was not insignificant.

37 At the time PwC audited Provident's financial report for FY04 and issued PwC's audit report:

- (a) Debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 35.
- (b) Debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
- (c) Debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 35.
- (d) Debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

38 By reason of the matters pleaded in paragraphs 8, 12, 13, 14 and 35 to 37 above, in auditing Provident's financial report for FY04 and in issuing PwC's audit report, PwC owed a duty to holders and future holders of debentures issued by Provident to take reasonable care:

- (a) in the conduct of its audit; and

(b) in the preparation of its audit report,
to avoid the risk of harm pleaded in paragraph 35 above.

39 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY04 and in the preparation of PwC's audit report.

Particulars

AET repeats the particulars to paragraph 18 above.

40 The breach of duty pleaded in the previous paragraph has caused the Plaintiffs and group members loss, being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.

41 PwC's conduct in issuing its audit report pleaded in paragraph 11 above, in contravention of the statutory prohibitions on misleading conduct pleaded in paragraphs 25 and 32 above, has caused the Plaintiffs and group members loss, being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.

Particulars

If PwC had not issued its audit report, or had not made the representations in paragraph 22(a), paragraph 22(b) or 28 above, then it would have been necessary for Provident to obtain another audit report. That other audit report would have identified the matters in (2) of the particulars to paragraph 19 above. AET otherwise repeats the remainder of the particulars to paragraph 19 above. If AET had taken the actions identified in the particulars to paragraph 19 above, then the Plaintiffs and group members would not have suffered the loss claimed by them in this proceeding.

42 The Plaintiffs and group members are entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act;
- (b) s. 1041I of the Corporations Act;
- (c) s. 12GM of the ASIC Act;
- (d) former s. 68 of the *Fair Trading Act 1987* (NSW);

- (e) the corresponding provisions of the fair trading legislation of the other States and Territories.
- 43 If, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then that liability could have been established in tort.
- 44 By reason of the matters pleaded in paragraphs 35 to 42 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:
- (a) s. 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
- (b) s. 23B of the *Wrongs Act 1958* (Vic.);
- (c) such other corresponding provision of the contribution legislation of the other States and Territories as may be applicable to each group member's claim against AET.
- 45 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.
- 46 By reason of the matters pleaded in paragraphs 35 to 43 and 45 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

FY05 audit

Damages in negligence at common law

- 47 On 28 September 2005, Provident issued its financial report for FY05.
- 48 Provident's financial report for FY05 stated:
- (a) that Provident's assets, as at 30 June 2005, included loans and advances with a recoverable value of \$212,597,297;
- (b) that, as at 30 June 2005, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**Past Due Loans**) was \$54,246,551;
- (c) that no specific provision had been made for the Past Due Loans as at 30 June 2005 because the directors considered that the recovery of all

amounts of principal and interest, including interest at the contractual rate, was regarded as reasonably certain and the security held was adequate to cover the Past Due Loans;

- (d) that Provident's total assets as at 30 June 2005 were \$244,685,998;
- (e) that, as at 30 June 2005, Provident had on issue debentures with a principal of \$221,469,015;
- (f) that Provident's net assets as at 30 June 2005 were \$9,049,596.

49 After auditing Provident's financial report for FY05, PwC issued an audit report in which PwC expressed the opinion that Provident's financial report for FY05:

- (a) gave a true and fair view of the financial position of Provident as at 30 June 2005 and of its performance for the year ended on that date; and
- (b) was presented in accordance with, amongst other things, the *Corporations Act 2001* and Australian Accounting Standards.

50 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY05 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.

51 At the time PwC audited Provident's financial report for FY05 and issued PwC's audit report, PwC knew or ought reasonably to have known:

- (a) that Provident had on issue debentures the subject of Chapter 2L of the *Corporations Act*;
- (b) that AET was the trustee for the holders of those debentures and owed the duties set out in s. 283DA of the *Corporations Act*.

52 At the time PwC audited Provident's financial report for FY05 and issued PwC's audit report, it was reasonably foreseeable by PwC:

- (a) that AET would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable skill and care;
- (b) that AET would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY05;
- (c) that AET would rely upon PwC's audit report in discharging its duties under section 283DA of the *Corporations Act*;

- (d) that a failure by PwC properly to conduct its audit, or to prepare its audit report, might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
- (e) that a failure by PwC properly to ensure that Provident's financial report for FY05 presented a true and fair view of Provident's financial position and performance, might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
- (f) that the failures pleaded above might cause AET to fail to discharge its duties under section 283DA and result in its being liable to debenture holders under section 283F of the Corporations Act; and
- (g) that, were that to occur, AET would suffer harm in the form of economic loss.

53 The risk of harm pleaded in paragraph 52 was not insignificant.

54 At the time PwC audited Provident's financial report for FY05 and issued PwC's audit report:

- (a) AET had no practical ability to protect itself from the risk of harm pleaded in paragraph 52.
- (b) AET could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
- (c) AET was dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 52.
- (d) AET was vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

55 By reason of the matters pleaded in paragraphs 8 and 50 to 54 above, in auditing Provident's financial report for FY05 and in issuing PwC's audit report, PwC owed a duty to AET to take reasonable care:

- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,

to avoid the risk of harm pleaded in paragraph 52 above.

- 56 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY05 and in the preparation of PwC's audit report.

Particulars

The best particulars that AET can currently provide are as follows:

- (1) A competent auditor exercising reasonable care would have taken the steps identified in (1)-(4) of the particulars to paragraph 18 above.
- (2) According to the Potter Report:
 - (A) As at 30 June 2005, Provident only held assets sufficient to provide a return to debenture holders of between 75 cents and 84 cents in the dollar ([2.4]).
 - (B) As at 30 June 2005, an investigating accountant appointed to Provident would have concluded that Provident's net tangible assets were no more than \$5,255 (before taking into account costs that would have been associated with realising properties pledged as security for loans advanced by Provident) ([4.26]-[4.27]).
 - (C) As at 30 June 2005, an investigating accountant appointed to Provident would have concluded that debenture holders would not receive payment in full where recoveries were made from the realisation of the secured properties ([4.27]).
 - (D) As at 30 June 2005, an investigating accountant appointed to Provident would have drawn the further conclusions identified in (5)(D)-(5)(I) of the particulars to paragraph 18 above.
- (3) If the conclusions in the Potter Report are accepted, then, having regard to:
 - (A) what was stated in Provident's financial report for FY05, as pleaded at paragraph 48 above;
 - (B) the matters in (2) above;

- (C) the magnitude of the shortfall in (2)(A) above;
- (D) the similarity between the steps referred to in (1) above and the approach of the putative investigating accountant described in the Potter Report; and
- (F) the opinion actually expressed by PwC in its audit report in respect of Provident's financial report for FY05, as pleaded at paragraph 49 above,

it may be inferred that PwC did not take the steps referred at (1) above when auditing Provident's financial report for FY05.

Further particulars will be provided following disclosure of documents and issuance of subpoenas.

57 PwC's breach of duty pleaded in the previous paragraph has caused AET loss.

Particulars

AET repeats the particulars to paragraph 19 above, *mutatis mutandis*.

Statutory damages for misleading and deceptive conduct

- 58 PwC's conduct in issuing its audit report pleaded in paragraph 49 above was:
- (a) conduct in trade or commerce;
 - (b) conduct in relation to financial products, namely, the debentures issued by Provident.
- 59 PwC issued its audit report pleaded in paragraph 49 above by use of postal or telegraphic services.
- 60 By issuing its audit report pleaded in paragraph 49 above, PwC impliedly represented that:
- (a) it had conducted its audit in respect of Provident's financial report for FY05 with reasonable care;
 - (b) PwC had reasonable grounds for its opinion that Provident's financial report for FY05 gave a true and fair view of the financial position of Provident as at 30 June 2005 and of its performance for the year ended on that date.

61 Contrary to the representation pleaded in paragraph 60(a), PwC had not conducted its audit in respect of Provident's financial report for FY05 with reasonable care.

Particulars

AET repeats the particulars to paragraph 56 above.

62 Contrary to the representation pleaded in paragraph 60(b), PwC did not have reasonable grounds for PwC's opinion that Provident's financial report for FY05 gave a true and fair view of the financial position of Provident as at 30 June 2005 and of its performance for the year ended on that date.

Particulars

AET repeats the particulars to paragraph 56 above.

63 By virtue of the matters pleaded in paragraphs 58 to 62 above, by issuing its audit report pleaded in paragraph 49 above, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) former s. 52 of the former *Trade Practices Act 1974*;
- (b) s. 1041H of the Corporations Act;
- (c) s. 12DA of the *Australian Securities and Investments Commission Act 2001*;
- (d) former s. 42 of the *Fair Trading Act 1987 (NSW)*;
- (e) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.

64 PwC's conduct in issuing its audit report pleaded in paragraph 49 above has caused AET loss.

Particulars

AET repeats the particulars to paragraph 26 above, *mutatis mutandis*.

65 AET is entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act;
- (b) s. 1041I of the Corporations Act;
- (c) s. 12GM of the ASIC Act;

- (d) former s. 68 of the *Fair Trading Act 1987* (NSW);
- (e) the corresponding provisions of the fair trading legislation of the other States and Territories.

66 In its audit report for Provident's FY05 financial report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards.

67 The representation pleaded in paragraph 66 was made in:

- (a) in trade or commerce; and
- (b) in connexion with the supply of PwC's audit services.

68 At the time PwC issued its audit report for Provident's FY05 financial report, the Australian Auditing Standards required:

- (a) that an audit be conducted with professional competence due care; and
- (b) that an audit be conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

AUS 202.04(d) and AUS 202.08.

69 PwC's audit of Provident's FY05 financial report:

- (a) had not been conducted with professional competence due care; and
- (b) had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

AET repeats the particulars to paragraph 56 above.

70 By virtue of the matters pleaded in the previous paragraph:

- (a) the representation pleaded in paragraph 66 was false.
- (b) by issuing its audit report for Provident's FY05 financial report, PwC contravened:
 - (A) former s. 53(aa) of the former *Trade Practices Act 1974*;
 - (B) former s. 44(b) of the *Fair Trading Act 1987* (NSW);

(C) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.

71 PwC's conduct in issuing its audit report for Provident's FY05 financial report has caused AET loss.

Particulars

AET repeats the particulars to paragraph 26 above, *mutatis mutandis*.

72 AET is entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act;
- (b) former s. 68 of the *Fair Trading Act 1987* (NSW);
- (c) the corresponding provisions of the fair trading legislation of the other States and Territories.

Contribution

73 At the time PwC audited Provident's financial report for FY05 and issued PwC's audit report, it was reasonably foreseeable by PwC:

- (a) that holders of debentures issued by Provident would rely on AET performing its duties under the trust deed and under s. 283DA of the Corporations Act;
- (b) that AET would rely on PwC to conduct its audit and prepare its audit report with reasonable skill and care in the manner pleaded at paragraph 52 above;
- (c) that, if PwC failed to conduct its audit and prepare its audit report with reasonable skill and care, then the trustee for debenture holders might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders;
- (d) that, were that to occur, debenture holders might suffer harm in the form of economic loss.

74 The risk of harm pleaded in paragraph 73 was not insignificant.

75 At the time PwC audited Provident's financial report for FY05 and issued PwC's audit report:

- (a) Debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 73.
- (b) Debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
- (c) Debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 73.
- (d) Debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in the performing its audit and preparing its audit report.

76 By reason of the matters pleaded in paragraphs 8, 50, 51 and 73 to 75 above, in auditing Provident's financial report for FY05 and in issuing PwC's audit report, PwC owed a duty to holders and future holders of debentures issued by Provident to take reasonable care:

- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,

to avoid the risk of harm pleaded in paragraph 73 above.

77 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY05 and in the preparation of PwC's audit report.

Particulars

AET repeats the particulars to paragraph 56 above.

78 The breach of duty pleaded in the previous paragraph has caused the Plaintiffs and group members loss, being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.

79 PwC's conduct in issuing its audit report pleaded in paragraph 49 above, in contravention of the statutory prohibitions on misleading conduct pleaded in paragraphs 63 and 70 above, has caused the Plaintiffs and group members loss,

being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.

Particulars

AET repeats the particulars to paragraph 41 above, *mutatis mutandis*.

80 The Plaintiffs and group members are entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act;
- (b) s. 1041I of the Corporations Act;
- (c) s. 12GM of the ASIC Act;
- (d) former s. 68 of the *Fair Trading Act 1987* (NSW);
- (e) former s. 159 of the former *Fair Trading Act 1999* (Vic.);
- (f) the corresponding provisions of the fair trading legislation of the other States and Territories.

81 If, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then that liability could have been established in tort.

82 By reason of the matters pleaded in paragraphs 73 to 80 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:

- (a) s. 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
- (b) s. 23B of the *Wrongs Act 1958* (Vic.);
- (c) such other corresponding provision of the contribution legislation of the other States and Territories as may be applicable to each group member's claim against AET.

83 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.

84 By reason of the matters pleaded in paragraphs 73 to 81 and 83 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in

the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

FY06 audit

Damages in negligence at common law

85 On 18 October 2006, Provident issued its financial report for FY06.

86 Provident's financial report for FY06 stated:

- (a) that Provident's assets, as at 30 June 2006, included loans and advances with a recoverable value of \$186,368,972;
- (b) that, as at 30 June 2006, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**Past Due Loans**) was \$42,504,014;
- (c) that, with the exception of one Past Due Loan (for which a provision of \$1 million had been made), the directors considered that the recovery of all amounts of principal and interest, including interest at the contractual rate, was regarded as reasonably certain and the security held was adequate to cover the Past Due Loans;
- (d) that, aside from the specific provision in respect of the one Past Due Loan referred to in (c) above, as at 30 June 2006 no other provision or impairment, whether specific or general, had been made to allow for the possibility that loans and advances made by Provident would not be recovered in full;
- (e) that Provident's total assets as at 30 June 2006 were \$243,824,866;
- (f) that Provident, as at 30 June 2006, Provident had on issue debentures with a principal of \$222,500,877;
- (g) that Provident's net assets as at 30 June 2006 were \$12,635,793.

87 After auditing Provident's financial report for FY06, PwC issued an audit report in which PwC expressed the opinion that Provident's financial report for FY06:

- (a) gave a true and fair view of the financial position of Provident as at 30 June 2006 and of its performance for the year ended on that date; and
- (b) was presented in accordance with, amongst other things, the *Corporations Act 2001* and Australian Accounting Standards.

- 88 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY06 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.
- 89 At the time PwC audited Provident's financial report for FY06 and issued PwC's audit report, PwC knew or ought reasonably to have known the matters pleaded in paragraph 51 above.
- 90 At the time PwC audited Provident's financial report for FY06 and issued PwC's audit report, it was reasonably foreseeable by PwC:
- (a) that AET would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable skill and care;
 - (b) that AET would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY06;
 - (c) that AET would rely upon PwC's audit report in discharging its duties under section 283DA of the Corporations Act;
 - (d) that a failure by PwC properly to conduct its audit, or to prepare its audit report, might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
 - (e) that a failure by PwC properly to ensure that Provident's financial report for FY06 presented a true and fair view of Provident's financial position and performance, might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the Corporations Act;
 - (f) that the failures pleaded above might cause AET to fail to discharge its duties under section 283DA and result in its being liable to debenture holders under section 283F of the Corporations Act; and
 - (g) that, were that to occur, AET would suffer harm in the form of economic loss.
- 91 The risk of harm pleaded in paragraph 90 was not insignificant.

92 At the time PwC audited Provident's financial report for FY06 and issued PwC's audit report:

- (a) AET had no practical ability to protect itself from the risk of harm pleaded in paragraph 90.
- (b) AET could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
- (c) AET was dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 90.
- (d) AET was vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.

93 By reason of the matters pleaded in paragraphs 8 and 88 to 92 above, in auditing Provident's financial report for FY06 and in issuing PwC's audit report, PwC owed a duty to AET to take reasonable care:

- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,

to avoid the risk of harm pleaded in paragraph 90 above.

94 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY06 and in the preparation of PwC's audit report.

Particulars

The best particulars that AET can currently provide are as follows:

- (1) A competent auditor exercising reasonable care would have taken the steps identified in (1)-(4) of the particulars to paragraph 18 above.
- (2) According to the Potter Report:
 - (A) As at 30 June 2006, Provident only held assets sufficient to provide a return to debenture holders of between 79 cents and 86 cents in the dollar ([2.4]).
 - (B) As at 30 June 2006, an investigating accountant appointed to Provident would have concluded that Provident had negative net tangible assets ([4.26]).

- (C) As at 30 June 2006, an investigating accountant appointed to Provident would have concluded that debenture holders would not receive payment in full where recoveries were made from the realisation of the secured properties ([4.27]).
 - (D) As at 30 June 2006, an investigating accountant appointed to Provident would have drawn the further conclusions identified in (5)(D)-(5)(I) of the particulars to paragraph 18 above.
- (3) If the conclusions in the Potter Report are accepted, then, having regard to:
- (A) what was stated in Provident's financial report for FY06, as pleaded at paragraph 86 above;
 - (B) the matters in (2) above;
 - (C) the magnitude of the shortfall in (2)(A) above;
 - (D) the similarity between the steps referred to in (1) above and the approach of the putative investigating accountant described in the Potter Report; and
 - (F) the opinion actually expressed by PwC in its audit report in respect of Provident's financial report for FY06, as pleaded at paragraph 87 above,

it may be inferred that PwC did not take the steps referred at (1) above when auditing Provident's financial report for FY06.

Further particulars will be provided following disclosure of documents and issuance of subpoenas.

95 PwC's breach of duty pleaded in the previous paragraph has caused AET loss.

Particulars

AET repeats the particulars to paragraph 19 above, *mutatis mutandis*.

Statutory damages for misleading and deceptive conduct

96 PwC's conduct in issuing its audit report pleaded in paragraph 87 above was:

- (a) conduct in trade or commerce;

- (b) conduct in relation to financial products, namely, the debentures issued by Provident.
- 97 PwC issued its audit report pleaded in paragraph 87 above by use of postal or telegraphic services.
- 98 By issuing its audit report pleaded in paragraph 87 above, PwC impliedly represented that:
- (a) it had conducted its audit in respect of Provident's financial report for FY06 with reasonable care;
- (b) PwC had reasonable grounds for its opinion that Provident's financial report for FY06 gave a true and fair view of the financial position of Provident as at 30 June 2006 and of its performance for the year ended on that date.
- 99 Contrary to the representation pleaded in paragraph 98(a), PwC had not conducted its audit in respect of Provident's financial report for FY06 with reasonable care.

Particulars

AET repeats the particulars to paragraph 94 above.

- 100 Contrary to the representation pleaded in paragraph 98(b), PwC did not have reasonable grounds for PwC's opinion that Provident's financial report for FY06 gave a true and fair view of the financial position of Provident as at 30 June 2006 and of its performance for the year ended on that date.

Particulars

AET repeats the particulars to paragraph 94 above.

- 101 By virtue of the matters pleaded in paragraphs 96 to 100 above, by issuing its audit report pleaded in paragraph 87 above, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:
- (a) former s. 52 of the former *Trade Practices Act 1974*;
- (b) s. 1041H of the *Corporations Act*;
- (c) s. 12DA of the *Australian Securities and Investments Commission Act 2001*;
- (d) former s. 42 of the *Fair Trading Act 1987 (NSW)*;

- (e) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.
- 102 PwC's conduct in issuing its audit report pleaded in paragraph 87 above has caused AET loss.

Particulars

AET repeats the particulars to paragraph 26 above, *mutatis mutandis*.

- 103 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
 - (b) s. 1041I of the Corporations Act;
 - (c) s. 12GM of the ASIC Act;
 - (d) former s. 68 of the *Fair Trading Act* 1987 (NSW);
 - (e) the corresponding provisions of the fair trading legislation of the other States and Territories.
- 104 In its audit report for Provident's FY06 financial report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards.
- 105 The representation pleaded in paragraph 104 was made in:
- (a) in trade or commerce; and
 - (b) in connexion with the supply of PwC's audit services.
- 106 At the time PwC issued its audit report for Provident's FY06 financial report, the Australian Auditing Standards required:
- (a) that an audit be conducted with professional competence due care; and
 - (b) that an audit be conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

AUS 202.04(d) and AUS 202.08.

- 107 PwC's audit of Provident's FY06 financial report:

- (a) had not been conducted with professional competence due care; and
- (b) had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

AET repeats the particulars to paragraph 94 above.

108 By virtue of the matters pleaded in the previous paragraph:

- (a) the representation pleaded in paragraph 104 was false.
- (b) by issuing its audit report for Provident's FY06 financial report, PwC contravened:
 - (A) former s. 53(aa) of the former *Trade Practices Act 1974*;
 - (B) former s. 44(b) of the *Fair Trading Act 1987 (NSW)*;
 - (C) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.

109 PwC's conduct in issuing its audit report for Provident's FY06 financial report has caused AET loss.

Particulars

AET repeats the particulars to paragraph 26 above, *mutatis mutandis*.

110 AET is entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former *Trade Practices Act*;
- (b) former s. 68 of the *Fair Trading Act 1987 (NSW)*;
- (c) the corresponding provisions of the fair trading legislation of the other States and Territories.

Contribution

111 At the time PwC audited Provident's financial report for FY06 and issued PwC's audit report, it was reasonably foreseeable by PwC:

- (a) that holders of debentures issued by Provident would rely on AET performing its duties under the trust deed and under s. 283DA of the *Corporations Act*;

- (b) that AET would rely on PwC to conduct its audit and prepare its audit report with reasonable skill and care in the manner pleaded at paragraph 90 above;
 - (c) that, if PwC failed to conduct its audit and prepare its audit report with reasonable skill and care, then AET might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders;
 - (d) that, were that to occur, debenture holders might suffer harm in the form of economic loss.
- 112 The risk of harm pleaded in paragraph 111 was not insignificant.
- 113 At the time PwC audited Provident's financial report for FY06 and issued PwC's audit report:
- (a) Debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 111.
 - (b) Debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
 - (c) Debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 111.
 - (d) Debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in the performing its audit and preparing its audit report.
- 114 By reason of the matters pleaded in paragraphs 8, 88, 89 and 111 to 113 above, in auditing Provident's financial report for FY06 and in issuing PwC's audit report, PwC owed a duty to holders and future holders of debentures issued by Provident to take reasonable care:
- (a) in the conduct of its audit; and
 - (b) in the preparation of its audit report,
- to avoid the risk of harm pleaded in paragraph 111 above.
- 115 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY06 and in the preparation of PwC's audit report.

Particulars

AET repeats the particulars to paragraph 94 above.

- 116 The breach of duty pleaded in the previous paragraph has caused the Plaintiffs and group members loss, being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.
- 117 PwC's conduct in issuing its audit report pleaded in paragraph 87 above, in contravention of the statutory prohibitions on misleading conduct pleaded in paragraphs 101 and 108 above, has caused the Plaintiffs and group members loss, being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.

Particulars

AET repeats the particulars to paragraph 41 above, *mutatis mutandis*.

- 118 The Plaintiffs and group members are entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
 - (b) s. 1041I of the Corporations Act;
 - (c) s. 12GM of the ASIC Act;
 - (d) former s. 68 of the *Fair Trading Act 1987* (NSW);
 - (e) former s. 159 of the former *Fair Trading Act 1999* (Vic.);
 - (f) the corresponding provisions of the fair trading legislation of the other States and Territories.
- 119 If, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then that liability could have been established in tort.
- 120 By reason of the matters pleaded in paragraphs 111 to 118 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:
- (a) s. 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
 - (b) s. 23B of the *Wrongs Act 1958* (Vic.);

- (c) such other corresponding provision of the contribution legislation of the other States and Territories as may be applicable to each group member's claim against AET.
- 121 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.
- 122 By reason of the matters pleaded in paragraphs 111 to 119 and 121 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

FY07 audit

Damages in negligence at common law

- 123 On 28 September 2007, Provident issued its financial report for FY07.
- 124 Provident's financial report for FY07 stated:
- (a) that Provident's assets, as at 30 June 2007, included loans and advances with a recoverable value of \$212,250,616;
 - (b) that, as at 30 June 2007, the face value of loans held by Provident that had not operated within their key terms for at least 90 days (**Past Due Loans**) was \$41,636,821;
 - (c) that no provision or impairment had been made in respect of any of the Past Due Loans;
 - (d) that the directors regarded the recovery of the amounts of principal and interest accrued under the Past Due Loans as reasonably certain and the security held was adequate to cover the Past Due Loans;
 - (e) that Provident's total assets as at 30 June 2007 were \$231,534,933;
 - (f) that, as at 30 June 2007, Provident had on issue debentures with a principal of \$208,925,120;
 - (g) that Provident's net assets as at 30 June 2007 were \$13,740,260.
- 125 After auditing Provident's financial report for FY07, PwC issued an audit report in which PwC expressed the opinion that Provident's financial report for FY07:

- (a) gave a true and fair view of the financial position of Provident as at 30 June 2007 and of its performance for the year ended on that date; and
- (b) was presented in accordance with, amongst other things, the *Corporations Act 2001* and Australian Accounting Standards.

126 It was a term of the contract (between Provident and PwC) under which PwC was retained to audit Provident's financial report for FY07 that PwC would exercise reasonable care and skill in auditing the financial report and issuing its audit report.

127 At the time PwC audited Provident's financial report for FY07 and issued PwC's audit report, PwC knew or ought reasonably to have known the matters pleaded in paragraph 51 above.

128 At the time PwC audited Provident's financial report for FY07 and issued PwC's audit report, it was reasonably foreseeable by PwC:

- (a) that AET would rely upon PwC having conducted its audit, and prepared its audit report, with reasonable skill and care;
- (b) that AET would consider, and rely upon, any audit report provided by PwC in respect of Provident's financial report for FY07;
- (c) that AET would rely upon PwC's audit report in discharging its duties under section 283DA of the *Corporations Act*;
- (d) that a failure by PwC properly to conduct its audit, or to prepare its audit report, might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the *Corporations Act*;
- (e) that a failure by PwC properly to ensure that Provident's financial report for FY07 presented a true and fair view of Provident's financial position and performance, might result in AET being uninformed or unaware of matters that, if known, would affect its assessment of the matters it was required to ascertain and do in accordance with ss. 283DA(a), 283DA(b) and 283DA(c) of the *Corporations Act*;

- (f) that the failures pleaded above might cause AET to fail to discharge its duties under section 283DA and result in its being liable to debenture holders under section 283F of the Corporations Act; and
- (g) that, were that to occur, AET would suffer harm in the form of economic loss.
- 129 The risk of harm pleaded in paragraph 128 was not insignificant.
- 130 At the time PwC audited Provident's financial report for FY07 and issued PwC's audit report:
- (a) AET had no practical ability to protect itself from the risk of harm pleaded in paragraph 128.
- (b) AET could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
- (c) AET was dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 128.
- (d) AET was vulnerable to harm resulting from a failure by PwC to exercise reasonable care in performing its audit and preparing its audit report.
- 131 By reason of the matters pleaded in paragraphs 8 and 126 to 130 above, in auditing Provident's financial report for FY07 and in issuing PwC's audit report, PwC owed a duty to AET to take reasonable care:
- (a) in the conduct of its audit; and
- (b) in the preparation of its audit report,
- to avoid the risk of harm pleaded in paragraph 128 above.
- 132 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY07 and in the preparation of PwC's audit report.

Particulars

The best particulars that AET can currently provide are as follows:

- (1) A competent auditor exercising reasonable care would have taken the steps identified in (1)-(4) of the particulars to paragraph 18 above.
- (2) According to the Potter Report:

- (A) As at 30 June 2007, Provident only held assets sufficient to provide a return to debenture holders of between 73 cents and 82 cents in the dollar ([2.4]).
 - (B) As at 30 June 2007, an investigating accountant appointed to Provident would have concluded that Provident had negative net tangible assets ([4.26]).
 - (C) As at 30 June 2007, an investigating accountant appointed to Provident would have concluded that debenture holders would not receive payment in full where recoveries were made from the realisation of the secured properties ([4.27]).
 - (C) As at 30 June 2007, an investigating accountant appointed to Provident would have drawn the further conclusions identified in (5)(D)-(5)(I) of the particulars to paragraph 18 above.
- (3) If the conclusions in the Potter Report are accepted, then, having regard to:
- (A) what was stated in Provident's financial report for FY07, as pleaded at paragraph 124 above;
 - (B) the matters in (2) above;
 - (C) the magnitude of the shortfall in (2)(A) above;
 - (D) the similarity between the steps referred to in (1) above and the approach of the putative investigating accountant described in the Potter Report; and
 - (F) the opinion actually expressed by PwC in its audit report in respect of Provident's financial report for FY07, as pleaded at paragraph 125 above,

it may be inferred that PwC did not take the steps referred at (1) above when auditing Provident's financial report for FY07.

Further particulars will be provided following disclosure of documents and issuance of subpoenas.

133 PwC's breach of duty pleaded in the previous paragraph has caused AET loss.

Particulars

AET repeats the particulars to paragraph 19 above, *mutatis mutandis*.

Statutory damages for misleading and deceptive conduct

- 134 PwC's conduct in issuing its audit report pleaded in paragraph 125 above was:
- (a) conduct in trade or commerce;
 - (b) conduct in relation to financial products, namely, the debentures issued by Provident.
- 135 PwC issued its audit report pleaded in paragraph 125 above by use of postal or telegraphic services.
- 136 By issuing its audit report pleaded in paragraph 125 above, PwC impliedly represented that:
- (a) it had conducted its audit in respect of Provident's financial report for FY07 with reasonable care;
 - (b) PwC had reasonable grounds for its opinion that Provident's financial report for FY07 gave a true and fair view of the financial position of Provident as at 30 June 2007 and of its performance for the year ended on that date.
- 137 Contrary to the representation pleaded in paragraph 136(a), PwC had not conducted its audit in respect of Provident's financial report for FY07 with reasonable care.

Particulars

AET repeats the particulars to paragraph 132 above.

- 138 Contrary to the representation pleaded in paragraph 136(b), PwC did not have reasonable grounds for PwC's opinion that Provident's financial report for FY07 gave a true and fair view of the financial position of Provident as at 30 June 2007 and of its performance for the year ended on that date.

Particulars

AET repeats the particulars to paragraph 132 above.

- 139 By virtue of the matters pleaded in paragraphs 134 to 138 above, by issuing its audit report pleaded in paragraph 125 above, PwC engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of:

- (a) former s. 52 of the former *Trade Practices Act 1974*;
 - (b) s. 1041H of the Corporations Act;
 - (c) s. 12DA of the *Australian Securities and Investments Commission Act 2001*;
 - (d) former s. 42 of the *Fair Trading Act 1987 (NSW)*;
 - (e) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.
- 140 PwC's conduct in issuing its audit report pleaded in paragraph 125 above has caused AET loss.

Particulars

AET repeats the particulars to paragraph 26 above, *mutatis mutandis*.

- 141 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
 - (b) s. 1041I of the Corporations Act;
 - (c) s. 12GM of the ASIC Act;
 - (d) former s. 68 of the *Fair Trading Act 1987 (NSW)*;
 - (e) the corresponding provisions of the fair trading legislation of the other States and Territories.
- 142 In its audit report for Provident's FY07 financial report, PwC represented that its audit services were of a particular standard, namely, that they accorded with the Australian Auditing Standards.
- 143 The representation pleaded in paragraph 142 was made in:
- (a) in trade or commerce; and
 - (b) in connexion with the supply of PwC's audit services.
- 144 At the time PwC issued its audit report for Provident's FY07 financial report, the Australian Auditing Standards required that an audit be conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

ASA 200, [24].

- 145 PwC's audit of Provident's FY07 financial report had not been conducted so as to provide reasonable assurance that the financial report, taken as a whole, was free from material misstatement.

Particulars

AET repeats the particulars to paragraph 132 above.

- 146 By virtue of the matter pleaded in the previous paragraph:
- (a) the representation pleaded in paragraph 142 was false.
 - (b) by issuing its audit report for Provident's FY07 financial report, PwC contravened:
 - (A) former s. 53(aa) of the former *Trade Practices Act 1974*;
 - (B) former s. 44(b) of the *Fair Trading Act 1987 (NSW)*;
 - (C) the corresponding prohibitions on misleading and deceptive conduct under the statutes of the other States and Territories.
- 147 PwC's conduct in issuing its audit report for Provident's FY07 financial report has caused AET loss.

Particulars

AET repeats the particulars to paragraph 26 above, *mutatis mutandis*.

- 148 AET is entitled to recover that loss from PwC as damages under:
- (a) s. 82 of the former Trade Practices Act;
 - (b) former s. 68 of the *Fair Trading Act 1987 (NSW)*;
 - (c) the corresponding provisions of the fair trading legislation of the other States and Territories.

Contribution

- 149 At the time PwC audited Provident's financial report for FY07 and issued PwC's audit report, it was reasonably foreseeable by PwC:
- (a) that holders of debentures issued by Provident would rely on AET performing its duties under the trust deed and under s. 283DA of the Corporations Act;
 - (b) that AET would rely on PwC to conduct its audit and prepare its audit report with reasonable skill and care in the manner pleaded at paragraph 128 above;
 - (c) that, if PwC failed to conduct its audit and prepare its audit report with reasonable skill and care, then AET might, in reliance on PwC's audit report, fail to take steps (such as appointing a receiver) to protect the interests of debenture holders;
 - (d) that, were that to occur, debenture holders might suffer harm in the form of economic loss.
- 150 The risk of harm pleaded in paragraph 149 was not insignificant.
- 151 At the time PwC audited Provident's financial report for FY07 and issued PwC's audit report:
- (a) Debenture holders had no practical ability to protect themselves from the risk of harm pleaded in paragraph 149.
 - (b) Debenture holders could not direct, control or influence the manner in which PwC performed its audit or prepared its audit report.
 - (c) Debenture holders were dependent upon PwC taking reasonable care to avoid the risk of harm pleaded in paragraph 149.
 - (d) Debenture holders were vulnerable to harm resulting from a failure by PwC to exercise reasonable care in the performing its audit and preparing its audit report.
- 152 By reason of the matters pleaded in paragraphs 8, 126, 127 and 149 to 151 above, in auditing Provident's financial report for FY07 and in issuing PwC's audit report, PwC owed a duty to holders and future holders of debentures issued by Provident to take reasonable care:
- (a) in the conduct of its audit; and

(b) in the preparation of its audit report,
to avoid the risk of harm pleaded in paragraph 149 above.

153 In breach of the duty pleaded in the previous paragraph, PwC failed to take reasonable care in the conduct of its audit of Provident's financial report for FY07 and in the preparation of PwC's audit report.

Particulars

AET repeats the particulars to paragraph 132 above.

154 The breach of duty pleaded in the previous paragraph has caused the Plaintiffs and group members loss, being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.

155 PwC's conduct in issuing its audit report pleaded in paragraph 125 above, in contravention of the statutory prohibitions on misleading conduct pleaded in paragraph 139 and 146 above, has caused the Plaintiffs and group members loss, being the same loss in respect of which the Plaintiffs and group members seek to recover damages in this proceeding from AET.

Particulars

AET repeats the particulars to paragraph 41 above, *mutatis mutandis*.

156 The Plaintiffs and group members are entitled to recover that loss from PwC as damages under:

- (a) s. 82 of the former Trade Practices Act;
- (b) s. 1041I of the Corporations Act;
- (c) s. 12GM of the ASIC Act;
- (d) former s. 68 of the *Fair Trading Act 1987* (NSW);
- (e) former s. 159 of the former *Fair Trading Act 1999* (Vic.);
- (f) the corresponding provisions of the fair trading legislation of the other States and Territories.

157 If, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then that liability could have been established in tort.

- 158 By reason of the matters pleaded in paragraphs 149 to 156 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to:
- (a) s. 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW);
 - (b) s. 23B of the *Wrongs Act 1958* (Vic.);
 - (c) such other corresponding provision of the contribution legislation of the other States and Territories as may be applicable to each group member's claim against AET.
- 159 Further or alternatively, if, which is denied, AET is liable to the Plaintiffs or Group Members as alleged in the Statement of Claim, then its liabilities are coordinate with those of PwC pleaded above.
- 160 By reason of the matters pleaded in paragraphs 149 to 157 and 159 above, if, which is denied, AET is liable to the Plaintiffs and group members as alleged in the Statement of Claim, then AET is entitled to recover contribution from PwC pursuant to the doctrine of equitable contribution.

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 claim for damages in this statement of cross-claim has reasonable prospects of success.

I have advised the cross-claimant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Bradley Woodhouse

Date of signature

20 December 2016

NOTICE TO CROSS-DEFENDANT

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.

HOW TO RESPOND

Please read this statement of cross-claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the cross-claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1 If you intend to dispute the cross-claim or part of the cross-claim, by filing a defence and/or making a cross-claim.

2 If money is claimed, and you believe you owe the money claimed, by:

- Paying the cross-claimant all of the money and interest claimed.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

3 If money is claimed, and you believe you owe part of the money claimed, by:

- Paying the cross-claimant that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at

<http://www.ucprforms.justice.nsw.gov.au/> or at any NSW court registry.

REGISTRY ADDRESS

Street address	184 Phillip Street, Sydney
Postal address	Supreme Court of NSW, GPO Box 3, Sydney, 2001
Telephone	(02) 9230 8628

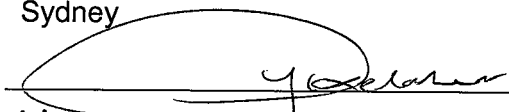
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AFFIDAVIT VERIFYING

Name Yvonne Maree Kelaher
 Address Level 22, 207 Kent Street, Sydney, NSW
 Occupation Senior Manager
 Date 20 December 2016

I say on oath :

- 1 I am the Senior Manager – Relationship and Transaction Management for the Cross Claimant and am authorised to make this affidavit on their behalf.
- 2 I believe that the allegations of fact in the statement of cross-claim are true.

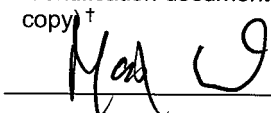
SWORN at Sydney
 Signature of deponent 
 Name of witness Mark J CESSANO
 Address of witness 8 Chifley, 8-12 Chifley Square, Sydney, NSW
 Capacity of witness Justice of the Peace / Solicitor

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 confirmed the deponent's identity using the following identification document:

NSW DL# 12107062

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

Signature of witness 

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

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS

A list of parties must be filed and served with this statement of cross-claim.

PARTIES TO THIS CROSS-CLAIM**Cross-claimant**

Australian Executor Trustees Limited,

Cross-claimant

Cross-defendants

Marcus Jonathon Anderson Laithwaite
and the others listed in Schedule 1, First
cross-defendant

DETAILS ABOUT CROSS-DEFENDANTS THAT ARE NEW PARTIES**First cross-defendant**

Name

Marcus Jonathon Anderson Laithwaite and the others
listed in Schedule 1

Address

201 Sussex Street
Sydney NSW 2000

SCHEDULE ONE**The partners of PwC, who so far as known to the Cross-claimant were:**

LAITHWAITE, MARCUS JONATHON ANDERSON
ABBEY, PAUL JOSEPH
AGNOLETTO, JASON
ALLMAN, TIMOTHY JOHN
AMPERLAW, NIGEL IAN
ANDREWS, GRAHAM KEITH
ANDREWS, WAYNE JEFFREY
ARMSTRONG, DAVID HUGH
BAARTZ, DONALD GERARD
BAKER, ROBERT ANTHONY
BANNATYNE, SUSAN CAROL
BARLOW, ANDREW
BARRIO, ANGEL
BARRON, EWAN ALASDAIR
BASSILI, ASH
BAXTER, ANTONY JOHN
BEATIE, MEREDITH JOHN
BECK, BRADLEY JOHN
BENDALL, PAUL ANTHONY
BENNETI, CHRISTOPHER PAUL
BENNETT, JOHN WILLIAM
BERESFORD, BRIAN
BERSTEN, MICHAEL CHARLES
BEST, CORINNE GERALDINE
BILLINGHAM, STEPHEN DENNIS
BILLINGS, GRAEME AMBERV
BILLINGTON, CHRISTOPHER
BIRKENSLEIGH, SANDRA CHRISTINE
BLOM, WILHELMUS MARIUS
BLUMOR, ROBERT WILLIAM
BOSILJEVAC, STEVEN JOHN
BOURKE,STEPHENJAMES
BOWLES, STEPHEN JAMES
BRADGATE, RICHARD JOHN FINDLAY

BRASHER, PAUL VINCENT
BRASSIL, PAUL VINCENT
BRENT, NOELASHLEY
BRIDGE, MICHAEL ANDREW
BRINDLE, PAUL OWEN
BROWNE, MICHAEL HOLGATE
BRUNNER, PAUL FRANZ JOSEF
BRYANT, NICOLE MAREE
BRYANT, SCOTT DUNCAN
BUCHHOLZ, PETER LLOYD
BURT, CHRISTOPHER JOHN
CALLEJA, PETER DAMIAN
CAMPBELL, WILLIAM PATRICK
CAMPION, JOHN ANDREW
CANNINGS, JOHN WILLIAM
CARLIN, NADIA CHERIE
CARLSTEIN, BRUCE ROY
CARNEY, PATRICIA JOSEPHINE
CARROLL, JOHN ANTHONY
CARROLL, JUSTIN MARK
CARROZZI, JOSEPH
CARTER, PAUL RICHARD
CARTER, PHILIP PATRICK
CHEATER, KIM ANDREW
CHIANG, MICHELLE WEILING
CHIPMAN, NICHOLAS JOHN
CHOWDRY, RAHOUL
CHRISTIE, CHARLES DOUGLAS
CLARK, DEREK RONALD
CLARK, IAN DAVID
CLARKE, PHILIP JOHN
CLARKE, VICTOR JOSEPH
CLEMENS, ANTHONY EDWARD
CLIFFORD, VALERIE ANNA MARGARET
COATES, JULIE SANDRA
CODLING, MICHAEL JOHN

COLDERICK, MALCOLM STUART
COLLINS, PETER JOHN
COLLINSON, GEOFFREY MICHAEL
CONROY, DELLA
COOGAN, DAVID NICHOLAS
COOPER, CHRISTOPHER PATRICK
COOPER, FRANK CHARLES
COTTON, DANIEL CHARLES
COTTRELL, GEOFFREY MORLEY
COUGLE, STEPHEN JOHN
COX, TIMOTHY WYNAND
CRAIG, DOUGLAS DONALD ANTHONY
CRAMPTON, GRAEME LINDSAY
CRAWFORD, KAREN ANNE
CRETHAR, ERIC HARRY
CROKER, MICHAEL JOHN JAMES
CROSLAND, VANESSA LOUISE
CUMING, TIMOTHY JAMES
CUMMINS, CRAIG JAMES
CUTAJAR, CLARA ANGELA
CUTHBERT, CHRISTOPHER MARK
DANIEL, MICHAEL FRANCIS PAUL
DANIELS, JASON
DAVIDSON, MICHAEL
DAVIS, ADAM GLENN
DAWSON, JENNIFER MERRAN
DE SILVA, NIKHIL
DELANEY, BRETT STEPHEN
D'ELIA, MARIO ROSARIO
DELMENICO-GRAY, TRUDY
DENNY, DAVID ANDREW
DEUTSCH, RICHARD DAVID
DEVALIA, PRADIPKUMAR KANJI
DIAMOND, BARRY
DIAMOND, GREG JOHN
DICK, WARREN JAMES

DODD, CHRISTOPHER JAMES
DOVASTON, JOHN ALEXANDER
DOW, MARK GREIG
DOWD, NOREEN
DOY, JONATHAN WILLIAM
DREYER, PIERRE
DRING, RODNEY DOUGLAS
DUNN, COLIN WALTER
DUNNING, JAMES ALEXANDER
ECKERSLEY, DEBRA MAREE
EDGE, WILLIAM RODNEY
EDWARDS, HUGH ANDREW JON
EDWARDS, STUART JAMES
ELLIS, BRUCE ANTHONY
ELSWORTH, ANDREW DAVID
EMPSON, MICHAEL JOHN
ENTWISTLE, BRETT WILLIAM
EVANS, MURRAY DAVID
FARMER, IAN MICHAEL
FARRELL, PATRICK JOHN
FAUVET, JOHN FRANCIS
FAZZINO, HELEN
FEELY, JOHN WILLIAM
FEHILY, KENNETH LEWIS
FEKETE, PETER JOHN
FELTRIN, MARCO ALBERTO
FENTON, THOMAS GEORGE
FERGUSSON, SCOTT KIRWAN
FEROS, PETER
FEYER, ANNE MARIE
FIKKERS, REGINA FRANCES
FINN, DENNIS JOSEPH
FITZALAN, KEVIN
FORD, SIMON GRAHAM
FORMAN, ANDREW GEORGE
FORSDICK, MICHAEL JAMES.

FRAZER, MICHAEL ANDREW
FRIZZELL, STEVEN JOHN
FROST, GLEN EDWARD
FULTON, ANTHONY RICHARD
FURBY, ROBERT STANLEY
GALLACHER. KENNETH THOMAS WILSON
GARDE. JAMES CHARLES FREDERICK
GAVIN. ROSS LINDSAY
GEDDES, ROHAN GORDON
GILBRAITH, MARK JON
GILLEN. ROBERT NEIL
GILLESPIE, BRIAN MALCOLM
GODDARD. MARK ROBERT
GOLDSMITH, TIMOTHY
GORDON. ANDREW NICHOLAS
GORDON, JOHN
GRAHAM, MATTHEW KEVIN
GRAPSAS, CON
GRAY, SIMON ANTHONY JOHN
GREEN, ADRIAN JOHN
GREENHILL, KATHERINE ANN
GREGORY. SEAN MICHAEL
GRIFFITHS. JONATHAN MARK
GRIFFITHS, KEVIN ALUN
GROUIOS, JOHN
HAAS, MEGAN LOUISE
HABAK, JASON
HABERLIN. MARK
HADFIELD. SCOTT JAMES
HADLOW. GLEN JAMES
HALL. GREGORY WINFIELD
HALL. IAN RICHARD
HAMER. CRAIG DERRICK
HAMMOND. IAN LESLIE
HANDO, LISA ANNE
HANSON, ANDREW DONALD

HAPPEL, MICHAEL JOHN
HARKER, LISA JANE
HARKER, STUART JOHN
HARRINGTON, ANTHONY PATRICK DAVID
HASTIE, BARRY NORMAN EDWARD
HAYES, JASON AUSTIN
HAYWARD, KENNETH WILLIAM
HEALY, NIALL
HENRY, NICHOLAS MICHAEL
HIGGINS, MARK JONATHAN
HINE, JULIAN DAVID
HOCKINGS, IAN CHRISTOPHER
HODSON, GREGORY JOHN
HOGAN, LEONARD WAYNE
HOGAN, PETER NEVILLE
HOLLE, CHRISTIAN ALFRED
HORLIN, SUSAN GAI
HOUSEMAN, NICHOLAS PAUL
HOWARD, CATHERINE MICHELLE
HUBBARD, JONATHAN GARTH
HUBBARD, ROBERT
HUMPHREY, CHARLES HAROLD
HUMPHRIES, STEPHEN JAMES DONALD
HUNTER, BRIAN KENNEDY
INGHAM, MARK WARWICK
INGRAM, STEVEN GLEN
IRELAND, DAVID BRUCE
IVERS, DEREK GRAHAM
JAMES, JOHN LYNDON
JEFFREY, IAN MCGREGOR
JERAJ, SANJIV LILADHER
JOHNSON, CHRISTOPHER
JOHNSON, MARK GRAHAM
JONES, CAMERON NAPIER
JORDAAN, WILEM GABRIEL
JULIUS, KATHERINE ANNE

KEATING, CLAIRE MAJELLA
KEESING, VICTORIA ANNE
KELLY, DAVID NOEL
KENNEDY, MILES THOMAS PITT
KENNEDY, PETER VINCENT
KEYS, GREGORY JOHN
KIDLEY, DEREK
KINSELLA, CHRISTOPHER JOHN
KIRK, PAUL WILLIAM
KLEIN, ANTHONY DARREN
KOENIG, PAUL GUSTAV
KONIDARIS, PETER
KOOPMANS, HANS BERNARDUS
KRAEVA, GALINA
KRANES, STEVEN ROBERT
KUMAR, SAMEER
KUS, ROBERT MATIJA
LAST, DEBBIE
LATHAM, CHRISTOPHER ROBERT JOHN
LAURIE, MARK JOSEPH
LAWN, CRAIG STANTON
LAWRENCE, BRIAN PAUL
LAWSON, DAVID BRUCE
LAYTON, LUCIENNE PRISCILLA
LAZAR, ANDREW LOUIS
LAZARUS, GREGORY LEE
LE HURAY, PETER GRANT
LENNON, SCOTT DOYLE
LEWIS, DAVID REGINALD
LEWIS, PAUL RAYMOND
LIJESKI, JAMES PAUL
LILLEY, CAROLYN JEAN
LINDSTROM, PAUL WILLIAM
LINSCHOTTEN, ANTON JOHAN
LINZ, MARTIN THOMAS
LOCKE, MARTIN STUART

LONGLEY, STEPHEN GRAHAM
LOUREY, GREGORY STEPHEN
LOVERIDGE, ANNE JOAN
LOW, ROBIN JANE
LOWE, CHRISTOPHER HAROLD
LUNN, MATTHEW THOMAS
MADDEN, JANE FRANCESCA
MAGUIRE, FRANCES ANN
MAHER, SHANNON TRENT
MAHONY, TREVOR ANTHONY
MAKAS, EMMANUEL
MANGION, MAUREEN
MARJORAM, GAVIN JOHN
MARJORIBANKS, CHRISTA JANE
MARTIN, MARIA ANNE
MASON, SANDRA CLARE
MASTERS, JOHN
MASTOS, PETER MATHEW
MAY, JEFFREY IAN
MCCAHEY, JAN ELIZABETH
MCCLUSKEY, WILLIAM DOUGLAS
MCCOLL, ROSS ALEXANDER
MCCOMISKIE, ROGER JOHN
MCCONNELL, NIALL RUARI
MCDERMOTT, GARY JAMES
MCDONALD, BRUCE
MCELVOGUE, JAMES SHERIDAN
MCEVOY, DAVID LAURENCE
MCGRATH, MICHAEL PATRICK
MCILVEEN, CRAIG BERNARD
MCKEE, DALE ANTHONY
MCKEERING, DAVID PETER RICHARD
MCKEON, PATRICK JOHN DAVID
MCLEAN, ALASTAIR HENRY
MCMAHEN, PAUL ANDREW
MCMILLAN, JAMES FRANCIS

MCNAB, PAUL JOSEPH
MCPHERSON, ANDREW COLIN
MELICK, ANGELA ANN
MERREIT, PETER KENNETH
MESTON, WILLIAM PAUL ROSS
MICHIE, CASSANDRA ANDRE'E
MILL, ANDREW JAMES
MILLEN, RICHARD JOHN
MINEHAM, LEIGH PEERS
MIRABELLO, RICHARD
MITCHELL, MARTYN JOHN
MITCHELL, ROBERT BRADLEY
MORGAN, BRUCE WILLIAM DISTIN
MORRIS, CHRISTOPHER JOHN
MORRIS, GRAHAME
MOSS, GAVIN JOHN
MUNRO, DONALD FRASER
MURPHY, DAVID VICTOR
MURRAY, JOANNE
MURRAY, PATRICK THOMAS
MUYSKEN, JAN COENRAAD
MYERS, JULIAN DUNCAN
NAGLAN, PAUL FRANCIS
NANCE, CATHERINE ANNE
NAPPER, NEIL
NEASMITH, ROBYN
NEILSEN, ALLAN RAYMOND
NICOLAOU, ANDREW
NOONAN, GLEN ANDREW
O'BRIEN, PAUL FRANCIS
O'BRIEN, STEPHEN JOHN
O'CALIAGHAN, JOHN FINTAN
O'CONNOR, JOHN PETER
O'DONOGHUE, JOHN
O'DOWD, CONOR JAMES
O'PREY, PHILIP GORDON

O'REILLY, MARK OWEN
O'ROURKE, KEVIN JOHN
OSMOND, MATIHEW GARY DAVID
PALLIER, DAVID JOHN
PAPAGEORGIU, VOULA VICTORIA
PARKER, ANDREW JAMES
PAROISSIEN, IAN DAVID
PEAKE, ANTHONY WILLIAM
PEARSON, ALISTAIR
PEEL, DANTE MICHAEL RODERICK
PETERSEN, ANDREW IAN ROBERT
PETERSON, ROWLAND ROY
PLAYFORD, MICHAEL JAMES
PLUMMER, WAYNE STEPHEN
PORT, ROGER MAITLAND
PORTER, TROY ANDREW
PORVAZNIK, ANDREW
POULOS, KEIRON
POWER, CLARE MARY
POWER, JAMES FRANCIS
PRAKASH, SUMANTH
PRATI, DAVID CLEMENT
PREVITERA, ANN MARIE
PROSSER, ROBERT EDWARD
PROTHERO, DAVID ANTHONY
PUNIA, RAGHUVINDER SINGH
RADLEY, ROBERT
RAY, MONOJIT ANDREW
READING, MARK CHRISTOPHER
REARDON, CHRISTOPHER MARK
REES, CLIFFORD DAVID
REEVES, KEVIN DAVID
REID, KEVIN RICHARD
REILLY, JANE LOUISE
RIDEHALGH, DAVID NICHOLAS
RIDLEY, MICHAEL MARK

RITCHIE, ZARA HELEN
RIXON, KYLIE ELIZABETH
ROACH, ROBERT JOHNSON
ROCHE, JOHANNA BRIDGET
ROCKMAN, ASHLEY BRETT
ROMANS, DAVID CHARLES
ROOKE, SIMON CARL
ROSENBERG, DANIEL HAIM MARK
RUSSELL, WAYNE MURRAY
RYLEY, DERRICK JOHN
SANTIAGO, MAN OJ JOSEPH
SARGENT, OLIVER CHARLES
SAYERS, LUKE FREDERICK
SCALISE, CESARE HANNY
SCANLON, CATHERINE NORA NIAMH
SCHOFIELD, WILLIAM FREDERICK
SCHREUDER, JOHANNES DANIEL PETRUS
SCOULAR, STUART ALEXANDER
SCULLY, MARTIN PATRICK
SEATON, WILLIAM HENRY BROWN
SEDDON, NORAH ANNE
SEYMOUR, TOM RICHARD
SHACKELL, MALCOLM ROSS
SHANNON, PAULA JANE
SHEPPARD, KEITH DAVID
SHEWAN, MICHAEL
SHIM, JOHN
SIMPSON, LISA NICOLE
SLADE, JASON ROGER
SMITH, DARREN ANDREW
SMITH, DAVID JAMES
SMITH, DEBBIE GAI
SMITH, KIM GERARD
SMITH, STEPHANIE JANE
SNOOK, STEPHEN RICHARD
SORENSEN, GRAHAM KEITH

SOULOS, MARK CONSTANTINE
STAFFORD, CRAIG JAMES
STEPHEN, ANTHONY WILLIAM
STEVENSON, KEVIN MICHAEL
STEWART, GRANT CHARLES THOMAS
STEWART, RICHARD JOHN
STUBBINS, KRISTIN
STUDLEY, JOHN WILLIAM
SULLIVAN, JOHN WILLIAM
SUTTON, LOUISE JENNIFER
SUTTON, RUSSEL LSTEPHEN
SWAN, MARK JAMES
TARRANT, WAYNE LINDSAY
TESS, DANIEL
TESTA, BIAGIO
THOMASON, CRAIG SCYLD
THORPE, JEREMY GUY
THORPE, ROSS JUSTIN
TREMAIN, MICHELLE ANN
TURNER, DARREN ANTHONY
UPCROFT, MARC DAVID JUSTIN
UYS, DANIEL PETRUS
VAN DONGEN, PETER WARWICK
VEXLER, RONEN
WALDRON, MARY BRIGID
WALSH, JOHN ERNEST
WARD AM, ROBERT
WATSON, ALLAN JOHN
WATSON, TIMOTHY ROBERT
WAUGH, GARRY LEONARD
WELLINGTON, ANDREW JOHN
WHALE, DAVID JOHN
WHEATON, BENJAMIN ERIC
WHEELER, ANDREW ARNOTT