

Principal Registrar &
Chief Executive Officer

COMMERCIAL LIST CROSS-CLAIM RESPONSE OF THE SECOND CROSS-DEFENDANT

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/76580

TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd ACN 009 863 807
Second Plaintiff	Geoffrey Edward Underwood
Third Defendant	Wayne Leonard Chapman
Number of defendants (if more than two)	11

TITLE OF CROSS-CLAIM PROCEEDINGS

First cross-claimant	Robin Gray
First cross-defendant	Wayne Leonard Chapman
Number of cross-defendants	6

PREPARATION DETAILS

Prepared for	Robert Watson and Erica Gay, as the legal personal representatives for the estate of the late John Eugene Gay, the Second Cross-Defendant
Filed in relation to	Sixth Cross-Claim
Legal representative	Richard Mereine HWL Ebsworth Lawyers
Legal representative reference	RM:NP:881154
Contact name and telephone	Richard Mereine Tel: 03 8644 3656
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PRELIMINARIES

The terms defined in the Further Amended Commercial List Statement filed by the Plaintiffs on 21 August 2020 (**CLS**) and the Further Amended Commercial List Response filed by the Fourth Defendant on 2 March 2021 (**CLR**) have the same meaning in this document unless otherwise stated.

A NATURE OF DISPUTE

- 1 The Second Cross-Defendant agrees with the general description of the nature of the dispute in the Sixth Cross-Claim Commercial List Cross-Claim Statement filed on 2 July 2021 (**Cross-Claim**) other than the reference to 'Mr Eugene Gay' in paragraph 3 should be 'Mr John Eugene Gay'.
- 2 The Second Cross-Defendant disputes the Eighth Defendant's allegations in the Cross-Claim as more fully set out below.

B ISSUES LIKELY TO ARISE

- 1 The Second Cross-Defendant agrees that the issues identified by the Eighth Defendant in the Cross-Claim are likely to arise in the proceeding.

C FOURTH CROSS-DEFENDANT'S RESPONSE TO THE CONTENTIONS

For the purposes of responding to the Cross-Claim only the Second Cross-Defendant says as follows.

Allegations made by the Plaintiffs

- 1 As to paragraph 1(a) of the Cross-Claim, the Second Cross-Defendant refers to and repeats as against the Eighth Defendant the responses made by the Fourth Defendant in paragraphs 4, 14-52C, 55A-64, 69, 73-75, 82-84, 90B-94A and 102-104 of section C of the CLR.
- 2 As to paragraph 1(b) of the Cross-Claim, the Second Cross-Defendant refers to and repeats as against the Eighth Defendant the responses made by the Fourth Defendant in paragraphs 5, 14-52C, 55A-64, 69, 73-75, 82-84, 90B-94A and 102-104 of section C of the CLR.
- 3 Further, the Second Cross-Defendant refers to and repeats paragraph 11 and 12 of section C of the CLR.
- 4 As to paragraph 1(c) of the Cross-Claim, the Second Cross-Defendant refers to and repeats as against the Eighth Defendant the responses made by the Fourth Defendant in paragraphs 6, 14-52C, 55A-64, 69, 73-75, 82-84, 90B-94A and 102-104 of section C of the CLR.

- 5 As to paragraph 1(d) of the Cross-Claim, the Second Cross-Defendant refers to and repeats as against the Eighth Defendant the responses made by the Fourth Defendant in paragraphs 7, 14-52C, 55A-64, 69, 73-75, 82-84, 90B-94A and 102-104 of section C of the CLR.
- 6 As to paragraph 1(e) of the Cross-Claim, the Second Cross-Defendant refers to and repeats as against the Eighth Defendant the responses made by the Fourth Defendant in paragraphs 8, 14-52C, 55A-64, 69, 73-75, 82-84, 90B-94A and 102-104 of section C of the CLR.
- 7 As to paragraph 1(f) of the Cross-Claim, the Second Cross-Defendant refers to and repeats as against the Eighth Defendant the responses made by the Fourth Defendant in paragraphs 10, 14-52C, 55A-64, 69, 73-75, 82-84, 90B-94A and 102-104 of section C of the CLR.
- 8 As to paragraph 2 of the Cross-Claim, the Second Cross-Defendant:
- (a) denies each of the allegations in paragraph 2 of the Cross-Claim; and
 - (b) says that by reason of the matters in paragraphs 2 and 3 above, if (which is denied) the Eighth Defendant is entitled to contribution from the Second Cross-Defendant it is just and equitable that:
 - (i) the Second Cross-Defendant be exempted from liability to make contribution having regard to the extent of Mr Gay's responsibility for the damage;
 - (ii) alternatively, the amount of contribution recoverable from the Second Cross-Defendant should be zero having regard to the extent of Mr Gay's responsibility for the damage.
- 9 As to paragraph 3 of the Cross-Claim, the Second Cross-Defendant:
- (a) denies each of the allegations in paragraph 3 of the Cross-Claim; and
 - (b) says that by reason of the matters in paragraphs 2 and 3 above, if (which is denied) the Eighth Defendant is entitled to contribution from the Second Cross-Defendant it is just and equitable that:

- (i) the Second Cross-Defendant be exempted from liability to make contribution having regard to the extent of Mr Gay's responsibility for the damage;
- (ii) alternatively, the amount of contribution recoverable from the Second Cross-Defendant should be zero having regard to the extent of Mr Gay's responsibility for the damage.

10 As to paragraph 4:

- (a) The Second Cross-Defendant admits that the Eighth Defendant claims as against each Cross-Defendant for the relief set out in the Cross Summons dated 1 July 2021;
- (b) refers to and repeats paragraphs 1 to 9 above; and
- (c) otherwise denies each of the allegations in paragraph 4.

D QUESTION APPROPRIATE FOR REFERRAL TO A REFEREE

1 None.

E MEDIATION STATEMENT

1 The Second Cross-Defendant participated in a mediation on 25 June 2019, which was unsuccessful. The Second Cross-Defendant is willing to attempt another mediation at an appropriate time.

SIGNATURE

Signature of legal representative



Capacity

Richard Mereine, Solicitor

Date of signature

27 July 2021

PARTIES TO THE CROSS-CLAIM**Cross Claimants****Robin Gray**

First Cross-Claimant

Cross-Defendants**Wayne Leonard Chapman**

First Cross-Defendant

Robert Watson and Erica Gay, as the legal personal representatives for the estate of the late John Eugene Gay

Second Cross-Defendant

Rodney John Loone

Third Cross-Defendant

Leslie Ralph Baker

Fourth Cross-Defendant

Robert Henry Graham

Fifth Cross-Defendant

Paul Desmond Teisseire

Sixth Cross-Defendant