

## THIRD CROSS-CLAIM DEFENCE TO CROSS-CLAIM

### COURT DETAILS

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

### TITLE OF PROCEEDINGS

First plaintiff	<b>John Smith and Rosemary Smith</b>
Defendant	<b>Australian Executor Trustees Limited</b>

### TITLE OF THIS CROSS-CLAIM

First plaintiff	<b>Australian Executor Trustees Limited</b>
Defendant	<b>Philip Bruce Meade and the others listed in Schedule 1</b>

### FILING DETAILS

Filed for	<b>Philip Bruce Meade and the others listed in Schedule 1, Cross-Defendants</b>
Filed in relation to	Third Cross-Claim
Legal representative	Tricia Hobson, Norton Rose Fulbright Australia
Legal representative reference	2834916
Contact name and telephone	Susannah Mitton, Norton Rose Fulbright Australia (02) 9330 8718
Contact email	tricia.hobson@nortonrosefulbright.com susannah.mitton@nortonrosefulbright.com

### HEARING DETAILS

The proceeding is listed for directions before Justice Ball on 16 June 2017.

### PLEADINGS AND PARTICULARS

In answer to the Pleadings and Particulars contained in the Third Cross-Claim Statement of Cross-claim filed on 21 December 2016 (**Third Cross-Claim**) the Cross-Defendants (Philip Bruce Meade and the others listed in Schedule 1) rely on the following facts and assertions:

#### Parties

1 The Cross-Defendants admit paragraph 1 of the Third Cross-Claim.

2 In answer to paragraph 2 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They do not know the circumstances in which Australian Executor Trustee Limited (**AET**) was trustee for holders of debentures issued by Provident Capital Limited (**Provident**); and
- (b) Therefore they do not admit the allegations in paragraph 2 of the Third Cross-Claim.

3 In answer to paragraph 3 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They admit that the professional practice is conducted in Sydney under the name HLB Mann Judd (“the NSW Partnership”) and by HLB Mann Judd (NSW) Pty Ltd (**HLB**), a practice company approved by Chartered Accountants Australia and New Zealand;
- (b) HLB, at all material times, carried on business as a professional services firm that provided, amongst other things, audit services; and
- (c) HLB, at all material times, was a partnership with the rights and the obligations of the partnership governed by the HLB Mann Judd Partnership Agreement dated 1 July 2010.

4 In answer to paragraph 4 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They admit that there was a written agreement between the Directors of Provident and HLB for HLB to audit the financial statements of Provident for the financial year ended 30 June 2010, comprising the balance sheet, statement of comprehensive income, statement of changes in equity, statement of cashflows for the year then ended, a summary of significant accounting policies and other explanatory information;

#### **PARTICULARS**

- (i) The terms of the agreement are set out in the letter from HLB to the Directors of Provident dated 4 August 2010 and signed on behalf of Provident by John Fulker COO on 5 August 2010.
- (b) They admit that there was a written agreement between the Directors of Provident and HLB for HLB to audit the financial statements of Provident for

the financial year ended 30 June 2011, comprising the statement of financial position as at 30 June 2011, statement of comprehensive income, statement of changes in equity, statement of cashflows for the year then ended, a summary of significant accounting policies and other explanatory information;

#### **PARTICULARS**

- (i) The terms of the agreement are set out in the letter from HLB to the Directors of Provident dated 6 July 2011 and signed on behalf of Provident by Michael O'Sullivan Managing Director on 20 July 2011.

5 In answer to paragraph 5 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) Victor Bruce Rose and Dennis Jeffery Mattiske retired from HLB prior to 1 July 2010; and
- (b) The partners of HLB in the period from 26 July 2010 to 29 June 2012 are listed in Schedule One, subject to the following:
  - (i) David McGrane retired from HLB on 30 June 2011;
  - (ii) John Biddle retired from HLB on 30 September 2011; and
  - (iii) Philip Meade retired from HLB on 31 December 2011.

6 In answer to paragraph 6 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They admit that HLB audited the financial statements of Provident, which was comprised of the balance sheet as at 30 June 2010, the balance sheet, statement of changes in equity and statement of cash flows for the year then ended, a summary of significant accounting policies and other explanatory information.

#### **PARTICULARS**

- (i) The Objective and Scope of the Audit of the Financial Statements is set out in the letter from HLB to the Directors of Provident dated 4 August 2010 (**August 2010 Agreement**).

- (b) Under the terms of the August 2010 Agreement, the directors, management and, where appropriate, others charged with governance acknowledged and understood that they had responsibility:
- (i) For the preparation and fair representation of the financial statements in accordance with Australian Accounting Standards;
  - (ii) For such internal control as directors, management and others charged with governance determined was necessary to enable the preparation of financial statements that were free from material misstatement, whether due to fraud or error; and
  - (iii) To provide HLB with:
    - (A) Access to all information of which directors, management and others charged with governance were aware that was relevant to the preparation of the financial statements such as records, documentation and other matters;
    - (B) Additional information that HLB may request from directors, management and others charged with governance for the purpose of the audit; and
    - (C) Unrestricted access to persons within the entity from whom HLB determined it necessary to obtain audit evidence.
- (c) They admit that HLB audited the financial statements of Provident, which was comprised of the statement of financial position as at 30 June 2011, statement of comprehensive income, statement of changes in equity and statement of cash flows for the year then ended, a summary of significant accounting policies and other explanatory information, and the director's declaration.

#### **PARTICULARS**

- (i) The Objective and Scope of the Audit of the Financial Statements is set out in the letter from HLB to the Directors of Provident dated 6 July 2011 (**July 2011 Agreement**).

- (d) Under the terms of the July 2011 Agreement, the directors, management and, where appropriate, others charged with governance acknowledged and understood that they had responsibility:
- (i) For the preparation and fair representation of the financial statements in accordance with Australian Accounting Standards;
  - (ii) For such internal control as directors, management and others charged with governance determined was necessary to enable the preparation of financial statements that were free from material misstatement, whether due to fraud or error; and
  - (iii) To provide HLB with:
    - (A) Access to all information of which directors, management and others charged with governance were aware that was relevant to the preparation of the financial statements such as records, documentation and other matters;
    - (B) Additional information that HLB may request from directors, management and others charged with governance for the purpose of the audit; and
    - (C) Unrestricted access to persons within the entity from whom HLB determined it necessary to obtain audit evidence.
- (e) Otherwise they do not admit the allegations in paragraph 6 of the Third Cross-Claim.

7 In answer to paragraph 7 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They admit that there was a written agreement between the Directors of Provident and HLB for HLB to review the 31 December 2010 half-year financial report of Provident;

#### **PARTICULARS**

- (i) The terms of the agreement are set out in the letter from HLB to the Directors of Provident dated 4 August 2010 on p. 8 under the

heading "*Scope of the review of the Provident Capital Limited half-year financial report*" (**August 2010 Agreement**).

- (b) Under the terms of the August 2010 Agreement, they admit that HLB reviewed the 31 December 2010 half-year financial report of Provident, which comprised of the condensed balance sheet as at 31 December 2010, and the related condensed statements of comprehensive income, changes in equity and cash flows for the sixth-month period ended on that date, a summary of significant accounting policies and other explanatory notes.
- (c) Under the terms of the August 2010 Agreement, the responsibility for the half-year financial report, including adequate disclosure, was that of the directors.
- (d) They admit that there was a written agreement between the Directors of Provident and HLB for HLB to review the 31 December 2011 half-year financial report of Provident;

#### **PARTICULARS**

- (i) The terms of the agreement are set out in the letter from HLB to the Directors of Provident dated 6 July 2011 on pp. 8-9 under the heading "*Scope of the review of the Provident Capital Limited half-year financial report*" (**July 2011 Agreement**).
- (e) Under the terms of the July 2011 Agreement, they admit that HLB reviewed the 31 December 2011 half-year financial report of Provident, which comprised the condensed statement of financial position as at 31 December 2011, and the related condensed statements of comprehensive income, changes in equity and cash flows for the sixth-month period ended on that date, a summary of significant accounting policies and other explanatory notes.
- (f) Under the terms of the July 2011 Agreement, the responsibility for the half-year financial reports, including adequate disclosure, was that of the directors.
- (g) Otherwise they do not admit the allegations in paragraph 7 of the Third Cross-Claim.

8 In answer to paragraph 8 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They admit that HLB was aware that Provident had on issue debentures that were ED securities pursuant to s.111AI of the *Corporations Act*.
- (b) They admit that HLB was aware that Provident was a disclosing entity pursuant to s.111AC of the *Corporations Act*.
- (c) They admit that HLB was aware that Provident was required by s. 292 of the *Corporations Act* to prepare a financial report for each financial year.
- (d) They admit that HLB was aware that 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) They admit that, as the auditor of the financial statements of Provident as pleaded at paragraph 6 of this defence, HLB was required by s. 308(1) of the *Corporations Act* to report to the members of Provident on whether HLB was of the opinion that the 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) They admit that pursuant to s.313(1) of the *Corporations Act*, HLB was required to provide a copy of its audit report for each of FY10 and FY11 to the trustee for the holders of the debentures issued by Provident.
- (g) They admit that HLB was aware that Provident was required by s. 318(1) of the *Corporations Act* to provide a copy of HLB's audit report for each of FY10 and FY11 to the trustee for the holders of debentures issued by Provident.
- (h) They admit that HLB was aware that, pursuant to s.318(2) of the *Corporations Act*, the holder of a debenture issued by Provident was entitled to ask Provident to provide the holder with a copy of HLB's audit report for the last financial year.
- (i) They admit that HLB was aware that Provident was required by s. 302(a) of the *Corporations Act* to prepare a financial report for each half-year.

- (j) They admit that HLB was aware that Provident was required by s. 302(b) of the *Corporations Act* to have its financial report for each half-year either audited or reviewed in accordance with Division 3 and (in either case) to obtain an auditor's report.
- (k) They admit that HLB reviewed the 31 December 2010 half-year financial report of Provident as pleaded at paragraph 7 of this defence and they were aware that HLB was required by s.309(4) of the *Corporations Act* to report to members of Provident on whether it became aware of any matter in the course of the review that made it believe that the financial report did not comply with Division 2.
- (l) They admit that HLB reviewed the 31 December 2011 half-year financial report of Provident as pleaded at paragraph 7 of this defence and they were aware that HLB was required by s.309(4) of the *Corporations Act* to report to members of Provident on whether it became aware of any matter in the course of the review that made it believe that the financial report did not comply with Division 2.
- (m) They admit that pursuant to s.313(1) of the *Corporations Act*, HLB was required to provide a copy of its 31 December 2010 half-year financial report of Provident and 31 December 2011 half-year financial report of Provident as pleaded at paragraph 7 of this defence to the trustee for the holders of the debentures issued by Provident.
- (n) They admit that HLB was aware that Provident was required by s. 318(4) of the *Corporations Act* to provide a copy of HLB's 31 December 2010 half-year financial report of Provident and 31 December 2011 half-year financial report of Provident as pleaded at paragraph 7 of this defence to the trustee for the holders of debentures issued by Provident.
- (o) They admit that pursuant to s.313(2) of the *Corporations Act*, throughout the period from 26 July 2010 to 29 June 2012, HLB was required to give Provident a written report about any matter that:
  - (i) HLB became aware of in conducting an audit or review of Provident's financial report for a financial year or half-year;



- (ii) In HLB's opinion was or was likely to be prejudicial to the interests of holders of debentures issued by Provident; and
  - (iii) In HLB's opinion was relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties, under the *Corporations Act* or the trust deed.
- (p) They admit that pursuant to s.313(2) of the *Corporations Act*, HLB was required to give the trustee for holders of debentures issued by Provident a copy of report referred to in sub-paragraph (o) above.

#### **FY10 audit**

- 9 The Cross-Defendants admit paragraph 9 of the Third Cross-Claim.
- 10 The Cross-Defendants admit paragraph 10 of the Third Cross-Claim.
- 11 In answer to paragraph 11 of the Third Cross-Claim, the Cross-Defendants say:
- (a) They admit that after auditing the financial statements of Provident as pleaded at paragraph 6(a) above, HLB issued an Audit report in which it expressed the opinion that:
    - (i) *"the financial report of Provident Capital Limited is in accordance with the Corporations Act 2001, including:*
      - (A) *giving a true and fair view of the company's financial position as at 30 June 2010 and of its performance for the year ended on that date; and*
      - (B) *complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations 2001; and*
    - (ii) *the financial statements also comply with International Financial Reporting Standards as disclosed in Note 1(a)".*
  - (b) Otherwise does not admit the allegations in paragraph 11 of the Third Cross-Claim.

- 12 In answer to paragraph 12 of the Third Cross-Claim, the Cross-Defendants say that:
- (a) They admit that HLB audited the financial statements of Provident as pleaded in paragraph 6(a) above;
  - (b) They say that the agreement was in writing and set out set out in the letter from HLB to the Directors of Provident dated 4 August 2010;
  - (c) They say that it was a term of HLB's contract with the Directors of Provident that HLB would exercise reasonable care and skill in auditing the financial report and issuing its audit report; and
  - (d) Otherwise do not admit the allegations in paragraph 12 of the Third Cross-Claim.
- 13 The Cross-Defendants admit paragraph 13 of the Third Cross-Claim.
- 14 The Cross-Defendants do not admit the allegations in paragraph 14 of the Third Cross-Claim.
- 15 The Cross-Defendants deny the allegations in paragraph 15 of the Third Cross-Claim.
- 16 The Cross-Defendants deny the allegations in paragraph 16 of the Third Cross-Claim.
- 17 The Cross-Defendants deny the allegations in paragraph 17 of the Third Cross-Claim.
- 18 The Cross-Defendants deny the allegations in paragraph 18 of the Third Cross-Claim.
- 19 The Cross-Defendants deny the allegations in paragraph 19 of the Third Cross-Claim.
- 20 In answer to paragraph 20 of the Third Cross-Claim, the Cross-Defendants admit that HLB's conduct in issuing its audit report in which it expressed the opinion pleaded in paragraph 11 of this defence was:
- (a) Conduct in trade or commerce;

- (b) Conduct in relation to financial products, namely, the debentures issued by Provident.
- 21 The Cross-Defendants say that HLB issued its audit report pleaded in paragraph 11 of this defence by email.
- 22 The Cross-Defendants admit paragraph 22 of the Third Cross-Claim.
- 23 The Cross-Defendants deny the allegations in paragraph 23 of the Third Cross-Claim.
- 24 The Cross-Defendants deny the allegations in paragraph 24 of the Third Cross-Claim.
- 25 The Cross-Defendants deny the allegations in paragraph 25 of the Third Cross-Claim.
- 26 The Cross-Defendants deny the allegations in paragraph 26 of the Third Cross-Claim.
- 27 The Cross-Defendants deny the allegations in paragraph 27 of the Third Cross-Claim.
- 28 In answer to paragraph 28 of the Third Cross-Claim, the Cross-Defendants say that:
- (a) HLB issued an Audit report in which it expressed the opinion that:
- (i) *“the financial report of Provident Capital Limited is in accordance with the Corporations Act 2001, including:*
- (A) *giving a true and fair view of the company's financial position as at 30 June 2010 and of its performance for the year ended on that date; and*
- (B) *complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations 2001; and*
- (ii) *the financial statements also comply with International Financial Reporting Standards as disclosed in Note 1(a)”.*

(b) Otherwise does not admit the allegations in paragraph 28 of the Third Cross-Claim.

29 The Cross-Defendants admit paragraph 29 of the Third Cross-Claim.

30 In answer to paragraph 30 of the Third Cross-Claim, the Cross-Defendants say that:

(a) They admit that at the time HLB issued its Audit report as pleaded in paragraph 28 of this defence, the Australian Auditing Standards required that:

(i) HLB comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report taken as a whole is free from material misstatement; and

(ii) Reasonable assurance is a concept relating to the accumulation of the audit evidence necessary for the auditor to conclude that there are no material misstatements in the financial report taken as a whole. Reasonable assurance relates to the whole audit process.

#### **PARTICULARS**

(A) ASA200, [24] and [25]

31 The Cross-Defendants deny the allegations in paragraph 31 of the Third Cross-Claim.

32 The Cross-Defendants deny the allegations in paragraph 32 of the Third Cross-Claim.

33 The Cross-Defendants deny the allegations in paragraph 33 of the Third Cross-Claim.

34 The Cross-Defendants deny the allegations in paragraph 34 of the Third Cross-Claim.

35 The Cross-Defendants deny the allegations in paragraph 35 of the Third Cross-Claim.

36 The Cross-Defendants deny the allegations in paragraph 36 of the Third Cross-Claim.

37 The Cross-Defendants deny the allegations in paragraph 37 of the Third Cross-Claim.

38 The Cross-Defendants deny the allegations in paragraph 38 of the Third Cross-Claim.

39 The Cross-Defendants deny the allegations in paragraph 39 of the Third Cross-Claim.

40 The Cross-Defendants deny the allegations in paragraph 40 of the Third Cross-Claim.

41 The Cross-Defendants deny the allegations in paragraph 41 of the Third Cross-Claim.

42 The Cross-Defendants deny the allegations in paragraph 42 of the Third Cross-Claim.

43 The Cross-Defendants deny the allegations in paragraph 43 of the Third Cross-Claim.

44 The Cross-Defendants deny the allegations in paragraph 44 of the Third Cross-Claim.

45 The Cross-Defendants deny the allegations in paragraph 45 of the Third Cross-Claim.

46 The Cross-Defendants deny the allegations in paragraph 46 of the Third Cross-Claim.

**FY11 audit**

47 The Cross-Defendants admit paragraph 47 of the Third Cross-Claim.

48 The Cross-Defendants admit paragraph 48 of the Third Cross-Claim.

49 In answer to paragraph 49 of the Third Cross-Claim, the Cross-Defendants say:

- (a) They admit that after auditing the financial statements of Provident as pleaded at paragraph 6(c) above, HLB issued an Audit report in which it expressed the opinion that:
- (i) *“the financial report of Provident Capital Limited is in accordance with the Corporations Act 2001, including:*
    - (A) *giving a true and fair view of the company's financial position as at 30 June 2011 and of its performance for the year ended on that date; and*
    - (B) *complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations 2001; and*
  - (ii) *the financial statements also comply with International Financial Reporting Standards as disclosed in Note 1(a)”.*
- (b) Otherwise does not admit the allegations in paragraph 49 of the Third Cross-Claim.

50 In answer to paragraph 50 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They admit that HLB audited the financial statements of Provident as pleaded in paragraph 6(c) above;
- (b) They say that the agreement was in writing and set out in the letter from HLB to the Directors of Provident dated 6 July 2011; and
- (c) They say that it was a term of HLB’s contract with the Directors of Provident that HLB would exercise reasonable care and skill in auditing the financial report and issuing its audit report;
- (d) Otherwise do not admit the allegations in paragraph 50 of the Third Cross-Claim.

51 The Cross-Defendants admit paragraph 51 of the Third Cross-Claim.

- 52 The Cross-Defendants do not admit the allegations in paragraph 52 of the Third Cross-Claim.
- 53 The Cross-Defendants deny the allegations in paragraph 53 of the Third Cross-Claim.
- 54 The Cross-Defendants deny the allegations in paragraph 54 of the Third Cross-Claim.
- 55 The Cross-Defendants deny the allegations in paragraph 55 of the Third Cross-Claim.
- 56 The Cross-Defendants deny the allegations in paragraph 56 of the Third Cross-Claim.
- 57 The Cross-Defendants deny the allegations in paragraph 57 of the Third Cross-Claim.
- 58 The Cross-Defendants admit paragraph 58 of the Third Cross-Claim.
- 59 The Cross-Defendants say that HLB issued its audit report pleaded in paragraph 49 of this defence by email.
- 60 The Cross-Defendants admit paragraph 60 of the Third Cross-Claim.
- 61 The Cross-Defendants deny the allegations in paragraph 61 of the Third Cross-Claim.
- 62 The Cross-Defendants deny the allegations in paragraph 62 of the Third Cross-Claim.
- 63 The Cross-Defendants deny the allegations in paragraph 63 of the Third Cross-Claim.
- 64 The Cross-Defendants deny the allegations in paragraph 64 of the Third Cross-Claim.
- 65 The Cross-Defendants deny the allegations in paragraph 65 of the Third Cross-Claim.

66 In answer to paragraph 66 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) HLB issued an Audit report in which it expressed the opinion that:
  - (i) *“the financial report of Provident Capital Limited is in accordance with the Corporations Act 2001, including:*
    - (A) *giving a true and fair view of the company's financial position as at 30 June 2011 and of its performance for the year ended on that date; and*
    - (B) *complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations 2001; and*
  - (ii) *the financial statements also comply with International Financial Reporting Standards as disclosed in Note 1(a)”.*
- (b) Otherwise does not admit the allegations in paragraph 66 of the Third Cross-Claim.

67 The Cross-Defendants admit paragraph 67 of the Third Cross-Claim.

68 In answer to paragraph 68 of the Third Cross-Claim, the Cross-Defendants say that:

- (a) They admit that at the time HLB issued its Audit report as pleaded in paragraph 66 of this defence, the Australian Auditing Standards required that:
  - (i) HLB comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report taken as a whole is free from material misstatement; and
  - (ii) Reasonable assurance is a concept relating to the accumulation of the audit evidence necessary for the auditor to conclude that there are no material misstatements in the financial report taken as a whole. Reasonable assurance relates to the whole audit process.



**PARTICULARS**

(A) ASA200, [24] and [25]

- 69 The Cross-Defendants deny the allegations in paragraph 69 of the Third Cross-Claim.
- 70 The Cross-Defendants deny the allegations in paragraph 70 of the Third Cross-Claim.
- 71 The Cross-Defendants deny the allegations in paragraph 71 of the Third Cross-Claim.
- 72 The Cross-Defendants deny the allegations in paragraph 72 of the Third Cross-Claim.
- 73 The Cross-Defendants deny the allegations in paragraph 73 of the Third Cross-Claim.
- 74 The Cross-Defendants deny the allegations in paragraph 74 of the Third Cross-Claim.
- 75 The Cross-Defendants deny the allegations in paragraph 75 of the Third Cross-Claim.
- 76 The Cross-Defendants deny the allegations in paragraph 76 of the Third Cross-Claim.
- 77 The Cross-Defendants deny the allegations in paragraph 77 of the Third Cross-Claim.
- 78 The Cross-Defendants deny the allegations in paragraph 78 of the Third Cross-Claim.
- 79 The Cross-Defendants deny the allegations in paragraph 79 of the Third Cross-Claim.
- 80 The Cross-Defendants deny the allegations in paragraph 80 of the Third Cross-Claim.

81 The Cross-Defendants deny the allegations in paragraph 81 of the Third Cross-Claim.

82 The Cross-Defendants deny the allegations in paragraph 82 of the Third Cross-Claim.

83 The Cross-Defendants deny the allegations in paragraph 83 of the Third Cross-Claim.

84 The Cross-Defendants deny the allegations in paragraph 84 of the Third Cross-Claim.

85 Further, in answer to the whole Third Cross-Claim, the Cross-Defendants say:

- (a) They deny that the Plaintiff and Group Members are entitled to the relief sought in the Statement of Claim; and
- (b) HLB denies that AET are entitled to the relief sought in the Third Cross-Claim; and
- (c) Pursuant to s.50 of the *Civil Liability Act 2002*, that HLB, in carrying out its professional audit services as set out at paragraphs 6 and 7 above, acted in a professional manner at the time the services were provided; and/or
- (d) If, which is denied, the Plaintiff or Group Members as alleged in the Statement of Claim are entitled to recover that loss and damage, the cause of that loss and damage, being the same loss and damage in respect of which AET seeks to recover in this proceeding from HLB, are the actions and omissions of Provident and not any contravention by HLB; and/or
- (e) If, which is denied, the Plaintiff and Group Members as alleged in the Statement of Claim are entitled to recover that loss and damage, the cause of that loss and damage, being the same loss and damage in respect of which AET seeks to recover in this proceeding from HLB, are the actions and omissions of AET and not any contravention by HLB; and/or
- (f) If, which is denied, HLB is liable to the Plaintiff or Group Members as alleged in the Statement of Claim, and that the Plaintiff and Group Members are entitled to recover compensation from HLB, then that

compensation must be reduced to account for any amounts recovered or to be recovered by the Plaintiff and Group Members:

- (i) pursuant to the Receivership of Provident, including the proceedings commenced by the Receivers of Provident against the directors of Provident in the Supreme Court of New South Wales (proceeding No. 2014/63700); and
  - (ii) pursuant to the Supreme Court of New South Wales primary proceedings against AET (proceeding No. 2015/306222); and
  - (iii) pursuant to the Supreme Court of New South Wales Second Cross-Claim against Pricewaterhouse Coopers (**PwC**) (proceeding No. 2015/306222); and/or
- (g) If, which is denied, the Plaintiff and Group Members as alleged in the Statement of Claim are entitled to recover that loss and damage, being the same loss and damage in respect of which AET seeks to recover in this proceeding from HLB, HLB's liability is limited by Professional Standards Scheme approved under the Professional Standards Legislation;


#### **PARTICULARS**

- (i) Professional Standards Act 1994 (NSW), The Institute of Chartered Accountants In Australia (NSW) Scheme for Category 1 Services; and
- (ii) The Limitation of Liability is set out at p. 9 in the letter from HLB to the Directors of Provident dated 4 August 2010; and
- (iii) The Limitation of Liability is set out at p. 10 in the letter from HLB to the Directors of Provident dated 6 July 2011.

#### **SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a

reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature   
Capacity Solicitor on record *by the partner*  
Date of signature 12 May 2017 *D.B. Goldman*

**AFFIDAVIT VERIFYING**

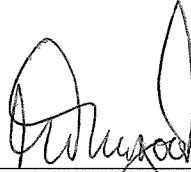
Name Michael Thurgood  
 Address Level 19, 207 Kent St, Sydney NSW 2000  
 Occupation Chief Operating Officer - Shared Services  
 Date 12 May 2017

I say on oath/affirm:

- 86 I am the Chief Operating Officer, Shared Services of HLB.
- 87 I believe that the allegations of fact contained in the defence are true.
- 88 I believe that the allegations of fact that are denied in the defence are untrue.
- 89 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN /AFFIRMED at

Signature of deponent



Name of witness

Garry Willis Weis

Address of witness

58 Browns Road Kurragong NSW 2758

Capacity of witness

JP - 118555

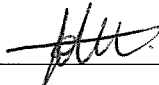
And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.  
 I have confirmed the deponent's identity using the following identification document:

Drives Licence 8295DW

Identification document relied on (may be original or certified copy)<sup>†</sup>

Signature of witness



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

**Garry Willis Weis**  
 A Justice of the Peace in and for  
 The State of New South Wales  
 Regn. No: 118555

## FURTHER DETAILS ABOUT FILING PARTY

### Filing party

Name	Philip Bruce Meade and the others listed in Schedule One
Address	Level 19, 207 Kent St Sydney NSW 2000

### Legal representative for filing party

Name	Tricia Hobson
Practising certificate number	
Firm	Norton Rose Fulbright Australia
Contact solicitor	Susannah Mitton
Address	Grosvenor Place 225 George Street Sydney NSW 2000
DX address	368 Sydney
Telephone	02 9330 8000
Fax	02 9330 8111
Email	tricia.hobson@nortonrosefulbright.com susannah.mitton@nortonrosefulbright.com
Electronic service address	tricia.hobson@nortonrosefulbright.com susannah.mitton@nortonrosefulbright.com

**SCHEDULE ONE**

The partners of HLB in the period from 26 July 2010 to 29 June 2012 were:

MEADE, Philip Bruce  
BEMBRICK, Peter Ross  
TAYLOR, Barry Anthony  
HUTTON, Michael Geoffrey  
NEEDHAM, Andrew Fletcher  
SWINDELLS, Darryl Kevin  
SMITH, Aidan Gerard  
PREEN, Stephen Keith  
FITTLER, Sven Anthony  
JAMES, Simon Powell  
MULLER, Mark Douglas  
VON-LUCKEN, Mariana Ines  
WICKENDEN, Neil  
GARDINER, Matthew Robert  
BIDDLE, John Russell  
McGRANE, David  
GRIVAS, Steve  
KABROVSKI, Tony  
PHILPOT, Jonathan