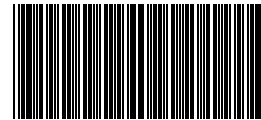




Filed: 13 September 2018 10:30 AM



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### Commercial List Response

#### COURT DETAILS

|             |                      |
|-------------|----------------------|
| Court       | Supreme Court of NSW |
| Division    | Equity               |
| List        | Commercial           |
| Registry    | Supreme Court Sydney |
| Case number | 2018/00076580        |

#### TITLE OF PROCEEDINGS

|                      |  |
|----------------------|--|
| First Plaintiff      | Giabal Pty Ltd   |
| Second Plaintiff     | Geoffry Underwood  |
| First Defendant      | Gunns Plantations Limited (in Liquidation)                     |
| Second Defendant     | Gunns Limited (in Liquidation)(Receivers & managers Appointed) |
| Number of Defendants | 11   |

#### TITLE OF THIS CROSS-CLAIM

|                            |  |
|----------------------------|--|
| First Cross Claimant       | Andrew Gray  |
| Second Cross Claimant      | Mathew Gary Wallace  |
| First Cross Defendant      | Gunns Plantations Limited (in Liquidation)                     |
| Second Cross Defendant     | Gunns Limited (in Liquidation)(Receivers & managers Appointed) |
| Number of Cross Defendants | 9  |

#### FILING DETAILS

|                                |                                    |
|--------------------------------|------------------------------------|
| Filed for                      | John Eugene Gay, Cross Defendant 4 |
| Filed in relation to           | Cross-Claim 1                      |
| Legal representative           | Richard Mereine                    |
| Legal representative reference |                                    |
| Telephone                      | 03 8644 3656                       |
| Your reference                 | RM:881154                          |

#### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Response (Commercial List Cross-Claim Response (Fourth Cross-Defendant).PDF)

[attach.]

## COMMERCIAL LIST CROSS-CLAIM RESPONSE OF THE FOURTH 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                            | <b>Giabal Pty Ltd</b> ACN 009 863 807                            |
| Second Plaintiff                           | <b>Geoffry Edward Underwood</b>                                  |
| First Defendant                            | <b>Gunns Plantations Ltd (in Liquidation)</b><br>ACN 091 232 209 |
| Number of defendants<br>(if more than two) | 11   |

### TITLE OF CROSS-CLAIM PROCEEDINGS

|                            |  |
|----------------------------|--|
| First cross-claimant       | <b>Andrew Gray</b> , Tenth Defendant   |
| Second cross-claimant      | <b>Matthew Wallace</b> , Eleventh Defendant  |
| First cross-defendant      | <b>Gunns Plantations Limited (In Liquidation) (Receivers and Managers Appointed)</b> |
| Number of cross-defendants | 9  |

### PREPARATION DETAILS

|                                |  |
|--------------------------------|--|
| Prepared for                   | <b>John Eugene Gay</b> , the Fourth Cross-Defendant                                    |
| Filed in relation to           | First Cross-Claim - The Commercial List Cross-Claim<br>Statement filed on 20 July 2018 |
| Legal representative           | Richard Mereine<br>HWL Ebsworth Lawyers  |
| Legal representative reference | RM:NP:881154   |
| Contact name and telephone     | Richard Mereine<br>Tel: 03 8644 3656   |
| Contact email                  | rmereine@hwle.com.au   |

### PRELIMINARIES

The terms defined in the Commercial List Statement filed by the Plaintiffs on 20 March 2018 (**CLS**) and the Commercial List Response filed by the Fourth Defendant on 13 July 2018 (**CLR**) have the same meaning in this document unless otherwise stated.

**A NATURE OF DISPUTE**

- 1 The Fourth Cross-Defendant agrees with the general description of the nature of the dispute in the Commercial List Cross-Claim Statement filed on 20 July 2018 (**Cross-Claim**).
- 2 The Fourth Cross-Defendant disputes the First and Second Cross-Claimants (**Cross-Claimants**) allegations in the Cross-Claim as more fully set out below.

**B ISSUES LIKELY TO ARISE**

- 1 The Fourth Cross-Defendant agrees that the issues identified by the Cross-Claimants 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 Fourth Cross-Defendant says as follows.

**Allegations made by the Plaintiffs**

- 1 As to paragraph 1(a) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross Claimants the responses made by the Fourth Defendant in paragraphs 1, 14-52, 56-64, 65-67, 73-76, 79-80, 87-90 and 101-103 of section C of the CLR.
- 2 As to paragraph 1(b) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 2-3, 14-52, 56-64, 68, 73-76, 81, 95-96 and 101-103 of section C of the CLR.
- 3 As to paragraph 1(c) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 4, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of section C of the CLR.
- 4 As to paragraph 1(d) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 5, 14-52, 56-64, 69, 73-76, 82-85, 91-94 and 101-103 of section C of the CLR.

- 5 Further, the Fourth Cross-Defendant refers to and repeats paragraph 12 of section C of the CLR and says that:
- (a) he was not a director of Gunns Limited after 27 May 2010;
  - (b) he was not a director of GPL after 3 June 2010;
  - (c) he believed that during the Relevant Period (being the period while he was a director of GPL and Gunns Limited, as defined in paragraph 12 of section C of the CLR) the Original Compliance Plans were being audited by the accounting firm KPMG, including the Cross-Claimants as pleaded in paragraph 12 of section C of the CLR;
  - (d) he believed that during the Relevant Period the Annual Financial Reports of GPL for the financial years ending 30 June 2002 to 30 June 2009 were being audited by the accounting firm KPMG, including the Cross-Claimants as pleaded in paragraph 12 of section C of the CLR;
  - (e) he believed that during the Relevant Period the consolidated financial reports of Gunns Limited and its subsidiaries for the financial years ending 30 June 2002 to 30 June 2009 were being audited by the accounting firm KPMG, including the Cross-Claimants as pleaded in paragraph 12 of section C of the CLR;
  - (f) during the Relevant Period he had no knowledge of any circumstance which should have caused the Cross-Claimants to notify ASIC as alleged in paragraph 78 of section C of the CLS, alternatively, if in order to discharge any obligation to do so the Cross-Claimants were obliged to make any such report as alleged by the Plaintiffs, the Fourth Cross-Defendant relied on them to discharge that obligation;
  - (g) he had no knowledge of any breach of duty by the Cross-Claimants, whether in the manner alleged in the CLS or otherwise; and
  - (h) at all material times during the Relevant Period he acted honestly and relied on the audits referred to in paragraphs (c) to (e) above.

### **Particulars**

The Fourth Cross-Defendant refers to and repeats paragraphs 82(h)(iii), 82(h)(vi), 82(h)(vii), 82(h)(ix),

82(h)(x), 82(h)(xi) and 82(h)(xiv) of section C of the CLR.

- 6 As to paragraph 1(e) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 6, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of section C of the CLR.
- 7 As to paragraph 1(f) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 7, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of section C of the CLR.
- 8 As to paragraph 1(g) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 8, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of section C of the CLR.
- 9 As to paragraph 1(h) of the Cross-Claim, the Fourth-Cross Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 9, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of section C of the CLR.
- 10 As to paragraph 1(i) of the Cross-Claim, the Fourth Cross-Defendant refers to and repeats as against the Cross-Claimants the responses made by the Fourth Defendant in paragraphs 10, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of section C of the CLR.

**Contribution at law or equity**

- 11 As to paragraph 2 of the Cross-Claim, the Fourth 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 4 and 5 above, if (which is denied) the Cross-Claimants are entitled to contribution from the Fourth Cross-Defendant it is just and equitable that:
    - (i) the Fourth Cross-Defendant be exempted from liability to make contribution having regard to the extent of his responsibility for the damage;

- (ii) alternatively, the amount of contribution recoverable from the Fourth Cross-Defendant should be zero having regard to the extent of his responsibility for the damage.

**D QUESTION APPROPRIATE FOR REFERRAL TO A REFEREE**

- 1 None.

**E MEDIATION STATEMENT**

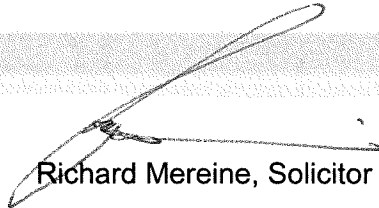
- 1 The Fourth Cross-Defendant agrees with the Cross-Claimants' position with respect to mediation.

**SIGNATURE**

Signature of legal representative

Capacity

Date of signature



Richard Mereine, Solicitor

13 September 2018

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

First Cross-Claimant

**Matthew Wallace**

Second Cross-Claimant

**Cross-Defendants****Gunns Plantations Ltd (in Liquidation)**

First Cross-Defendant

**Gunns Ltd (in Liquidation) (Receivers and Managers Appointed)**

Second Cross-Defendant

**Wayne Leonard Chapman**

Third Cross-Defendant

**John Eugene Gay**

Fourth Cross-Defendant

**Rodney John Loone**

Fifth Cross-Defendant

**Leslie Ralph Baker**

Sixth Cross-Defendant

**Robert Henry Graham**

Seventh Cross-Defendant

**Robin Gray**

Eighth Cross-Defendant

**Paul Desmond Teisseire**

Ninth Cross-Defendant