

COMMERCIAL LIST SIXTH CROSS-CLAIM RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2019/00232749

TITLE OF PROCEEDINGS

First plaintiff	Terry Walter Williamson
Second plaintiff	Helen Therese Williamson
Defendant	Sydney Olympic Park Authority ABN 68 010 941 405

TITLE OF THIS CROSS-CLAIM

Cross-claimant	Evolution Precast Systems Pty Ltd ABN 17 608 136 518
Cross-defendant	WSP Structures Pty Limited ABN 78 006 769 339

FILING DETAILS

Filed for	WSP Structures Pty Limited , Cross-Defendant
Filed in relation to	Sixth Cross-Claim
Legal representative	Tricia Hobson, Norton Rose Fulbright Australia
Legal representative reference	4014154
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A. NATURE OF DISPUTE

- 1 The Cross-Defendant, WSP Structures Pty Limited (**WSP**), generally agrees with the description of the Nature of Dispute set out in the Commercial List Fourth Cross-Claim Statement filed by Icon Co (NSW) Pty Ltd (**Icon**) referred to by the Cross-Claimant, Evolution Precast Systems Pty Ltd (**Evolution**) in Part A of its Commercial List Sixth Cross-Claim Statement filed in these proceedings on 6 May 2020 (**the Cross-Claim**).
- 2 WSP denies that it is liable to Evolution.

B. ISSUES LIKELY TO ARISE

- 1 The issues set out in Part B of the Cross-Claim.
- 2 The issues set out in Part B of WSP's List Response to the Second Cross-Claim Statement filed 31 January 2020 (**WSP's List Response to Icon's Cross-Claim**).
- 3 The issues set out in Part B of WSP's Commercial List Third Cross-Claim Statement filed 20 December 2019 (**Third Cross-Claim**).

C. DEFENDANT'S RESPONSE TO CROSS-CLAIMANT'S CONTENTIONS

In response to Evolution's allegations contained in Part C of the Cross-Claim (adopting the defined terms contained in the Cross-Claim, unless otherwise defined):

Parties

- 1 WSP admits the allegations in paragraph 1.
- 2 WSP admits the allegations in paragraph 2.
- 3 WSP admits the allegations in paragraph 3.

Evolution's Cross-Claim against WSP

- 4 WSP denies the allegations in paragraph 4, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

Contribution between tortfeasors

- 5 As to the allegations in paragraph 5, WSP:
 - (a) assumes that the reference to "WSP Consultancy Agreement" is a reference to "Consultancy Agreement" as defined in the Fourth Cross-Claim Statement and relies on the express words of the Consultancy Agreement;
 - (b) otherwise admits the paragraph.
- 6 As to the allegations in paragraph 6, WSP:

(a) assumes that the reference to “WSP Consultancy Agreement” is a reference to “Consultancy Agreement” as defined in the Fourth Cross-Claim Statement and relies on the express words of the Consultancy Agreement;

(b) otherwise admits the paragraph.

7 As to the allegations in paragraph 7, WSP:

(a) assumes that the reference to “WSP Agreement” is a reference to “Consultancy Agreement” as defined in the Fourth Cross-Claim Statement and relies on the express words of the Consultancy Agreement;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

8 As to the allegations in paragraph 8, WSP:

(a) says that Evolution breached its duty of care to Icon and is liable to Icon in respect of the loss or damage claimed by Icon in the Fourth Cross-Claim, by reason of the matters set out in paragraphs 60 to 67 of the Third Cross-Claim;

(b) denies that it breached any duty to Icon;

(c) denies that it is liable to Icon;

(d) denies that it is a joint tortfeasor;

(e) denies that Evolution is entitled to indemnity or contribution from WSP in accordance with section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946*;

(f) repeats paragraphs 166 to 181 of WSP’s List Response to Icon’s Cross-Claim;

(g) says that in the event (which is denied) that Evolution is entitled to contribution in respect of the same damage, the amount of contribution is to be determined having regard to the matters set out in paragraphs 60 to 68 of the Third Cross-Claim;

(h) otherwise denies the allegations therein.

Misleading or deceptive conduct

9 As to the allegations in paragraph 9, WSP:

(a) as to paragraph 9(a), WSP:

(i) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 26 July 2016 at 5:46 pm (mail no. NSWIcon-TRANSMIT-000200);

- (ii) relies on the Aconex from Icon to Bates Smart and WSP dated 29 August 2016 (mail no. NSWIcon-HCADV-002191);
- (iii) relies on the Aconex from Icon to Evolution, Bates Smart and WSP (cc others) dated 30 August 2016 (mail no. NSWIcon-HCADV-002204);
- (iv) relies on the Aconex from Evolution to Bates Smart, Icon and WSP dated 8 September 2016 at 2:38 pm (mail no. EVOPS-TRANSMIT-000002);
- (v) relies on the Aconex from Icon to Bates Smart (cc others) dated 8 September 2016 at 4:40 pm (mail no. NSWIcon-WTRAN-000088);
- (vi) relies on the Aconex from Icon to Bates Smart, Evolution and WSP (cc others) dated 8 September 2016 at 6:18 pm (mail no. NSWIcon-HCADV-002425);
- (vii) relies on the Aconex from Icon to WSP (cc others) dated 12 September 2016 at 12:50 pm (mail no. NSWIcon-WTRAN-000089);
- (viii) relies on the Aconex from Icon to AMA Windows (cc others) dated 12 September 2016 at 12:51 pm (mail no. NSWIcon-WTRAN-000090);
- (ix) relies on the Aconex from Icon to Icon (cc others) dated 12 September 2016 at 12:54 pm (mail no. NSWIcon-WTRAN-000092);
- (x) relies on the Aconex from Evolution to Bates Smart, Icon and WSP (cc others) dated 12 September 2016 at 1:11 pm (mail no. EVOPS-TRANSMIT-000003);
- (xi) relies on the Aconex from Icon to Bates Smart (cc others) dated 12 September 2016 (mail no. NSWIcon-WTRAN-000098);
- (xii) relies on the Aconex from Bates Smart to Icon and WSP (cc others) dated 12 September 2016 (mail no. B Smart-CADV-000707);
- (xiii) relies on the Aconex from Icon to Evolution and Icon (cc others) dated 15 September 2016 at 12:39 pm (mail no. NSWIcon-HCADV-002518);
- (xiv) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 19 September 2016 at 10:34 am (mail no. NSWIcon-TRANSMIT-000389);
- (xv) relies on the Aconex from WSP to Evolution and Icon (cc others) dated 19 September 2016 at 3:29 pm (mail no. WSP(SA)-CADV-000562) and says that it did not approve any design change by that communication;

- (xvi) relies on the Aconex from Icon to Evolution (cc others) dated 19 September 2016 at 4:55 pm (mail no. NSWIcon-RFI-000229) and says that it did not approve any design change by the Aconex from WSP to Evolution and Icon (cc others) dated 19 September 2016 at 3:29 pm (mail no. WSP(SA)-CADV-000562);
- (xvii) relies on the Aconex from Evolution to Icon (cc others) dated 20 September 2016 (mail no. EVOPS-SUBADV-000028);
- (xviii) relies on the Aconex from WSP to Icon and Evolution (cc others) dated 21 September 2016 (mail no. WSP(SA)-CADV-000573);
- (xix) relies on the Aconex from Bates Smart to Evolution and Icon (cc others) dated 21 September 2016 at 8:19 pm (mail no. B Smart-CADV-000750);
- (xx) relies on the Aconex from Icon to AMA Windows, Bates Smart and Evolution (cc others) dated 22 September 2016 at 11:55 am (mail no. NSWIcon-HCADV-002668);
- (xxi) relies on the Aconex from WSP to Icon and Evolution (cc others) dated 22 September 2016 (mail no. WSP(SA)-CADV-000581) and says that it did not approve any design change by that communication;
- (xxii) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3;

(b) paragraph 9(b) is admitted;

(c) as to paragraph 9(c), WSP:

- (i) relies on the Aconex from WSP to Evolution and Icon (cc others) dated 19 September 2016 at 3.29 pm (mail no. WSP(SA)-CADV-000562);
- (ii) otherwise admits the paragraph;

(d) as to paragraph 9(d), WSP:

- (i) repeats paragraphs 9(a) to 9(c) above;
- (ii) otherwise denies the paragraph.

10 As to the allegations in paragraph 10, WSP:

- (a) repeats paragraph 9(d) above;
- (b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

11 As to the allegations in paragraph 11, WSP:

- (a) repeats paragraph 9(d) above;
- (b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

12 As to the allegations in paragraph 12, WSP:

- (a) repeats paragraph 9(d) above;
- (b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

13 As to the allegations in paragraph 13, WSP:

- (a) as to paragraph 13(a), repeats paragraph 9(a) above;
- (b) paragraph 13(b) is admitted;
- (c) as to paragraph 13(c), WSP:
 - (i) relies on the Aconex from WSP to Icon and Evolution (cc others) dated 22 September 2016 (mail no. WSP(SA)-CADV-000581);
 - (ii) otherwise admits the paragraph;
- (d) as to paragraph 13(d), WSP:
 - (i) repeats paragraphs 13(a) to 13(c) above;
 - (ii) otherwise denies the paragraph.

14 As to the allegations in paragraph 14, WSP:

- (a) repeats paragraph 13(d) above;
- (b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

15 As to the allegations in paragraph 15, WSP:

- (a) repeats paragraph 13(d) above;
- (b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

16 As to the allegations in paragraph 16, WSP:

- (a) repeats paragraph 13(d) above;
- (b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

17 As to the allegations in paragraph 17, WSP:

(a) as to paragraph 17(a), WSP:

- (i) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 26 July 2016 at 5:46 pm (mail no. NSWIcon-TRANSMIT-000200);
- (ii) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 19 September 2016 at 10:34 am (mail no. NSWIcon-TRANSMIT-000389);
- (iii) relies on the Aconex from Evolution to Icon (cc others) dated 22 September 2016 (mail no. EVOPS-TRANSMIT-000004);
- (iv) relies on the Aconex from Evolution to Icon (cc others) dated 22 September 2016 at 9:32 pm (mail no. EVOPS-TRANSMIT-000005);
- (v) relies on the Aconex from Icon to Evolution (cc others) dated 23 September 2016 at 12:37 pm (mail no. NSWIcon-HCADV-002721);
- (vi) relies on the Aconex from Icon to Air Conditioning Engineering Services Pty Ltd and others dated 13 October 2016 (mail no. NSWIcon-TRANSMIT-000516);
- (vii) relies on the Aconex from Evolution to Icon (cc others) dated 31 October 2016 (mail no. EVOPS-TRANSMIT-000014);
- (viii) relies on the Aconex from Icon to WSP and others dated 31 October 2016 (mail no. NSWIcon-TRANSMIT-000579);
- (ix) relies on the Aconex from Bates Smart to Australian Prestressing Services Pty Ltd and others dated 1 November 2016 (mail no. B Smart-CADV-000912);
- (x) relies on the Aconex from WSP to Icon (cc others) dated 3 November 2016 (mail no. WSP(SA)-CADV-000684) and says that it did not approve any design change by that communication;
- (xi) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3;

(b) paragraph 17(b) is admitted;

(c) as to paragraph 17(c), WSP:

- (i) relies on the Aconex from WSP to Icon (cc others) dated 3 November 2016 (mail no. WSP(SA)-CADV-000684);

(ii) relies on the Aconex from Icon to Evolution dated 3 November 2016 at 5.30 pm (mail no. NSWIcon-RFI-000411);

(iii) otherwise admits the paragraph;

(d) as to paragraph 17(d), WSP:

(i) repeats paragraphs 17(a) to 17(c) above;

(ii) otherwise denies the paragraph.

18 As to the allegations in paragraph 18, WSP:

(a) repeats paragraph 17(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

19 As to the allegations in paragraph 19, WSP:

(a) repeats paragraph 17(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

20 As to the allegations in paragraph 20, WSP:

(a) repeats paragraphs 9(d), 13(d) and 17(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

21 WSP denies the allegations in paragraph 21.

22 WSP denies the allegations in paragraph 22.

23 WSP denies the allegations in paragraph 23.

24 WSP denies the allegations in paragraph 24 and says that in the event that WSP is liable (which is denied), Evolution suffered the loss and damage as a result partly of its own failure to take reasonable care, and the amount of loss that Evolution may recover under s 236(1) of the Australian Consumer Law is to be reduced to the extent to which the Court thinks just and equitable having regard to Evolution's share in the responsibility for the loss or damage, pursuant to s 137B of the *Competition and Consumer Act 2010* (Cth).

Particulars

WSP repeats paragraphs 60 to 66 of the Third Cross-Claim.

25 WSP denies the allegations in paragraph 25.

Co-ordinate liability

- 26 WSP denies the allegations in paragraph 26.
- 27 WSP denies the allegations in paragraph 27.
- 28 As to the allegations in paragraph 28, WSP repeats paragraphs 20 and 21 of WSP's List Response to Icon's Cross-Claim.
- 29 WSP denies the allegations in paragraph 29.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

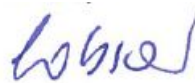
- 1 At this stage, none.

E. STATEMENT AS TO MEDIATION

- 1 The parties have not attempted mediation.
- 2 WSP is willing to proceed to mediation at an appropriate time.

SIGNATURE

Signature of legal representative
by her Partner
Capacity
Date of signature



Solicitor
29 May 2020