

pursuant to:

- (d) section 1041I of the Corporations Act; and/or
- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

Second HY15 inventory representations, opinions and conduct

788. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the Second HY15 Inventory Representations;
- (b) making the Second HY15 Inventory Opinion Representations;
- (c) engaging in the Second HY15 Inventory Conduct,

pursuant to:

- (d) section 1041I of the Corporations Act; and/or
- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

Second HY15 rebate representations, opinions and conduct

789. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the Second HY15 Rebate Representations;
- (b) making the Second HY15 Rebate Opinion Representations;
- (c) engaging in the Second HY15 Rebate Conduct,

pursuant to:

- (d) section 1041I of the Corporations Act; and/or
- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

HY15 Anticipated Unqualified Review Report representation and conduct

790. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the HY15 Anticipated Unqualified Review Report Representation;
- (b) engaging in the HY15 Anticipated Unqualified Review Report Conduct,
pursuant to:

- (c) section 1041I of the Corporations Act; and/or
- (d) section 12GF of the ASIC Act; and/or
- (e) section 236 of the ACL.

Second HY15 impairment representation, opinion and conduct

791. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the Second HY15 Impairment Representations;
- (b) making the Second HY15 Impairment Opinion Representations;
- (c) engaging in the Second HY15 Impairment Conduct,
pursuant to:

- (d) section 1041I of the Corporations Act; and/or
- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

HY15 unqualified review report representations, opinions and conduct

792. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the HY15 Unqualified Review Report Representations;
- (b) making the HY15 Unqualified Review Report Opinion Representations;

(c) engaging in the HY15 Unqualified Review Report Conduct,

pursuant to:

(d) section 1041I of the Corporations Act; and/or

(e) section 12GF of the ASIC Act; and/or

(f) section 236 of the ACL.

HY15 Corporations Act compliance representations, opinions and conduct

793. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

(a) making the HY15 Corporations Act Compliance Representations;

(b) making the HY15 Corporations Act Compliance Opinion Representations;

(b1) making the Second HY15 Corporations Act Compliance Representations;

(c) engaging in the HY15 Corporations Act Compliance Conduct,

pursuant to:

(d) section 1041I of the Corporations Act; and/or

(e) section 12GF of the ASIC Act; and/or

(f) section 236 of the ACL.

HY15 review compliance representations, opinions and conduct

794. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

(a) making the HY15 Review Compliance Representations;

(b) making the HY15 Review Compliance Opinion Representations;

(c) engaging in the HY15 Review Compliance Conduct,

pursuant to:

(d) section 1041I of the Corporations Act; and/or

- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

HY15 representations that services were of a particular standard or quality

ASRE 2410

- 795. Further, or in the alternative, the HY15 Review Compliance Representation was a representation that Deloitte had provided its services to a particular standard or quality, namely ASRE 2410.
- 796. Deloitte did not conduct its review of the HY15 Financial Report in accordance with ASRE 2410.
- 797. In the premises, the HY15 Review Compliance Representation was false or misleading.
- 798. The HY15 Review Compliance Representation was conduct by Deloitte in trade or commerce in connection with the supply of services within the meaning of section 29 of the ACL.
- 799. Further, or alternatively, the HY15 Review Compliance Representation was conduct by Deloitte in trade or commerce in connection with the supply of financial services within the meaning of section 12DB of the ASIC Act.
- 800. By reason of the matters referred to at paragraphs 707 and 795 to 796 above, by making the HY15 Review Compliance Representation, Deloitte has contravened:
 - (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
- 801. Each of Wavish, Cave, Raine, Murray, Ishak and DSH relied on the HY15 Review Compliance Representation.
- 802. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the HY15 Review Compliance Representation in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
- 803. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte making the HY15 Review Compliance Representation from Deloitte pursuant to:

- (a) section 12GF of the ASIC Act; and/or
- (b) section 236 of the ACL.

Degree of skill, care and diligence expected of a professional providing services of the same kind and/or reasonable skill and care

804. Further, or in the alternative, each of the:

- (a) First HY15 Inventory Opinion Representations;
- (b) First HY15 Rebate Opinion Representations;
- (b1) HY15 No Internal Control Deficiencies Opinion Representation;
- (c) First HY15 Impairment Opinion Representation;
- (d) Second HY15 Inventory Opinion Representations;
- (e) Second HY15 Rebate Opinion Representations;
- (f) Second HY15 Impairment Opinion Representation;
- (g) HY15 Anticipated Unqualified Review Report Representation;
- (h) HY15 Unqualified Review Report Opinion Representations;
- (i) HY15 Corporations Act Compliance Opinion Representations;
- (j) HY15 Review Compliance Opinion Representations,

was a representation that Deloitte had provided its services to a particular standard or quality, namely with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.

805. In making the First HY15 Inventory Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.

806. In making the First HY15 Rebate Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.

- 806A. In making the HY15 No Internal Control Deficiencies Opinion Representation, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
807. In making the First HY15 Impairment Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
808. In making the Second HY15 Inventory Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
809. In making the Second HY15 Rebate Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
810. In making the Second HY15 Impairment Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
811. In making the HY15 Anticipated Unqualified Review Report Representation, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
812. In making the HY15 Unqualified Review Report Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
813. In making the HY15 Corporations Act Compliance Opinion Representation, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
814. In making the HY15 Review Compliance Opinion Representation, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
815. In the premises, each of the:
- (a) First HY15 Inventory Opinion Representations;

- (b) First HY15 Rebate Opinion Representations;
- (b1) HY15 No Internal Control Deficiencies Opinion Representation;
- (c) First HY15 Impairment Opinion Representation;
- (d) Second HY15 Inventory Opinion Representations;
- (e) Second HY15 Rebate Opinion Representations;
- (f) Second HY15 Impairment Opinion Representation;
- (g) HY15 Anticipated Unqualified Review Report Representation;
- (h) HY15 Unqualified Review Report Opinion Representations;
- (i) HY15 Corporations Act Compliance Opinion Representations;
- (j) HY15 Review Compliance Opinion Representations,

were false or misleading.

816. The making of each of the:

- (a) First HY15 Inventory Opinion Representations;
- (b) First HY15 Rebate Opinion Representations;
- (b1) HY15 No Internal Control Deficiencies Opinion Representation;
- (c) First HY15 Impairment Opinion Representation;
- (d) Second HY15 Inventory Opinion Representations;
- (e) Second HY15 Rebate Opinion Representations;
- (f) Second HY15 Impairment Opinion Representation;
- (g) HY15 Anticipated Unqualified Review Report Representation;
- (h) HY15 Unqualified Review Report Opinion Representations;
- (i) HY15 Corporations Act Compliance Opinion Representations;
- (j) HY15 Review Compliance Opinion Representations;

was conduct by Deloitte:

- (k) in trade or commerce in connection with the supply of services within the meaning of section 29 of the ACL; and/or
 - (l) in trade or commerce in connection with the supply of financial services within the meaning of section 12DB of the ASIC Act.
817. By reason of the matters referred to at paragraphs 678, 804(a), 805, 815(a) and 816(a) above, by making the First HY15 Inventory Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
818. By reason of the matters referred to at paragraphs 681, 804(b), 806, 815(b) and 816(b) above, by making the First HY15 Rebate Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
- 818A. By reason of the matters referred to at paragraph 684, 804(b1), 806A, 815(b1) and 816(b1) above, by making the First HY15 Rebate Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
819. By reason of the matters referred to at paragraphs 687, 804(c), 807, 815(c) and 816(c) above, by making the First HY15 Impairment Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
820. By reason of the matters referred to at paragraphs 690, 804(d), 808, 815(d) and 816(d) above, by making the Second HY15 Inventory Opinion Representations, Deloitte has contravened:

- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
821. By reason of the matters referred to at paragraphs 693, 804(e), 809, 815(e) and 816(e) above, by making the Second HY15 Rebate Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
822. By reason of the matters referred to at paragraphs 698, 804(f), 810, 815(f) and 816(f) above, by making the Second HY15 Impairment Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
823. By reason of the matters referred to at paragraphs 695, 804(g), 811, 815(g) and 816(g) above, by making the HY15 Anticipated Unqualified Review Report Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
824. By reason of the matters referred to at paragraphs 701, 804(h), 812, 815(h) and 816(h) above, by making the HY15 Unqualified Review Report Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
825. By reason of the matters referred to at paragraphs 703, 804(i), 813, 815(i) and 816(i) above, by making the HY15 Corporations Act Compliance Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.

826. By reason of the matters referred to at paragraphs 704, 804(j), 814, 815(j) and 816(j) above, by making the HY15 Review Compliance Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
827. Paragraphs 744, 747, 751, 754, 757, 759, 762, 765, 768 and 771 are repeated.
828. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the First HY15 Inventory Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
829. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the First HY15 Rebate Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
- 829A. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the HY15 No Internal Control Deficiencies Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
830. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the First HY15 Impairment Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
831. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the Second HY15 Inventory Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
832. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the Second HY15 Rebate Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
833. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the Second HY15 Impairment Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
- 833A. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the HY15 Anticipated Unqualified Review Report

Representation in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.

834. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the HY15 Unqualified Review Report Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.

835. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the HY15 Corporations Act Compliance Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.

836. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the HY15 Review Compliance Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.

837. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte making the:

- (a) First HY15 Inventory Opinion Representations;
- (b) First HY15 Rebate Opinion Representations;
- (b1) HY15 No Internal Control Deficiencies Opinion Representations;
- (c) First HY15 Impairment Opinion Representation;
- (d) Second HY15 Inventory Opinion Representations;
- (e) Second HY15 Rebate Opinion Representations;
- (f) Second HY15 Impairment Opinion Representation;
- (g) HY15 Unqualified Review Report Opinion Representations;
- (h) HY15 Corporations Act Compliance Opinion Representations;
- (i) HY15 Review Compliance Opinion Representations;

from Deloitte pursuant to:

- (j) section 12GF of the ASIC Act; and/or

- (k) section 236 of the ACL.

XIV. HY15 BREACH OF DUTY OF CARE

HY15 Duty of Care

838. Deloitte owed DSH a duty of care to exercise reasonable skill, care and diligence in performing its services as auditor pursuant to the FY15 Deloitte Retainer, including in reviewing the HY15 Financial Report.
839. Further, or in the alternative, Deloitte held itself out as having special, skill, knowledge and expertise as professional auditors to carry out the review of the HY15 Financial Report as required by s 302 of the Corporations Act.
840. Further, as auditors of DSH and the DSE Group, Deloitte owed the HY15 Statutory Review Obligations.
841. Deloitte, by voluntarily accepting the FY15 Deloitte Retainer (**FY15 Engagement**) and by permitting the accepting of that FY15 Engagement by White, accepted a general professional responsibility to ensure that the FY15 Engagement was carried out in relation to the HY15 Review with the degree of care, skill and diligence expected of a professional providing the services of the same kind.
842. Deloitte was paid by DSH for its professional services in carrying out the HY15 Review.
843. Deloitte had exclusive control over the carrying out of the HY15 Review.
844. At all material times, Deloitte was afforded access to:
- (a) the persons within DSH from whom Deloitte determined it necessary to obtain evidence; and
 - (b) all information of DSH that was relevant,
- in respect of the preparation of the HY15 Financial Report and the conduct of the HY15 Review.
845. Deloitte, as auditors of the HY15 Financial Report, was in a situation of particular advantage to know or ascertain whether DSH had complied with the Corporations Act in respect of the matters pleaded in paragraphs 476 to 478 above.
846. At all material times, DSH:

- (a) was vulnerable in that it was unable to protect itself from the consequences of Deloitte's failure to exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind in conducting the HY15 Review;
 - (b) could suffer loss and damage if Deloitte did not exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind in carrying out its review of the HY15 Financial Report.
847. In the premises, at all material times, Deloitte knew, or ought to have known:
- (a) of the matters set out in paragraph 846 above;
 - (b) that DSH would rely upon Deloitte to exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind in:
 - (i) conducting the HY15 Review; and
 - (ii) making statements or forming opinions in respect of the HY15 Financial Report; and
 - (c) that DSH would be likely to suffer economic loss if Deloitte did not exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind in performing each of the matters referred to in paragraphs (b)(i) and (b)(ii) above.
848. By reason of the matters pleaded in paragraphs 845 to 847 above, the relationship between DSH on the one hand, and Deloitte on the other, was such that Deloitte owed to DSH a duty to exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind, in:
- (a) conducting the HY15 Review; and
 - (b) making statements or forming opinions in respect of the HY15 Financial Report,
(HY15 Duty of Care).

HY15 Breaches of the HY15 Duty of Care

849. In breach of the HY15 Duty of Care, Deloitte failed to exercise the degree of skill, care and diligence expected of a professional providing services of the same kind when:

- (a) conducting the HY15 Review; and
- (b) making statements or forming opinions in respect of the HY15 Financial Report, **(HY15 Breach)**.

850. By reason of the HY15 Breach, DSH has suffered loss and damage.

HY15 Negligent Misstatement - DSH

851. At all material times, Deloitte knew or ought to have known that DSH would rely upon its statements or opinions expressed in the course of performing the FY15 Deloitte Retainer in respect of the HY15 Review, including in:

- (a) preparing a financial report for HY15 in compliance with the obligations alleged in paragraphs 476(b) to 476(d) above;
- (b) determining the accounting treatment of rebates in DSH's accounts which complied with Australian Accounting Standards;
- (c) maintaining or developing appropriate and effective inventory management systems;
- (d) determining the provisions to be made in respect of inventory, including whether the existing provisions were appropriate;
- (e) determining whether or not to declare and pay the 2015 Interim Dividend; and
- (f) forming the view that the inventory acquired, and being acquired, by DSH was saleable at an appropriate margin and in an appropriate timeframe.

852. Deloitte, in making any statement or opinion expressed by Deloitte in the course of the performance of the HY15 Review in accordance with the FY15 Deloitte Retainer, assumed the responsibility of exercising reasonable care in making any such statement or opinion.

853. In the premises, Deloitte owed DSH, a duty to use reasonable skill and care in making any statement or expressing any opinion in the course of the performance of the HY15 Review in accordance with the FY15 Deloitte Retainer **(HY15 Misstatement Duty)**.

854. In breach of the HY15 Misstatement Duty, Deloitte failed to use reasonable care and skill in making statements or expressing opinions in the course of the performance of

the HY15 Review in accordance with the FY15 Deloitte Retainer (**HY15 Misstatement Breach**).

855. By reason of the HY15 Misstatement Breach, DSH has suffered loss or damage.

HY15 Contribution

856. For the purpose of this cross-claim only, and without admission, the NED Cross-Claimants repeat paragraphs 1 to 124 of the TACLS.

857. Further, or in the alternative, for the purpose of this cross-claim only, and without admission, the NED Cross-Claimants repeat paragraphs 25(b), 26, 99-113, 114(c)-(h), 115-116, 117(c)-(g), 118-119, 123(c)-(f), 124 and 125 of the TACLS.

858. In the premises, if DSH establishes the matters alleged in paragraph 856 or 857 (which is denied), then by reason of the matters alleged in:

- (a) paragraphs 838 to 850 above;
- (b) further or alternatively, paragraphs 851 to 855 above;
- (c) further or alternatively, paragraphs 677 to 794,

Deloitte is a tortfeasor which, had it been sued by DSH, would have been liable in respect of the same damage for which the NED Cross-Claimants are sued in tort by DSH in the main proceedings.

859. If the Plaintiff succeeds in its action against the NED Cross-Claimants in the main proceedings, the NED Cross-Claimants are entitled to recover contribution from Deloitte pursuant to section 5(1)(c) of the LRMPA in the amount that the Court finds to be just and equitable having regard to the extent of Deloitte's responsibility for that damage.

HY15 Equitable Contribution

860. In the event only that DSH establishes that:

- (a) the NED Cross-Claimants breached the Alleged Duties; and
- (b) by reason of those breaches, DSH has suffered loss and damage,

the NED Cross-Claimants plead as follows.

861. For the purposes only of this claim for contribution, and without admission, the NED Cross-Claimants repeats paragraphs 99-113, 114(c)-(h), 115-116, 117(c)-(g), 118-119, 123(c)-(f), 124 and 125 of the TACLS.
862. If the matters alleged in:
- (a) paragraphs 114(c)-(h), 115 and 116 of the TACLS are established (which are denied) then by reason of the breaches of the Alleged Duties alleged in paragraph 114(c)-(h) of the TACLS, DSH suffered loss or damage by reason of the acquisition and accumulation of significant quantities of Bad Stock;
 - (b) paragraphs 117(c)-(g), 118 and 119 of the TACLS are established (which are denied), then by reason of the breaches of the Alleged Duties alleged in paragraph 117(c)-(g) of the TACLS, DSH suffered loss or damage by reason of the paying of the 2015 Interim Dividend;
 - (c) paragraphs 123(c)-(f), 124 and 125 of the TACLS are established (which are denied), then by reason of the breaches of the Alleged Duties alleged in paragraph 123(c)-(f) of the TACLS, DSH suffered loss or damage by reason of the paying of the 2015 Final Dividend.
863. Further, by reason of the conduct of Deloitte alleged in paragraphs 677 to 709 above, which contravened section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act and/or section 29(1) of the ACL and/or section 12DB of the ASIC Act, DSH suffered loss or damage by reason of:
- (a) the acquisition and accumulation of significant quantities of Bad Stock;
 - (b) the payment of the 2015 Interim Dividend;
 - (c) the payment of the 2015 Final Dividend.
864. Further, or in the alternative, by reason of the conduct of Deloitte alleged in paragraph 796 and/or 849 and/or 854 above:
- (a) Deloitte has breached the term of the FY15 Deloitte Retainer alleged in paragraph 484 above;
 - (b) further or alternatively, Deloitte has breached the term of the FY15 Deloitte Retainer alleged in paragraph 485 above;

- (c) further or alternatively, Deloitte has breached the term of the FY15 Deloitte Retainer alleged in paragraph 486 above.
865. By reason of the breach or breaches alleged in paragraph 864 above, DSH has suffered loss or damage by reason of:
- (a) the acquisition and accumulation of significant quantities of Bad Stock;
 - (b) the payment of the 2015 Interim Dividend; and
 - (c) the payment of the 2015 Final Dividend.
866. By reason of the matters referred to in paragraphs 863 and/or 864 to 865 above:
- (a) Deloitte's contravening conduct caused the same loss or damage to DSH as that allegedly caused by the NED Cross-Claimants (which is denied);
 - (b) Deloitte and the NED Cross-Claimants are co-ordinately liable to DSH in respect of any such loss or damage.
867. By reason of the matters referred to in paragraph 866 above, if it is established (which is denied) that the NED Cross-Claimants are liable for the loss or damage allegedly suffered by DSH, then the NED Cross-Claimants are entitled to recover contribution in respect of any such liability from Deloitte in equity.

FY15 AUDIT

XV. FY15 AUDIT OBLIGATIONS

DSH's FY15 Statutory Obligations

868. For the financial year ended 28 June 2015, DSH:
- (a) was required, by section 286(1)(b) of the Corporations Act, to keep written financial records that would enable true and fair financial statements to be prepared and audited;
 - (b) was required, by section 292(1)(a) of the Corporations Act, to prepare a financial report;
 - (c) was required, by sections 295(1) and (2) of the Corporations Act and by AASB 127, to include in the financial report:
 - (i) the financial statements for the year in relation to DSH and the Consolidated Entity presented as those of a single economic entity, that were required by the accounting standards (if DSH elected to present them as a Consolidated financial statement);
 - (ii) the notes to those financial statements; and
 - (iii) the directors' declaration about the statements and notes;
 - (d) was required, by section 295(4) of the Corporations Act, to include, inter alia, a declaration by the DSH Directors whether, in the directors' opinion:
 - (i) there were reasonable grounds to believe that DSH and the Consolidated Entity would be able to pay their debts as and when they became due and payable; and
 - (ii) the financial statements and notes were in accordance with the Corporations Act, including s 296 (compliance with accounting standards) and s 297 (true and fair view); and
 - (e) prepared the FY15 Financial Report, in compliance with the obligations pleaded in paragraphs (a) to (d) above, which included the financial statements in relation to DSH and the Consolidated Entity, the notes to those statements and the directors' declaration.

869. Pursuant to section 301 of the Corporations Act, DSH was required to have the FY15 Financial Report audited in accordance with Division 3 of the Corporations Act and to obtain an auditor's report.
870. The FY15 Financial Report was required to:
- (a) comply with the accounting standards pursuant to section 296 of the Corporations Act; and
 - (b) give a true and fair view of the financial position and performance of DSH and of the consolidated entity pursuant to section 297 of the Corporations Act.
871. The accounting standards with which the FY15 Financial Report needed to comply included the Full Year Accounting Standards (as in force at the relevant time).

Deloitte's FY15 Statutory Auditing Obligations

872. As auditor of DSH for the financial year ended 28 June 2015, Deloitte was required:
- (a) pursuant to section 307 and section 308 of the Corporations Act to form an opinion as to whether:
 - (i) the FY15 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 the financial position and performance of DSH and of the consolidated entity; and
 - (ii) it had been given all information, explanation and assistance necessary for the conduct of the audit; and
 - (b) pursuant to section 307A of the Corporations Act to conduct the audit of the FY15 Financial Report in accordance with applicable auditing standards (as that term is defined in section 9 of the Corporations Act),
 - (c) to report in accordance with section 308 of the Corporations Act;
 - (d) through White, to report to ASIC in accordance with section 311 of the Corporations Act;
 - (e) to, and had the powers set out in sections 310, 323A and 323C of the Corporations Act to, obtain information,

(FY15 Statutory Auditing Obligations).

873. The auditing standards with which Deloitte needed to comply included the Full Year Auditing Standards (as in force at the relevant time).

FY15 Deloitte Retainer

874. Paragraph 482 above is repeated.
875. Pursuant to the FY15 Deloitte Retainer, DSH retained Deloitte to perform the audit, as required by section 301 of the Corporations Act, the FY15 Financial Report (**FY15 Audit**).
876. It was a term of the FY15 Deloitte Retainer that Deloitte would report whether in its opinion the FY15 Financial Report was in accordance with the Corporations Act including:
- (a) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended on that date; and
 - (b) complying with Australian Accounting Standards and the Corporations Regulations.
877. It was a term of the FY15 Deloitte Retainer that Deloitte would provide its services pursuant to the FY15 Deloitte Retainer with the degree of skill, care and diligence expected of a professional providing services of the same kind.
878. Further, or in the alternative to paragraph 877 above, it was a term of the FY15 Deloitte Retainer that Deloitte would use reasonable skill and care in providing services pursuant to the FY15 Deloitte Retainer.
879. It was a term of the FY15 Deloitte Retainer that Deloitte would perform its audit of the FY15 Financial Report in accordance with Australian Auditing Standards.
880. It was a term of the FY15 Deloitte Retainer that Deloitte would evaluate the appropriateness of DSH's accounting policies.
881. It was a term of the FY15 Deloitte Retainer that Deloitte would evaluate the reasonableness of accounting estimates made by DSH's management.
882. It was a term of the FY15 Deloitte Retainer that Deloitte would communicate to the chairman of the FAC, in writing, concerning any significant deficiencies in internal

control relevant to the audit of the FY15 Financial Report that Deloitte identified during the audit.

XVI. DELOITTE'S CONDUCT OF THE FY15 AUDIT

FY15 Audit Strategy

883. Paragraphs 487 to 495 above are repeated.

FAC Meeting on 19 May 2015

884. White and Cork attended the FAC Meeting held on 19 May 2015.

885. On or about 19 May 2015, Deloitte discussed, amongst other things, the following matters with Tomlinson, Raine, Ishak and Murray and DSH:

- (a) at the HY15 Review, it was noted that there had been a significant improvement in the quality of information for rebates accrued. A more automated process for vendor receivable claims was planned to be in place by 1 July 2015;
- (b) it was agreed with Deloitte that management would review the current obsolescence methodology used at HY15 to ensure it more accurately reflected the markdown provision required. Management confirmed that it would maintain the same obsolescence provisioning methodology that it used in HY15;
- (c) overall the DSH business did not exhibit signs of impairment.

Performance of the FY15 Audit

886. For the purpose of performing the FY15 Statutory Auditing Obligations and its obligations pursuant to the FY15 Deloitte Retainer, Deloitte performed the FY15 Audit in about July to August 2015.

887. For the purposes of completing the FY15 Audit, Deloitte:

- (a) attended at the premises at which books of DSH were held;
- (b) attended inventory counts and stock takes;
- (c) required officers and employees of DSH to provide Deloitte with and obtained:
 - (i) access to the books of DSH and the consolidated entity; and

- (ii) information, explanation and assistance to enable Deloitte to form opinions about the books of DSH and the consolidated entity;
- (d) had access to and reviewed Board Papers and Board Minutes;
- (e) had access to and reviewed books and other documents of DSH including in relation to inventory and rebates;
- (f) understood and appreciated the need to consider the reliability of representations made by the executive management team of DSH and to corroborate those representations by reviewing supporting evidence; and
- (g) had access to standard tests and guidance relevant to the accounting treatment of inventory and rebates.

FY15 FAC Report

888. On or about 6 August 2015, Deloitte reported to the FAC that:

- (a) nothing had come to its attention that caused it to believe that the financial information as presented in the FY15 Financial Report was materially misstated;

Rebates

- (b) management continued to seek to maximise its vendor rebates through price protection, advertising subsidies or O&A rebates;
- (c) where these rebates related to stock on hand, the income should be deferred into a future period;
- (d) as reported in the HY15 FAC Report, Deloitte noted improvements in the quality of information and supporting evidence and had not identified any unadjusted differences in relation to rebates accrued at 28 June 2015;
- (e) vendor receivables remained a key element of DSH's strategy for growth in gross margin and overall profitability;
- (f) the increase in O&A rebate receivables at 28 June 2015 was due to the increased amount of purchasing for the new stores opened, higher buying activity in the final months of the year as well as promotional launches;

- (g) where a rebate related specifically to a product purchase or promotion, the income relating to the rebate received should be deferred so as to match the recognition of the cost of that product or promotion in profit or loss. Generally, O&A rebates were not specifically allocated to a product purchase or promotion, however were often negotiated in parallel to a purchase of inventory or the clearance of an existing product. Consequently, these were recognised in the profit or loss in the period to which the marketing or sales activity related. Deloitte had assessed managements treatment of the O&A rebates and concurred with the treatment.
- (h) Deloitte's procedures in relation to rebates had consisted of the following:
- (i) discussing the nature of the rebate agreements with key members of DSH management;
 - (ii) analysing the various types of rebates recognised by assessing the nature and the classification of the rebates;
 - (iii) performing a walkthrough of the process;
 - (iv) detailed testing of a sample of rebates recognised throughout the year by tracing to supporting documentation, with a focus on rebates accrued as at 28 June 2015; and
 - (v) assessment of whether any rebates represented amounts which should be deferred;
- (i) based on Deloitte's work to date, Deloitte had not identified any unadjusted differences;
- (j) in relation to the classification of O&A rebates, given that DSH had moved towards the use of O&A rebates for vendor support rather than price protection subsidies, management recognised a portion of the O&A rebates in COS where the rebates exceeded the underlying promotional costs. Deloitte's procedures had included an analysis of the gross margin, net advertising costs and overall CODB as a percentage of sales to determine whether the allocation was reasonable and reflected the fundamental economic nature of the activity. Deloitte concurred with the basis of reallocation of the income as at 28 June 2015;

Inventory provision

- (k) during the year, management had adopted the revised inventory obsolescence methodology which had been developed in the second half of FY14. The revised methodology was based on stock ageing and sell through rates rather than stock categories. Based on its analysis of these changes, Deloitte concurred with the methodology adopted;
- (l) inventory balances had increased from FY14 as a result of additional store openings and increased buying activities at the conclusion of FY15;
- (m) the value of inventory as at FY15 was \$293 million;
- (n) the value of inventory of \$293 million as at FY15 included:
 - (i) AASB 102 inventory costs of \$11.6 million;
 - (ii) a reduction for AASB 102 rebates of \$22.9 million;
 - (iii) a provision for obsolete stock of \$5.4 million; and
 - (iv) a provision for shrinkage of \$4 million;
- (o) obsolescence provisions had decreased due to the changes in the calculation methodology which had resulted in a decrease in the provision of \$3.2 million;
- (p) management's updated methodology for calculating inventory provisions had been adopted for the year ended 28 June 2015. The methodology amended the basis of the provision from one based on stock categories to one based on a number of factors which indicated obsolescence, including inventory status, inventory ageing, sell through rates and months cover, negative margins at current selling prices and current promotions or other adjustments. The process included investigation of major product lines with the buying team to understand the expected future sell through and potential future write-downs;
- (q) management had further refined the calculation in FY15, whereby aged stock items which were selling at significant positive margin were excluded from the calculation. The methodology changes contributed \$1.8 million to the \$3.2 million overall movement, with the remaining movement due to improvement in the ageing and condition of stock;

- (r) Deloitte had assessed the assumptions and methodology applied and concurred with the revised methodology. Deloitte noted, however, the importance of consistency and that revisions to the methodology going forward should only be made where there was a change in the quality or nature of the DSE Group's inventory or specific circumstances;
- (s) management provided for 1% of all purchases to cover future obsolescence obligations, which were then added to the cost of the inventory. A similar methodology had been implemented for private label inventory, and the provision had increased as the inventory purchases cycled through the supply chain. As the uplift and private label provisions were offset by the cost of the inventory in the inventory sub-ledger there was no net impact on the balances of inventories recognised in the FY15 Financial Report;
- (t) the shrinkage provision had increased from \$2.3 million to \$4 million, due to the reduced number of stocktakes performed in FY15. Given that fewer stocktakes had been performed, if there was a difference between the estimated shrinkage rates and actuals this could result in more a significant true up once the stocktakes were performed than in prior periods. Deloitte noted that management continued to monitor the level of shrinkage to ensure the provision remained appropriate;

Inventory costing

- (u) included in the cost of inventory were capitalised rebates and supply chain costs which had been recognised in the total cost of inventory under AASB 102. Management had implemented changes in the percentages applied to the absorption costing calculation to better reflect time spent by the buying team on its core activities, as well as amending the calculation of inventory days. Deloitte was satisfied that the overall costs recognised in inventory are appropriate, however noted the importance of applying a consistent methodology and approach;
- (v) in accordance with AASB 102, the value of inventory should include the cost of purchase inclusive of costs incurred in bringing the inventory to its required location and condition and net of purchase rebates;
- (w) there had been an increase in the AASB 102 costs capitalised of \$4.5 million from \$7.1 million at 29 June 2014 to \$11.6 million at 28 June 2015. This had

been driven by increases in stock holdings but also by changes made to the methodology as follows:

- (i) adjustments to the period (i.e. inventory days) used to calculate overhead allocations; and
 - (ii) the percentages applied for buying costs and the allocation of occupancy costs between warehouse and administration at the Chullora site;
- (x) while Deloitte was satisfied that the overall costs recognised in inventory were appropriate, it noted the importance of applying a consistent methodology and approach;
- (y) previously the AASB 102 calculation was based on the year end closing inventory balance, however this had been changed to a rolling 12-month average in FY15. As the year end closing balance was similar to the 12-month average the impact of the change was minimal at 28 June 2015. Deloitte believed that using a closing inventory balance was more appropriate than applying an average balance to calculate the costs capitalised into inventory. This was because costs capitalised should reflect the actual inventory held at balance date. Whilst there was a minimal impact for FY15, the difference could be more significant in future periods;

Asset impairment

- (z) the DSE Group's fixed assets have been assessed for indicators of impairment and an impairment provision of \$2.2 million had been recorded, relating to the property, plant and equipment of NZ retail stores and David Jones stores
- (aa) Deloitte's audit procedures identified a number of potential improvements that could be made in the impairment review methodology;
- (bb) in accordance with AASB 136, tangible assets such as property, plant and equipment held by DSH were assessed for indicators of impairment at least annually. Where an asset did not generate cash flows that were largely independent from other assets, the asset should be considered as part of a cash generating unit ("CGU"). CGUs were defined as the smallest group of assets that generate cash flows that were largely independent of cash flows of other assets;

- (cc) each individual store had been determined by management to be a CGU. Therefore management had performed a review for indicators of impairment at an individual store level. Deloitte concurred with this treatment;
- (dd) management performed an assessment of impairment indicators at 28 June 2015 based on a value in use model;
- (ee) in relation to Australian DSH stores, Deloitte has assessed the model including interrogating the key assumptions which underpinned the value in use calculations. Deloitte noted there had been a marked improvement in the performance of the Australian retail business;
- (ff) in relation to the Move concept stores, while Deloitte concurred with the assessment of management that there are no indicators of impairment at 28 June 2015, should the new concept fail to achieve the required return on investment an impairment might be required;
- (gg) in relation to New Zealand stores, these had suffered a difficult trading period in FY15, albeit there was a slight improvement in the second half of the year. In reviewing management's impairment model, Deloitte had identified a number of areas where the assumptions and methodologies should be revised to improve the accuracy of the model. Deloitte had re-worked the model with revised assumptions and applied various sensitivities to determine if the impairment recorded by management was appropriate. Based on Deloitte's work, including the consideration of potential onerous leases, Deloitte did not consider there to be material impairment recorded in the DSE Group;
- (hh) the David Jones concessions remained a key risk to the profitability of the DSE group and management had identified an impairment provision of \$1.3 million in relation to store assets. Deloitte concurred with the assessment of management and the impairment recognised;

Other

- (ii) in performing its audit, Deloitte had not identified any significant deficiencies in internal controls relating to the prevention and detection of fraud and error which would impact upon its ability to provide its opinion on the FY15 Financial Report;

- (jj) Deloitte's audit procedures included an assessment of the status of the DSE Group's accounting records and reconciliations in line with the requirements of section 286 of the Corporations Act;
- (kk) Deloitte's controls testing had focused on the key business cycles. Deloitte noted that there had been continued improvement in the quality of review controls, documentation supporting adjustments and balances. In particular, Deloitte noted improvement in the reconciliation and supporting documentation relating to rebates, support for key positions and journal entries and had noted fewer unadjusted differences;
- (ll) Deloitte had not identified any uncorrected misstatements that, in its judgment, either individually or in aggregate, could have had a material effect on the FY15 Financial Report.

FAC Meeting on 11 August 2015

889. White and Cork attended the FAC Meeting on 11 August 2015.
890. On or about 11 August 2015, Deloitte took those present through the FY15 FAC Report and stated to Tomlinson, Raine, Ishak and Murray and DSH that:
- (a) Deloitte's audit of the financial statements for FY15 was substantially complete. Subject to the adoption of the accounts by the directors, review of any subsequent events and receipt of the signed management representation letter, Deloitte anticipated issuing an unqualified audit report;
 - (b) there had been a continued improvement in the financial reporting process. Of particular note was the improvement in the quality of reconciliations, accounting for rebates and financial reporting processes;
 - (c) during the year, management reviewed and changed the basis of absorption costing in inventory along with the inventory obsolescence calculation. While Deloitte concurred with the changes in methodology, the importance of applying a consistent methodology and approach to inventory provisioning and costing was noted;
 - (d) the DSE's Group's fixed assets had been assessed for indicators of impairment and an additional impairment charge of \$1.6 million was recorded, relating to the Dick Smith New Zealand and David Jones stores only.

FY15 Board meeting

891. White attended part of the FY15 Board Meeting held on 17 August 2015, by telephone.
892. At the FY15 Board Meeting, Deloitte confirmed that it had received the representation letter from the Abboud and Potts, declared the auditors' independence and gave clearance on the accounts.
893. At the Board meeting on 17 August 2015, the Board:
- (a) resolved that DSH pay the 2015 Final Dividend; and
 - (b) adopted the FY15 Financial Report and authorised DSH's company secretary to release the approved documents to the ASX.

FY15 Audit Report

894. On 17 August 2015, Deloitte issued its independent audit report in respect of the FY15 Financial Report (**FY15 Audit Report**).
895. In the FY15 Audit Report, Deloitte stated that:
- (a) Deloitte had audited the FY15 Financial Report;
 - (b) Deloitte had conducted its audit in accordance with Australian Auditing Standards;
 - (c) the Australian Auditing Standards required, inter alia, Deloitte to plan and perform the audit to obtain reasonable assurance whether the FY15 Financial Report was free from material misstatement;
 - (d) in Deloitte's opinion:
 - (i) the FY15 Financial Report was in accordance with the Corporations Act, including:
 - (A) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended that date;
 - (B) complying with Australian Accounting Standards and the Corporations Regulations 2001; and

- (ii) the consolidated financial statements also complied with International Financial Reporting Standards or disclosed in Note 2.

FY15 Financial Report

896. On 17 August 2015, DSH issued the consolidated accounts of the DSE Group for the full year ended 28 June 2015 which included the FY15 Financial Report audited by Deloitte.

897. The FY15 P&L in respect of the DSE Group, recorded inter alia:

- (a) total revenue of \$1,319.670 million;
- (b) total COS of (\$992.828 million);
- (c) gross profit of \$326.842 million;
- (d) marketing and sales costs of (\$112.935 million);
- (e) net profit for the year of \$37.905 million.

898. The consolidated statement of financial position in the FY15 Financial Report (**FY15 Balance Sheet**) in respect of the DSE Group, recorded inter alia:

- (a) trade and other receivables of \$53.323 million;
- (b) inventories of \$293.044 million.

899. The segment information in Note 4 of the FY15 Financial Report recorded in respect of Australia:

- (a) revenue from sale of goods of \$1,153.079 million;
- (b) COS of (\$865.310 million);
- (c) net profit for the period of \$37.002 million.

FY15 Inventories

900. In the FY15 FAC Report, DSH recorded inventory of \$293.044 million in respect of the consolidated DSE Group which was the net of:

- (a) gross stock of \$313.7 million (net of the 1% uplift provision and private label provision);

- (b) reduced by AASB 102 costs net of rebates of \$11.3 million;
- (c) against which a total provision of \$9.4 million was recognised, comprising:
 - (i) provision for obsolescence of \$5.4 million; and
 - (ii) provision for shrinkage of \$4.0 million.

FY15 Rebates

901. In FY15, O&A rebate income of \$90.452 million was credited to DSH's profit and loss in respect of Australia (consolidated O&A rebate income was \$97.841 million), of which:

- (a) \$63.450 million was recorded in COS Account 3324;
- (b) \$27.002 million was recorded in CODB, as follows:
 - (i) \$9.120 million was recorded in Account 4232;
 - (ii) \$1.542 million was recorded in Account 4237;
 - (iii) \$3.568 million was recorded in Account 4219; and
 - (iv) \$12.772 million was recorded in Account 4227 "*Private Label Vnd Inv Uplift*".

902. Of the total \$97.841 million of O&A rebate income recognised by the consolidated DSE Group during FY15, \$32.452 million (33.2%) was unclaimed by DSH at FY15 and was therefore recorded in Account 1392 as an asset disclosed in the balance sheet of DSH as at 28 June 2015.

XVII. FY15 RISKS OF HARM

FY15 risks relating to FY14 Audit findings

903. Paragraphs 583 to 584 and 639 to 640 above are repeated.

904. In respect of FY15, there was a risk that

- (a) DSH had not implemented new controls or systems to ensure that:
 - (i) the entries in Account 1392 were only recognised as receivables when a valid invoice or debit note had been raised by DSH;

- (ii) each of the Rebate Control Deficiencies were addressed;
 - (iii) inventory was accounted for in accordance with AASB 102;
- (b) as a result of one or more of the matters referred to in this paragraph:
- (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;
 - (B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:
 - (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;
 - (2) comply with Australian Accounting Standards and the Corporations Regulations 2001;
 - (ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss.

905. Deloitte knew, or ought to have known, of the risks alleged in paragraph 904 above.

906. The risks alleged in paragraph 904 above were not insignificant.

FY15 risks relating to rebates

907. Paragraphs 153 to 155 and 522 to 524 and 901 to 902 above are repeated.

908. In respect of FY15, there was a risk that:

- (a) rebate amounts had been recognised inappropriately, including where they did not meet the accounting definition of an asset or where rebate income should have been deferred from FY15 to FY16;
- (b) rebates had not been accounted for in accordance with the requirements of the Australian Accounting Standards, including the Framework, AASB 101 and AASB 102;
- (c) claims had been raised or recognised which were not approved rebates;
- (d) DSH's internal controls in relation to rebates were inadequate;

- (e) the Rebate Maximisation Policy had led to the Rebate Driven Buying Practices which had resulted in the consequences alleged in paragraphs 24 and 25 above;
- (f) as a result of one or more of the matters referred to in this paragraph:
 - (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;
 - (B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:
 - (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;
 - (2) comply with Australian Accounting Standards and the Corporations Regulations 2001;
 - (ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss.

909. Deloitte knew, or ought to have known, of the risks alleged in paragraph 908 above.

910. The risks alleged in paragraph 908 above were not insignificant.

Recognition of O&A rebates as receivables

911. Paragraphs 156 to 160 and 522 to 524 above are repeated.

912. In respect of FY15, there was a risk that:

- (a) the transactions recorded in Account 1392:
 - (i) did not meet the accounting definition of an asset;
 - (ii) should not have been recognised as an asset in the HY15 Balance Sheet;
 - (iii) would not be accounted for in accordance with the requirements of the Australian Accounting Standards, including the Framework and AASB 101;

- (b) as a result of one or more of the matters referred to in this paragraph:
 - (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;
 - (B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:
 - (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;
 - (2) comply with Australian Accounting Standards and the Corporations Regulations 2001;
 - (ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss.

913. Deloitte knew, or ought to have known, of the risks alleged in paragraph 912 above.

914. The risks alleged in paragraph 912 above were not insignificant.

Rebate treatment risks

915. Paragraphs 161 to 163 and 531 to 533 above are repeated.

916. In respect of FY15, there was a risk that:

- (a) rebates, including O&A rebates, had been applied so as to increase profit in circumstances where the rebates should have been applied so as to decrease the costs of purchase of inventory and therefore its carrying value;
- (b) DSH had failed to correctly defer the profit impact of rebates until the inventory to which they related was sold;
- (c) where it was appropriate to apply a rebate so as to increase profit, that DSH had incorrectly classified rebates as part of COS rather than CODB, or would incorrectly reclassify rebates from CODB to COS;
- (d) further or alternatively, DSH had failed to defer some O&A rebates from FY15 to FY16 including where they related to promotional support and the promotional activity to which they related had not been completed;

- (e) as a result of one or more of the matters referred to in this paragraph:
 - (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;
 - (B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:
 - (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;
 - (2) comply with Australian Accounting Standards and the Corporations Regulations 2001;
 - (ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss.

917. Deloitte knew, or ought to have known, of the risks alleged in paragraph 916 above.

918. The risks alleged in paragraph 916 above were not insignificant.

FY15 risks relating to COS

919. Paragraphs 164 to 166 and 535 to 537 above are repeated.

920. In respect of FY15, there was a risk that:

- (a) COS had been misstated due to:
 - (i) transactions being included in COS that had not occurred;
 - (ii) amounts being included in COS relating to fictitious or unauthorised transactions; or
 - (iii) COS transactions would not be recognised in the correct period;
- (b) as a result of one or more of the matters referred to in this paragraph:
 - (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;

(B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:

- (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;
- (2) comply with Australian Accounting Standards and the Corporations Regulations 2001;

(ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss.

921. Deloitte knew, or ought to have known, of the risks alleged in paragraph 920 above.

922. The risks alleged in paragraph 920 above were not insignificant.

FY15 risks relating to inventory

923. Paragraphs 167 to 170 and 539 to 541 above are repeated.

924. In respect of FY15, there was a risk that:

- (a) inventory obsolescence existed but had not been recorded against inventory;
- (b) inventory was misstated due to cost price changes not being accurately recorded in AS400 and not appropriately approved;
- (c) DSH had Inadequate Inventory Management;
- (d) inventory was not correctly valued (adjustments and related COS adjustments not being correctly recorded or recorded at all) due to the lower of NRV or cost not being used;
- (e) DSH had acquired Bad Stock against which provision needed to be made;
- (f) the Rebate Maximisation Policy had led to the Rebate Driven Buying Practices which had resulted in the consequences alleged in paragraphs 24 and 25 above;
- (g) DSH had incorrectly capitalised overhead costs into inventory, contrary to AASB 102;
- (h) as a result of one or more of the matters referred to in this paragraph:

- (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;
 - (B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:
 - (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;
 - (2) comply with Australian Accounting Standards and the Corporations Regulations 2001;
- (ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss.

925. Deloitte knew, or ought to have known, of the risks alleged in paragraph 924 above.

926. The risks alleged in paragraph 924 above were not insignificant.

FY15 risks in relation to journal entries

927. Paragraphs 171 to 173 and 543 to 545 above are repeated.

928. In respect of FY15, there was a risk that:

- (a) journal entries had been made inappropriately;
- (b) journal entries had been overridden by management;
- (c) there had been fraud at the assertion level;
- (d) as a result of one or more of the matters referred to in this paragraph:
 - (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;
 - (B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:
 - (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;

(2) comply with Australian Accounting Standards and the Corporations Regulations 2001;

(ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss.

929. Deloitte knew, or ought to have known, of the risks alleged in paragraph 928 above.

930. The risks alleged in paragraph 928 above were not insignificant.

FY15 risks relating to other accounting issues

931. In respect of FY15, there was a risk that:

- (a) DSH had misstated its operating profit, including by reason of the materialisation of one of the risks referred to in paragraphs 907 to 930 above;
- (b) DSH had misstated its net current liability position, including by reason of the materialisation of one of the risks referred to in paragraphs 907 to 930 above;
- (c) there were uncertainties as to DSH's ability to continue as a going concern;
- (d) DSH had failed to disclose the existence of uncertainties as to DSH's ability to continue as a going concern, contrary to the requirements of AASB 101;
- (e) DSH had incorrectly recognised tax assets, contrary to the requirements of AASB 112;
- (f) DSH had failed to impair its property, plant and equipment, as required by AASB 136;
- (g) DSH had failed to recognise onerous lease provisions, as required by AASB 137;
- (h) as a result of one or more of the matters referred to in this paragraph:
 - (i) the FY15 Financial Report:
 - (A) would not be free from material misstatement;
 - (B) further, or in the alternative, would not comply with the Corporations Act, including that it would not:

- (1) give a true and fair view of the financial position and performance of DSH and the DSE Group;
 - (2) comply with Australian Accounting Standards and the Corporations Regulations 2001,
- (ii) further, or in the alternative, DSH and/or the NED Cross-Claimants would suffer economic loss

932. Deloitte knew, or ought to have known, of the risks alleged in paragraph 931 above.

933. The risks alleged in paragraph 931 above were not insignificant.

XVIII. FY15 AUDIT DEFICIENCIES

FY15 recognition of unclaimed FY15 O&A rebates as an asset

934. Paragraphs 907 to 910 and 911 to 914 above are repeated.
935. Deloitte's testing of Account 1392 for the purpose of the FY15 Audit involved testing of 27 transactions, totaling \$12.083 million (40.2%) of the balance of Account 1392 of \$30.56 million.
936. For the purpose of conducting its testing of rebates recorded during the conduct of the FY15 Audit, Deloitte:
- (a) relied upon the assertions contained in emails from vendors to DSH buyers as supporting DSH's accounting treatment, provided that the email cited as support for the transaction:
 - (i) mentioned an amount that was consistent with the accounting treatment;
 - (ii) used words such as "*marketing support*", "*product training support*", "*promotional support*", "*catalogue support*", "*promotional activity*" or some other variant, which was consistent with the accounting treatment; and
 - (iii) mentioned a date or period occurring prior to 28 June 2015; and
 - (b) in doing so, assumed that assertions in the said emails reflected the substance of the transaction,

(FY15 Rebate Evidence).

937. In accordance with ASA 200 [17] and ASA 500, Deloitte was required to obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable Deloitte to draw reasonable conclusions on which to base its opinion.
938. In accordance with ASA 500 [7], Deloitte was required to consider the relevance and reliability of the information to be used as audit evidence.
939. In accordance with ASA 500 [9], when using information provided by DSH, Deloitte was required to evaluate whether the information was sufficiently reliable for Deloitte's purposes.
940. Paragraph 132 is repeated.
941. The entries in Account 1392 should only have been recognised as receivables when a valid invoice or debit note was raised by DSH.
942. Because it did not constitute valid invoices or debit notes raised by DSH, the FY15 Rebate Evidence was insufficient audit evidence to justify the recognition the entries in Account 1392 as receivables.
943. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 200 or ASA 500.
944. A Reasonable Auditor in the position of Deloitte would not have recognised the unclaimed O&A rebates in Account 1392 (or the FY15 Balance Sheet) until DSH had raised a valid invoice or debit note in respect of that income.
945. Deloitte did not conduct the FY15 Audit in accordance with paragraph 944 above.
946. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.
947. Had Deloitte conducted the FY15 Audit in accordance with paragraph 944 above, it would have:
- (a) not recognised the O&A rebate income in Account 1392 as a receivable in the FY15 Balance Sheet;
 - (b) advised the FAC in writing that DSH's current assets and total assets should have been \$30.056 million less than reported;

- (c) advised the FAC in writing that DSH's gross profit and net profit should have been \$14.116 million less than reported
- (d) not provided an unqualified opinion in relation to the FY15 Financial Report unless the O&A rebate income in Account 1392 was removed from the FY15 Balance Sheet;
- (e) advised the FAC in writing that:
 - (i) the entries in Account 1392 should only have been recognised as receivables when a valid invoice or debit note was raised by DSH;
 - (ii) DSH had been recognizing the entries in Account 1392 in the absence of a valid invoice or debit note raised by DSH; and
 - (iii) it was necessary for DSH to implement new controls to ensure that the entries in Account 1392 were only recognised as receivables when a valid invoice or debit note had been raised by DSH.

FY15 inadequate testing of Account 1392

948. Paragraphs 907 to 910 and 911 to 914 above are repeated.
949. In accordance with ASA 315 [25], Deloitte was required to identify and assess the risks of material misstatement at the financial report level and the assertion level for classes of transactions, account balances and disclosures to provide a basis for designing and performing further audit procedures.
950. By reason of the matters referred to in paragraphs 101(a), 107 to 115, 134 to 152, 189, 513 to 516, 585 and 948 above, in accordance with ASA 315 [25], Account 1392 was at risk of material misstatement.
951. A Reasonable Auditor in the position of Deloitte would have tested the credit side of transactions selected from Account 1392 to:
- (a) determine in which account the credit had been recorded, namely CODB Account 4232, or COS Account 3324, or some other account (whether balance sheet or profit and loss account);
 - (b) conclude whether there was justification for crediting the rebate in the respective account; and

- (c) obtain reasonable assurance whether DSH's treatment of O&A rebates complied with AASB 102.
952. Deloitte did not take the steps referred to in paragraph 951 above.
953. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.
954. Had Deloitte taken the steps referred to in paragraph 951 above, it would have:
- (a) assessed the economic substance of the rebates recorded in Account 1392 and whether they related to inventory or "marketing support";
 - (b) assessed whether rebates relating to inventory could be recognised immediately in the FY15 P&L or needed to be deferred until the inventory to which it related had been sold;
 - (c) assessed whether rebates relating to promotional support could be recognised immediately in the FY15 P&L or needed to be deferred until the promotional activity to which it related had been completed;
 - (d) determined, based on those assessments, that O&A rebates were being applied by DSH so as to increase profit in circumstances where the rebates should have been applied so as to decrease the costs of purchase of inventory and therefore its carrying value;
 - (e) not recognised O&A rebate income in DSH's profit and loss account but instead would have recognised it as a reduction in the cost of the purchase of inventory;
 - (f) not provided an unqualified opinion in relation to the FY15 Financial Report unless O&A rebate income improperly credited to the profit and loss account was instead recognised it as a reduction in the cost of the purchase of inventory;
 - (g) advised the FAC in writing that:
 - (i) DSH had been applying O&A rebates so as to increase profit in circumstances where the rebates should have been applied so as to decrease the costs of purchase of inventory and therefore its carrying value;

- (ii) this accounting treatment was not in accordance with AASB 102;
- (iii) it was necessary for DSH to adopt a new accounting treatment for O&A rebates that complied with AASB 102.

FY15 inadequate testing of Account 4232

955. Paragraphs 907 to 910 and 911 to 914 above are repeated.
956. Paragraph 950 is repeated.
957. By reason of the matters referred to in paragraphs 101(a), 107 to 115, 134 to 152, 189 to 195, 950 and 955 above, in accordance with ASA 315 [25], Account 4232 was at risk of material misstatement.
958. In testing Account 4232, Deloitte:
- (a) selected 13 samples and requested DSH to provide supporting documentation;
 - (b) selected 6 of the 13 samples for testing,
- (FY15 4232 Sample).**
959. All of the 13 samples in the FY15 4232 Sample:
- (a) were in respect of the same supplier (Shenzhen MTC Co Ltd);
 - (b) related to a VTA (and hence were not O&A rebates);
 - (c) related to the same VTA;
 - (d) represented \$177,271, being 1.74% of the total account balance of \$10.142 million.
960. Further, the 6 samples selected for testing:
- (a) represented 0.88% of balance of account balance of \$10.142 million;
 - (b) contained 5 samples from the same month.
961. The FY15 4232 Sample was not based on large value items in accordance with ASA 500.

962. The FY15 4232 Sample was not based on random selection, systematic selection or haphazard selection in accordance with ASA 530.
963. Further, contrary to ASA 530 [A12], the FY15 4232 Sample was not a representative sample because of the matters alleged in paragraphs 959 and 960 above.
964. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 500 or ASA 530 or ASA 315.
965. A Reasonable Auditor in the position of Deloitte would have:
- (a) tested Account 4232 using large value items or haphazard selection;
 - (b) ensured that the sample selected was representative of the population being tested including testing transactions in respect of different vendors, not covered by a VTA, and for the entire period.
966. Deloitte did not take the steps in paragraph 965 above.
967. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.
968. Had Deloitte taken the steps referred to in in paragraph 965 above, it would have:
- (a) discovered the reclassification of O&A rebate income from CODB Account 4232 to COS Account 3324 referred to in paragraph 978 below; and
 - (b) discovered the matters and taken the steps referred to in paragraph 982 below.

FY15 inadequate testing of Account 3324

969. Paragraphs 915 to 918 above are repeated.
970. In accordance with ASA 315 [25], Deloitte was required to identify and assess the risks of material misstatement at the financial report level and the assertion level for classes of transactions, account balances and disclosures to provide a basis for designing and performing further audit procedures.
971. By reason of the matters referred to in paragraphs 970 above, in accordance with ASA 315 [25]:
- (a) Account 3324 was at risk of material misstatement; and

- (b) Deloitte was required to conduct testing of Account 3324.
972. Deloitte's testing of Account 3324 for the purpose of the FY15 Audit:
- (a) involved testing of 28 transactions, totalling \$0.860 million (1.3%) of the balance of Account 3324 which totalled \$63.450 million (**FY15 3324 Sample**);
 - (b) were all dated prior to 29 April 2015, and therefore no transactions were tested for the months of May and June 2015;
 - (c) did not involve testing the substance of the transaction to ensure that it was:
 - (i) appropriately recognised in the profit and loss (rather than deferred); and
 - (ii) appropriately classified in COS (rather than CODB).
973. Deloitte's FY15 3324 Sample was not based on large value items in accordance with ASA 500 or ASA 530.
974. Deloitte's FY15 3324 Sample was not based on random selection, systematic selection or haphazard selection in accordance with ASA 530.
975. Further, contrary to ASA 530 [A12], Deloitte's FY15 3324 Sample was not a representative sample because of the matters alleged in paragraphs 972(a) and 972(b) above.
976. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 500 or ASA 530 or ASA 315.
977. Paragraph 612 above is repeated.
978. On or around 9 July 2015, DSH reclassified \$18.6 million worth of rebates from CODB Account 4232 to COS Account 3324 in respect of the period to 29 June 2015 via journal entry number 409859 (**Journal No 409859**).
979. A Reasonable Auditor in the position of Deloitte would have:
- (a) tested Account 3324 by selecting large value items or haphazard selection;
 - (b) ensured that the sample selected was representative of the population being tested including testing transactions in respect of different vendors, not covered by a VTA, and for the entire period.

980. Deloitte did not take the steps referred to in paragraph 979 above.
981. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.
982. Had Deloitte taken the steps referred to in paragraph 979 above, Deloitte would have:
- (a) discovered that 70% of the balance of Account 3324 comprised:
 - (i) one journal entry (Journal No 399871) for \$26 million (41%); and
 - (ii) one journal entry (Journal No 409859) for \$18.6 million (29%);
 - (b) selected Journal No 399871 and Journal No 409859 for testing, and requested a copy of those journals and the documents substantiating those journals;
 - (c) identified that \$44.6 million (i.e. \$26 million and \$18.6 million) of O&A rebate income had been reclassified from CODB Account 4232 to COS Account 3324 via Journal No 399871 and Journal No 409859;
 - (d) discovered some or all of the matters described in the First Mills Affidavit at paragraphs [130]-[149];
 - (e) identified the \$44.6 million in COS (and hence gross profit) as a potential error and sought sufficient audit evidence in relation to the transactions to obtain reasonable assurance that the amounts reclassified satisfied the criteria for recognizing the O&A rebate income as COS;
 - (f) not provided an unqualified opinion in relation to the FY15 Financial Report unless it had obtained sufficient audit evidence in respect of the \$26 million reclassification and the \$18.6 million reclassification or the FY15 accounts were restated to account properly for the \$26 million and \$18.6 million rebate income;
 - (g) advised the FAC in writing:
 - (i) of the matters referred to in sub-paragraphs (c) to (f) above; and
 - (ii) that it is necessary for DSH to implement new controls to ensure that the journals were posted when it was appropriate to do so.

FY15 inadequate journal testing

983. Paragraphs 927 to 930 above are repeated.
984. Paragraphs 241 to 243 above are repeated.
985. During the FY15 Audit, Deloitte documented that:
- (a) DSH utilised various types of journal entries, with the main distinction being between automatic journal entries (automatically posed by the AS400 system based on data inputs to the system) and manual journal entries (manually performed by individuals):
 - (b) from an audit point of view, manual journal entries pose a risk of material misstatement and potential fraud due to the ease of management override, probability of error and the risk of fraud;
 - (c) therefore, journal entry testing formed an important part of an audit.
986. Deloitte's Journal Entry Testing Program:
- (a) presumed a risk of material misstatement due to fraud related to management override of controls;
 - (b) acknowledged that management was in a unique position to perpetrate fraud because of management's ability to manipulate accounting records and prepare fraudulent financial statements by overriding controls that otherwise appear to be operating effectively;
 - (c) classified the said risk as "significant";
 - (d) required Deloitte to test the completeness of the journal entry testing population;
 - (e) required Deloitte to test the appropriateness of journal entries recorded in the general ledger, including by selecting journal entries and other adjustments made at the end of a reporting period; and
 - (f) when using information provided by DSH, required Deloitte to evaluate whether the information was sufficiently reliable for Deloitte's purposes, including as necessary obtaining audit evidence about the accuracy and completeness of the information.

987. Deloitte's approach to journal entry testing was that sample journals were to be selected for testing if they were non-systematic journals having criteria including the following:
- (a) significantly large values;
 - (b) round numbers;
 - (c) concerning areas of significant risk, such as rebates;
 - (d) other unusual entries;
 - (e) relating to sales (given the presumed risk of fraud); and
 - (f) integrity of data (missing journal number, description, date etc.)
988. Paragraphs 612 and 978 above are repeated.
989. In accordance with ASA 240, Deloitte was required to test Journal No 399871.
990. In accordance with ASA 240, Deloitte was required to test Journal No 409859.
991. Deloitte did not test Journal No 399871.
992. Deloitte did not test Journal No 409859.
993. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 240.
994. On or around 3 July 2015, DSH posted journal entry number 409670 (**Journal No 409670**):
- (a) in the amount of \$6.5 million;
 - (b) debiting Account 1392 and crediting account 4232;
 - (c) the reference for which was "O&A Rebates";
 - (d) the description of \$3.5 million of which was "Fixtures/Conference", with further detail "Over & Above rebates as per Jun 15 forecast";
 - (e) the description of \$3 million of which was "Procurement Contracts", with further detail "Over & Above rebates as per Jun 15 forecast".
995. On or around 3 July 2015, DSH posted three journal entries number 409667 (**Journal No 409667**), 409668 (**Journal No 409668**), and 4099669 (**Journal No 4099669**):

- (a) all of which were in the amount of \$3.476 million;
 - (b) one of which credited Account 1392 and debited Account 4227 (Journal No 409667);
 - (c) two of which credited Account 4227 and debited Account 1392 (Journals No 409668 and 409669);
 - (d) all of which had the reference "*Jun 15 ADV O&A*";
 - (e) all of which had the description "*Private Label Vnd Inv Uplift Jun 15*";
 - (f) two of which had no further detail;
 - (g) one of which had the further detail "*as per forecast*".
996. On or around 1 July 2015, DSH posted journal entry number 409548 (**Journal No 409548**):
- (a) in the amount of \$6.261 million;
 - (b) the reference for which was "*June O&A*";
 - (c) for which no description and no further details were entered.
997. In accordance with ASA 240, Deloitte was required to test Journal No 409670.
998. In accordance with ASA 240, Deloitte was required to test Journal Nos 409667, 409668 and 4099669.
999. In accordance with ASA 240, Deloitte was required to test Journal No 409548.
1000. Deloitte did not test Journal No 409670.
1001. Deloitte did not test Journal No 409667, 409668 or 4099669.
1002. Deloitte did not test Journal No 409548.
1003. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 240.
1004. Further:

- (a) Deloitte obtained a journal extraction for the financial year to 28 June 2015 based on journal period reference (i.e. the period to which the journal entry related), and not the posting date of the journal entry;
- (b) however, DSH was able to, and did, post journal entries after the date on which the journal list was run; and
- (c) therefore, the list of journals tested by Deloitte was not complete.

1005. Further, because:

- (a) in the FY14 Audit, Deloitte extracted journal entries by posting date; and
- (b) in the FY15 Audit, Deloitte extracted journal entries by journal period reference, in neither FY14 nor FY15 did Deloitte extract Journal No 390865 for testing.

1006. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 240.

1007. A Reasonable Auditor in the position of Deloitte would have selected Journal No 399871 and Journal No 409859 for testing.

1008. Deloitte did not take the steps referred to in paragraph 1007 above.

1009. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

1010. Had Deloitte taken the steps referred to in paragraph 1007 above, it would have discovered the matters and taken the steps referred to in paragraph 982 above.

1011. Further, a Reasonable Auditor in the position of Deloitte would have selected:

- (a) Journal No 409670;
- (b) Journal Nos 409667, 409668 and 4099669; and
- (c) Journal No 409548,

for testing.

1012. Deloitte did not take the steps referred to in paragraph 1011 above.

1013. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

1014. Had Deloitte taken the steps referred to in paragraph 1011 above, Deloitte would have:

- (a) in relation to Journal No 409670:
 - (i) discovered the matters referred to in paragraph 995 above;
 - (ii) discovered the matters referred to in the First Mills Affidavit at [257]-[258];
 - (iii) taken the steps, and reached the conclusions, set out in Basford at [98]-[103];
- (b) in relation to Journal Nos 409667, 409668 and 4099669:
 - (i) discovered the matters referred to in paragraph 996 above;
 - (ii) discovered the matters referred to the First Mills Affidavit at [256] and [259];
 - (iii) discovered the matters referred to in paragraphs 26 above;
 - (iv) taken the steps referred to in paragraph d(ii)-(v) below in respect of the \$3.476 million in the profit and loss;
- (c) in relation to Journal 409548:
 - (i) requested the documents substantiating those journals;
 - (ii) identified the \$6.261 million in the profit and loss as a potential error in the FY15 Financial Report until it had obtained sufficient audit evidence in relation to the transactions to ensure that treatment was appropriate;
 - (iii) ensured that the FY15 Financial Report was not materially misstated by reason of the \$6.261 million being included in the profit and loss without sufficient audit evidence;
 - (iv) not provided an unqualified opinion in relation to the FY15 Financial Report unless it had obtained sufficient audit evidence in respect of the \$6.261 million;

- (d) further or alternatively, having regard to the further detail provided of *“as per forecast”* for Journal No 409667 *“Over & Above rebates as per Jun 15 forecast”* in relation to Journal No 409670:
 - (i) requested the documents substantiating those journals;
 - (ii) identified that the \$6.5 million and the \$3.476 million in the profit and loss as potential errors in the FY15 Financial Report until it had obtained sufficient audit evidence in relation to the transactions to ensure that treatment was appropriate;
 - (iii) ensured that the FY15 Financial Report was not materially misstated by reason of the \$6.5 million or the \$3.476 million being included in the profit and loss without sufficient audit evidence;
 - (iv) not provided an unqualified opinion in relation to the FY15 Financial Report unless it had obtained sufficient audit evidence in respect of the \$6.5 million and the \$3.476 million;
- (e) advised the FAC in writing:
 - (i) of the matters referred to in sub-paragraphs (a) to (c) or (d) above; and
 - (ii) that it is necessary for DSH to implement new controls to ensure that journals were only posted when it was appropriate to do so.

FY15 inadequate testing of the Revised Obsolescence Methodology

1015. Paragraphs 900 and 923 and 926 above are repeated.

1016. In accordance with ASA 240 [5], Deloitte was responsible for obtaining reasonable assurance that the FY15 Financial Report taken as a whole was free from material misstatement, whether caused by fraud or error.

1017. In accordance with ASA 500 [4], Deloitte was required to design and perform audit procedures so as to enable it to obtain sufficient appropriate audit evidence to be able to draw a conclusion that the FY15 Financial Report accounted for inventory in accordance with AASB 102.

1018. Paragraph 291 above is repeated.

1019. In relation to the FY15 Audit, Deloitte's testing of the underlying provision for obsolescence was purportedly documented in its work paper entitled "23402 *Obsolescence Calc by Item (PBC)*", which stated that:

- (a) DSH's management had further revised its obsolescence calculation whereby aged stock items which were selling at a significant profit margin were excluded from the calculation;
- (b) Deloitte had "*tested the integrity of the model*";
- (c) Deloitte had tested "*assumptions separately*" in a separate work paper <23403>;
- (d) Deloitte had tested a sample of 8 stock items which comprised the new criteria of excluding high margin stock items from the provision for stock obsolescence calculation;
- (e) Deloitte had concluded that, like FY14, the methodology was deemed appropriate.

1020. Deloitte did not test the integrity of the model.

1021. Deloitte did not test the assumptions separately in work paper <23403>.

1022. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 240 or ASA 500.

1023. A Reasonable Auditor in the position of Deloitte would have designed and performed procedures to obtain sufficient and appropriate audit evidence to obtain reasonable assurance of the appropriateness of:

- (a) the selected sales data used in the calculations, including by obtaining audit evidence of:
 - (i) current and forecast sales of each stock item selected for testing; and
 - (ii) recent sales generated by the stock item, to ensure the stock item was realisable;
- (b) the allocation of stock to each category, including by:

- (i) auditing the accuracy of the quantum of stock allocated to each category;
 - (ii) challenging management's estimates for the percentages allocated to each stock category;
 - (iii) looking at historic write-down of stock items and assessing the status to which those stock items were allocated;
- (c) the number of months cover for stock in the "Active" and "End of Life" categories used in the calculations by:
- (i) obtaining forecast sales for stock items by unit and value and dividing the units on hand by the forecast units to be sold;
 - (ii) in the absence of forecast sales data:
 - (A) obtaining monthly units sold in the period to the date of the FY14 Audit;
 - (B) reviewing trends of sales of units for increases and decreases;
or
 - (C) applying professional judgement to quantify months cover based on average monthly units sold (if a consistent number of units were sold in that period);
 - (iii) the recorded age of the stock used in the calculations by testing the ageing of the items of stock by SKU and not just the date of last receipt of the stock.

1024. Deloitte did not take the steps referred to in paragraph 1023 above.

1025. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

1026. Had Deloitte taken the steps referred to in paragraph 1023 above, it would have determined that the Revised Obsolescence Methodology was flawed because:

- (a) it did not take into account whether DSH held excess inventory which was unlikely to be realised for its cost;

- (b) DSH should have, but failed to, analyse the number of weeks cover it held for each SKU and make an assessment of whether that stock amount was likely to be saleable given the nature of the product;
- (c) it depended on the appropriate categorisation was applied to each product line, and DSH may not have been categorising its Active stock correctly; and
- (d) the trigger for the provision policy for Active and End of Life was flawed and did not calculate NRV because it applied a lookback method, rather than considering likely realisable value of the inventory based on future sales.

1027. Further, a Reasonable Auditor in the position of Deloitte, having determined the matters at paragraph 1026 would have:

- (a) concluded that the Revised Obsolescence Methodology was not operating effectively;
- (b) ensured that the FY15 Financial Report was not materially misstated by reason of not including an adequate provision in respect of inventory in accordance with AASB 102;
- (c) not provided an unqualified opinion in relation to the FY15 Financial Report unless an adequate provision in respect of inventory in accordance with AASB 102 was included in the FY15 Financial Report;
- (d) advised the FAC in writing:
 - (i) of the matters referred to in sub-paragraph (a) above;
 - (ii) that DSH's methodology for calculating the provision for inventory was inadequate and not in accordance with AASB 102;
 - (iii) that it was necessary for DSH to implement a new system to ensure that inventory was accounted for in accordance with AASB 102;
 - (iv) that DSH should adopt the provisioning methodology referred to in Basford at [160], or some other alternative methodology that complied with Australian Accounting Standards, including AASB 102.

FY15 failure to advise in relation to improper capitalisation of overhead costs into inventory

1028. Paragraph 924(g) above is repeated.
1029. AASB 102 [10] provided that the cost of inventories should comprise all costs of purchase, costs of conversion, and other costs incurred in bringing the inventories to their present location and condition.
1030. AASB 102 [16(b)-(c)] provided that examples of costs excluded from the cost of inventories and recognised as expenses included:
- (a) storage costs, unless those costs were necessary in the production process before a further production stage; and
 - (b) administrative overheads that did not contribute to bringing inventories to their present location and condition.
1031. Paragraphs 289 to 291 and 304 above are repeated.
1032. Deloitte was aware, or ought reasonably to have been aware, of the Capitalisation Policy.
1033. The capitalisation of warehousing costs and some of the costs of the buying department in accordance with the Capitalisation Policy was not in accordance with AASB 102.
1034. In accordance with ASA 315 [11], Deloitte was required to obtain an understanding of DSH's selection and application of accounting policies, and evaluate whether DSH's accounting policies were appropriate for its business and consistent with the applicable financial reporting framework and accounting policies used in the relevant industry.
1035. Deloitte did not advise DSH of the matter alleged at paragraph 1033 above.
1036. In the premises, Deloitte did not conduct the FY15 Audit in accordance with ASA 315.
1037. A Reasonable Auditor in Deloitte's position would have:
- (a) determined that the Capitalisation Policy was not in accordance with AASB 102;
 - (b) not provided an unqualified opinion in relation to the FY15 Financial Report until the warehousing costs and costs of the buying department were excluded from the capitalisation;

(c) advised the FAC in writing of the matter referred to in sub-paragraph (a) above.

1038. Deloitte did not take the steps referred to in paragraph 1037 above.

1039. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

FY15 going concern

1040. Paragraphs 931 to 933 above are repeated.

1041. In accordance with AASB 101 [25], the FY15 Financial Report needed to disclose if there were material uncertainties as to DSH's ability to continue as a going concern.

1042. In accordance with ASA 570, Deloitte was required to conclude, based on the audit evidence obtained, whether a material uncertainty existed related to events or conditions that may cast significant doubt on DSH's ability to continue as a going concern and determine the implications for its auditor's report

1043. A Reasonable Auditor in the position of Deloitte conducting the FY15 Audit would have:

- (a) become aware, by reason of the matters referred to in paragraph 947 above, that DSH's profit had been overstated by \$14.116 million in respect of rebates;
- (b) become aware, by reason of the matters referred to in paragraph 947 above, that DSH's assets had been overstated by \$30.056 million in respect of rebates;
- (c) become aware, by reason of the matters referred to in paragraph 1026 above, that DSH had large quantities of excess inventory on hand;
- (d) become aware, by reason of the matters referred to in paragraph 1027 above, that DSH should report a provision in respect of inventory of \$55.861 million instead of \$4.241 million (or some other amount materially greater than the amount that was adopted), resulting in a reduction of \$51.620 million (or some other amount) in DSH's profit and assets;
- (e) become aware, by reason of the matter referred to in sub-paragraphs (c)-(d) above, that DSH had a net current liability position as at 28 June 2015;
- (f) become aware, by reason of the matters referred to above, that there were material uncertainties as to DSH's ability to continue as a going concern;

- (g) ensured that the FY15 Financial Report was not materially misstated by reason of it not including a disclosure as to DSH's ability to continue as a going concern;
- (h) not provided an unqualified opinion in relation to the FY15 Financial Report unless:
 - (i) it included a satisfactory disclosure as to DSH's ability to continue as a going concern; or
 - (ii) it included a disclosure of emphasis of matter;
- (i) advised the FAC in writing:
 - (i) of the matters referred to in sub-paragraphs (a) to (f) above;
 - (ii) that it needed to disclose in the FY15 Financial Report the existence of material uncertainties as to DSH's ability to continue as a going concern.

1044. Deloitte did not take the steps referred to in paragraph 1043 above.

1045. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

FY15 deferred tax assets

1046. Paragraphs 931 to 933 above are repeated.

1047. In accordance with AASB 112:

- (a) DSH could recognise deferred tax assets for all deductible differences only to the extent that it was probable that taxable profits would be available against which the deductible temporary difference could be utilised;
- (b) DSH could recognise deferred tax assets for the carryforward of unused tax losses and unused tax credits only to the extent that it was probable that taxable profits would be available against which the unused tax losses and unused tax credits could be utilised;
- (c) where DSH had a history of recent losses, DSH could recognise a deferred tax asset arising from unused tax losses or tax credits only to the extent that DSH had sufficient taxable temporary differences or there was convincing other

evidence that sufficient taxable profit would be available against which the unused tax losses or unused tax credits could be used by DSH.

1048. As at 28 June 2015, DSH recognised \$25.944 million of deferred tax assets.

1049. A Reasonable Auditor in the position of Deloitte conducting the FY15 Audit would have:

- (a) become aware of the matters referred to in paragraphs 1043(a) to (f) above;
- (b) become aware, by reason of the matters referred to in paragraphs 1043(a) to (f) and 1047 above, that DSH was not entitled to recognise deferred tax assets of \$25.944 million and so DSH's profit after tax and assets needed to be reduced by that amount;
- (c) ensured that the FY15 Financial Report was not materially misstated by reason of it including deferred tax assets of \$25.944 million;
- (d) not provided an unqualified opinion in relation to the FY15 Financial Report unless it excluded deferred tax assets of \$25.944 million;
- (e) advised the FAC in writing of the matters referred to in sub-paragraphs (a) to (b) above.

1050. Deloitte did not take the steps referred to in paragraph 1049 above.

1051. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

FY15 property, plant and equipment impairment

1052. Paragraphs 931 to 933 above are repeated.

1053. In accordance with AASB 136:

- (a) DSH was required to assess at the end of each reporting period whether there was any indication that an asset may be impaired;
- (b) if any such indication existed, DSH was required to estimate the recoverable amount of the asset;
- (c) in assessing whether there was any indication that an asset may be impaired, DSH was required to consider, inter alia, evidence available from internal

reporting that indicated that the economic performance of an asset was, or would be, worse than expected;

- (d) evidence from internal reporting that indicated that an asset may be impaired includes the existence of:
- (i) cash flows for acquiring the asset, or subsequent cash needs for operating or maintaining it that were significantly higher than those originally budgeted;
 - (ii) actual net cash flows or operating profit or loss flowing from the asset that were significantly worse than those budgeted;
 - (iii) a significant decline in budgeted net cash flows or operating profit, or a significant increase in budgeted loss, flowing from the asset; or
 - (iv) operating losses or net cash outflows for the asset, when current period amounts were aggregated with budgeted amounts for the future;
- (e) an asset must be carried at the lower of its depreciated amount or its recoverable amount.

1054. Paragraph 291 above is repeated.

1055. As at 28 June 2015, the carrying value of DSH's plant and equipment was \$92.548 million.

1056. A Reasonable Auditor in the position of Deloitte conducting the FY15 Audit would have:

- (a) become aware of the matters referred to in paragraphs 1043(a) to (f) above that, by reason of those matters DSH's retail operation were not operating as budgeted or planned;
- (b) become aware, by reason of the matters referred to in sub-paragraph (a) above, that DSH was required to test its assets for impairment;
- (c) tested DSH's assets by conducting value in use projections including budgets of realistic cash flows being generated by its stores, recognising the issues with disposing of its excess inventory;
- (d) alternatively, advised the FAC that DSH needed to test its assets by conducting value in use projections including budgets of realistic cash flows being

generated by its stores, recognising the issues with disposing of its excess inventory;

- (e) ensured that the FY15 Financial Report was not materially misstated by reason of it including plant and equipment with a carrying value of \$92.548 million which needed to be impaired;
- (f) not provided an emphasis of matter of unqualified audit report in relation to the FY15 Financial Report unless DSH's plant and equipment was tested and impaired appropriately;
- (g) advised the FAC in writing of the matters referred to in sub-paragraphs (a)-(b) and (c) or (d) above.

1057. Deloitte did not take the steps referred to in paragraph 1056 above.

1058. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

FY15 onerous lease provisions

1059. Paragraphs 931 to 933 above are repeated

1060. In accordance with AASB 137:

- (a) an onerous contract was a contract in which the unavoidable costs of meeting the obligations under the contract exceeded the economic benefits expected to be received under it;
- (b) if DSH had a contract that was onerous, the present obligation under the contract was required to be recognised and measured as a provision.

1061. Paragraph 291 above is repeated.

1062. A Reasonable Auditor in the position of Deloitte conducting the FY15 Audit would have:

- (a) become aware of the matters referred to in paragraphs 1043(a) to (f) above;
- (b) become aware, by reason of the matters referred to in paragraphs 1043(a) to (f) and 1047 above, that DSH would likely need to reduce its number of leases

both in order to increase profitability and through the likely greater constraints on working capital;

- (c) become aware that, to the extent that DSH needed to close stores, onerous lease provisions should have been recognised;
- (d) ensured that the FY15 Financial Report was not materially misstated by reason of it failing to appropriately recognise onerous lease provisions;
- (e) not provided an unqualified opinion in relation to the FY15 Financial Report unless it recognised DSH's plant and equipment was tested and impaired appropriately recognised onerous lease provisions;
- (f) advised the FAC in writing of the matters referred to in sub-paragraphs (a)-(c).

1063. Deloitte did not take the steps referred to in paragraph 1062 above.

1064. In the premises, Deloitte did not conduct the FY15 Audit in accordance with the applicable Auditing Standards or with the degree of skill, care and diligence of a professional person providing professional services of the same kind.

XIX. FY15 MISLEADING OR DECEPTIVE CONDUCT

FY15 representations, opinions and conduct

First FY15 inventory representations, opinions and conduct

1065. On or about 6 August 2015, Deloitte represented that:

- (a) commencing in FY15, management had adopted the Revised Obsolescence Methodology;
- (b) from 1 July 2014, the Revised Obsolescence Methodology was based on stock ageing and sell through rates rather than stock categories;
- (c) Deloitte had assessed the assumptions and methodology applied and concurred with it;
- (d) the value of DSH's inventory as at 28 June 2015 was \$293 million;
- (e) the provision for obsolete stock was \$5.4 million, which was appropriate and complied with Australian Accounting Standards, including AASB 102;

- (f) inventory balances had increased from FY14 as a result of additional store openings and increased buying activities at the conclusion of FY15;
- (g) the ageing and condition of stock had improved;
- (h) obsolescence provisions had decreased by \$3.2 million in total due to:
 - (i) the changes in the calculation methodology (which had contributed \$1.8 million of the decrease); and
 - (ii) improvements in the ageing and condition of the stock (which had contributed the remaining improvement;
- (i) the costs that DSH had included in the value of inventory, including warehouse costs and the costs of the buying team, were appropriate and complied with Australian Accounting Standards, including AASB 102;
- (j) the manner in which DSH accounted for inventory (including the value of inventory and level of provisioning) the manner in which DSH accounted for inventory (including the value of inventory and level of provisioning) was appropriate and complied with Australian Accounting Standards, including AASB 102.

(First FY15 Inventory Representations).

1066. Further, or in the alternative, on or about 6 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1065 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(First FY15 Inventory Opinion Representations).

1067. Further, or in the alternative to paragraphs 1065 and/or 1066 above, on or about 6 August 2015, Deloitte engaged in conduct that had the effect of conveying the

matters referred to at paragraphs 1065 and/or 1066 above (**First FY15 Inventory Conduct**).

First FY15 rebate representations, opinions and conduct

1068. On or about 6 August 2015, Deloitte represented that:

- (a) the quality of information and supporting evidence in relation to rebates had improved;
- (b) the increase in O&A rebate receivables at 28 June 2015 was due to the increased amount of purchasing for the new stores opened, higher buying activity in the final months of the year as well as promotional launches;
- (c) Deloitte had assessed management's treatment of the O&A rebates and concurred with the treatment;
- (d) management's treatment of O&A rebates was appropriate and complied with Australian Accounting Standards, including AASB 102;
- (e) Deloitte had assessed whether any rebates represented amounts which should be deferred into the next period;
- (f) none of the rebates that were included in the FY15 Financial Report should have been deferred into the next period;
- (g) Deloitte had conducted appropriate procedures to determine whether the recognition of a portion of O&A rebates in COS was appropriate;
- (h) having conducted those procedures, Deloitte concurred with the basis of reallocation of the income as at 28 June 2015;
- (i) the reallocation of a portion of O&A rebates to COS was appropriate and complied with Australian Accounting Standards, including AASB 102;
- (j) the manner in which DSH accounted for rebates (including the value of rebates recognised by DSH) was appropriate and complied with Australian Accounting Standards, including AASB 102,

(First FY15 Rebate Representation).

1069. Further, or in the alternative, on or about 6 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1068 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(First FY15 Rebate Opinion Representations).

1070. Further, or in the alternative to paragraphs 1068 and/or 1069 above, on or about 6 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1068 and/or 1069 above **(First FY15 Rebate Conduct)**.

FY15 No Internal Control Deficiencies Representation

1071. On or about 6 August 2015 , Deloitte represented that:

- (a) it had not identified any significant deficiencies in internal controls relating to the prevention and detection of fraud and error which would impact on Deloitte's ability to provide its opinion on the FY15 Financial Report; and
- (b) there had been continued improvement in the quality of review controls, documentation supporting adjustments and balances, and in particular improvement in the reconciliation and supporting documentation relating to rebates, support for key positions and journal entries.

(FY15 No Internal Control Deficiencies Representation).

1071A. Further, or in the alternative, on or about 6 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1071 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and

- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(FY15 No Internal Control Deficiencies Opinion Representation).

1071B. Further, or in the alternative to paragraphs 1071 and/or 1071A above, on or about 6 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1071 and/or 1071A above **(FY15 No Internal Control Deficiencies Conduct)**

First FY15 impairment representations, opinion and conduct

1072. On or about 6 August 2015, Deloitte represented that:

- (a) the DSE Group's fixed assets have been assessed for indicators of impairment and an impairment provision of \$2.2 million had been recorded;
- (b) the impairment provision of \$2.2 million was appropriate and complied with Australian Accounting Standards, including AASB 136,

(First FY15 Impairment Representation)

1073. Further, or in the alternative, on or about 6 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1072 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(First FY15 Impairment Opinion Representations).

1073A. Further, or in the alternative to paragraphs 1072 and/or 1073 above, on or about 6 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1072 and/or 1073 above **(First FY15 Impairment Conduct)**

Second FY15 inventory representations, opinions and conduct

1074. On or about 11 August 2015, Deloitte represented that:

- (a) during the year, DSH's management had reviewed and changed the basis of absorption costing in inventory along with the inventory obsolescence calculation;
- (b) Deloitte concurred with these changes in methodology;
- (c) the basis of absorption costing inventory and the inventory obsolescence calculation were appropriate and complied with Australian Accounting Standards, including AASB 102;
- (d) the manner in which DSH accounted for inventory (including the value of inventory and level of provisioning) was appropriate and complied with Australian Accounting Standards, including AASB 102,

(Second FY15 Inventory Representations).

1075. Further, or in the alternative, on or about 11 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1074 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(Second FY15 Inventory Opinion Representations).

1076. Further, or in the alternative to paragraphs 1074 and/or 1075 above, on or about 11 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1074 and/or 1075 above (**Second FY15 Inventory Conduct**).

Second FY15 rebate representations, opinions and conduct

1077. On or about 11 August 2015, Deloitte represented that:

- (a) there had been an improvement in the accounting for rebates;
- (b) the manner in which DSH accounted for rebates (including the value of rebates recognised by DSH) was appropriate and complied with Australian Accounting Standards, including AASB 102,

(Second FY15 Rebates Representations).

1078. Further, or in the alternative, on or about 11 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1077 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(Second FY15 Rebate Opinion Representations).

1079. Further, or in the alternative to paragraphs 1077 and/or 1078 above, on or about 11 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1077 and/or 1078 above (**Second FY15 Rebate Conduct**).

Second impairment representations, opinions and conduct

1080. On or about 11 August 2015, Deloitte represented that:

- (a) the DSE's Group's fixed assets had been assessed for indicators of impairment and an additional impairment charge of \$1.6 million was recorded, relating to the Dick Smith New Zealand and David Jones stores only;
- (b) the additional impairment charge of \$1.6 million was appropriate and complied with Australian Accounting Standards, including AASB 136,

(Second FY15 Impairment Representation).

1081. Further, or in the alternative, on or about 11 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1080 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(Second FY15 Impairment Opinion Representations).

1082. Further, or in the alternative to paragraphs above, on or about 11 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1080 and/or 1081 above (**Second FY15 Impairment Conduct**).

FY15 anticipated unqualified audit report representations and conduct

1083. On or about 11 August 2015, Deloitte represented that:

- (a) Deloitte's audit of the FY15 Financial Report was substantially complete;
- (b) subject to the directors adopting the accounts, review of any subsequent events and receipt of the signed management representation letter, Deloitte anticipated issuing an unqualified audit report;
- (c) in reaching the conclusion that (subject to the matters specified) it would issue an unqualified audit report, Deloitte:
 - (i) had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care; and
 - (ii) further, or in the alternative, it had reasonable grounds for reaching that conclusion based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(FY15 Anticipated Unqualified Audit Report Representation).

1084. Further, or in the alternative to paragraph 1083 above, on or about 11 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraph 1083 above (**FY15 Anticipated Unqualified Audit Report Conduct**).

FY15 clearance representations, opinions and conduct

1085. On or about 17 August 2015, Deloitte, by its audit partner, White, represented that:

- (a) Deloitte "gave clearance on the accounts" of DSH for the period ended 28 June 2015;
- (b) the FY15 Financial Report was appropriate for adoption by DSH;
- (c) the FY15 Financial Report was in accordance with the Corporations Act, including:
 - (i) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended that date;
 - (ii) complying with Australian Accounting Standards and the Corporations Regulations 2001;
- (d) the manner in which DSH accounted for inventory (including the value of inventory and level of provisioning) was appropriate and complied with Australian Accounting Standards, including AASB 102; and
- (e) the value of inventory and level of provisioning was appropriate and in accordance with Australian Accounting Standards, including AASB 102,

(FY15 Clearance Representation).

1086. Further, or in the alternative, on or about 17 August 2015, Deloitte by its audit partner, White, represented that it held opinions to the effect set out in 1085(b) to (e) above and, in forming those opinions, and in making the statement in paragraph 1085(a) above:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(FY15 Clearance Opinion Representations).

1087. Further, or in the alternative to paragraphs 1085 and/or 1086 above, on or about 17 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1085 and/or 1086 above (**FY15 Clearance Conduct**).

FY15 Corporations Act compliance representation, opinion and conduct

1088. On 17 August 2015, Deloitte represented that the FY15 Financial Report was in accordance with the Corporations Act, including:

- (a) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ended that date;
- (b) complying with Australian Accounting Standards and the Corporations Regulations 2001,

(FY15 Corporations Act Compliance Representation).

1089. Further, or in the alternative, on or about 17 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1088 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(FY15 Corporations Act Compliance Opinion Representation).

1090. Further, or in the alternative to paragraphs 1088 and/or 1089 above, on or about 17 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1088 and/or 1089 above (**FY15 Corporations Act Compliance Conduct**).

FY15 Audit Compliance Representation, opinion and conduct

1091. On 17 August 2015, Deloitte represented that it had conducted its audit of the FY15 Financial Report in accordance with Australian Auditing Standards (**FY15 Audit Compliance Representation**).

1092. Further, or in the alternative, on or about 17 August 2015, Deloitte represented that it held opinions to the effect set out in paragraph 1091 above and:

- (a) it had acted with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or exercised reasonable skill and care in reaching those opinions; and
- (b) further, or in the alternative, it had reasonable grounds for reaching those opinions based upon sufficient appropriate audit evidence and a proper interpretation of the Australian Accounting Standards,

(FY15 Audit Compliance Opinion Representation).

1093. Further, or in the alternative to paragraphs 1091 and/or 1092 above, on or about 17 August 2015, Deloitte engaged in conduct that had the effect of conveying the matters referred to at paragraphs 1091 and/or 1092 above **(FY15 Audit Compliance Conduct).**

FY15 trade/commerce, financial product and financial services

1094. Each of the:

- (a) First FY15 Inventory Representations;
- (b) First FY15 Inventory Opinion Representations;
- (c) First FY15 Inventory Conduct;
- (d) First FY15 Rebate Representations;
- (e) First FY15 Rebate Opinion Representations;
- (f) First FY15 Rebate Conduct;
- (g) FY15 No Internal Control Deficiencies Representation;
- (g1) FY15 No Internal Control Deficiencies Opinion Representation;
- (g2) FY15 No Internal Control Deficiencies Conduct;
- (g3) First FY15 Impairment Representation;
- (g4) First FY15 Impairment Opinion Representation;

- (g5) First FY15 Impairment Conduct;
 - (h) Second FY15 Inventory Representations;
 - (i) Second FY15 Inventory Opinion Representations;
 - (j) Second FY15 Inventory Conduct;
 - (k) Second FY15 Rebate Representations;
 - (l) Second FY14 Rebate Opinion Representations;
 - (m) Second FY15 Rebate Conduct;
 - (m1) Second FY15 Impairment Representation;
 - (m2) Second FY15 Impairment Opinion Representation;
 - (m3) Second FY15 Impairment Conduct;
 - (n) FY15 Anticipated Unqualified Audit Report Representations;
 - (o) FY15 Anticipated Unqualified Audit Report Conduct;
 - (p) FY15 Clearance Representations;
 - (q) FY15 Clearance Opinion Representations;
 - (r) FY15 Clearance Conduct;
 - (s) FY15 Corporations Act Compliance Representation;
 - (t) FY15 Corporations Act Compliance Opinion Representation;
 - (u) FY14 Corporations Act Compliance Conduct;
 - (v) FY14 Audit Compliance Representation;
 - (w) FY15 Audit Compliance Opinion Representation;
 - (x) FY15 Audit Compliance Conduct,
- constituted conduct by Deloitte:
- (y) in trade or commerce within the meaning of section 18 of the ACL; and/or

(z) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; and/or

(aa) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act.

FY15 misleading or deceptive conduct

First FY15 inventory representations, opinions and conduct

1095. The First FY15 Inventory Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1096. The First FY15 Inventory Opinion Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1097. The First FY15 Inventory Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

First FY15 rebate representations, opinions and conduct

1098. The First FY15 Rebate Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1099. The First FY15 Rebate Opinion Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1100. The First FY15 Rebate Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

FY15 No Internal Control Deficiencies Representation

1101. The FY15 No Internal Control Deficiencies Representation was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1101A. The FY15 No Internal Control Deficiencies Opinion Representation was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1101B. The FY15 No Internal Control Deficiencies Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

First FY15 Impairment representations, opinions and conduct

1102. The First FY15 Impairment Representations were misleading or deceptive or likely to mislead or deceive:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1103. The First FY15 Impairment Opinion Representations were misleading or deceptive or likely to mislead or deceive:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1104. The First FY15 Impairment Conduct was misleading or deceptive or likely to mislead or deceive:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

Second FY15 inventory representations, opinions and conduct

1105. The Second FY15 Inventory Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1106. The Second FY15 Inventory Opinion Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1107. The Second FY15 Inventory Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

Second FY15 rebate representations, opinions and conduct

1108. The Second FY15 Rebate Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1109. The Second FY15 Rebate Opinion Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1110. The Second FY15 Rebate Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

Second FY15 Impairment representations, opinion and conduct

1111. The Second FY15 Impairment Representations were misleading or deceptive or likely to mislead or deceive:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1112. The Second FY15 Impairment Opinion Representations were misleading or deceptive or likely to mislead or deceive:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1113. The Second FY15 Impairment Conduct was misleading or deceptive or likely to mislead or deceive:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

FY15 anticipated unqualified audit report representations and conduct

1114. The FY15 Anticipated Unqualified Audit Report Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1115. The FY15 Anticipated Unqualified Audit Report Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

FY15 clearance representations, opinion and conduct.

1116. The FY15 Clearance Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1117. The FY15 Clearance Opinion Representations were misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

1118. The FY15 Clearance Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

FY15 Corporations Act compliance representation, opinion and conduct

1119. The FY15 Corporations Act Compliance Representation was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1120. The FY15 Corporations Act Compliance Opinion Representation was misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1121. The FY15 Corporations Act Compliance Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

FY15 audit compliance representation, opinion and conduct

1122. The FY15 Audit Compliance Representation was misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1123. The FY15 Audit Compliance Opinion Representation was misleading or deceptive or likely to mislead or deceive in contravention of:

(a) section 1041H(1) of the Corporations Act; and/or

(b) section 12DA of the ASIC Act; and/or

(c) section 18 of the ACL.

1124. The FY15 Audit Compliance Conduct was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) section 1041H(1) of the Corporations Act; and/or
- (b) section 12DA of the ASIC Act; and/or
- (c) section 18 of the ACL.

FY15 reliance*First FY15 inventory representations, opinions and conduct*

- 1125. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Inventory Representations.
- 1126. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Inventory Opinion Representations.
- 1127. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Inventory Conduct.

First FY15 rebate representations, opinions and conduct

- 1128. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Rebate Representations.
- 1129. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Rebate Opinion Representations.
- 1130. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Rebate Conduct.

FY15 No Internal Control Deficiencies Representation

- 1131. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 No Internal Control Deficiencies Representation.
- 1131A. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 No Internal Control Deficiencies Opinion Representation.
- 1131B. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 No Internal Control Deficiencies Conduct.

First FY15 impairment representations, opinions and conduct

1132. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Impairment Representation.
1133. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Impairment Opinion Representation.
1134. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the First FY15 Impairment Conduct.

Second FY15 inventory representations, opinions and conduct

1135. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Inventory Representations.
1136. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Inventory Opinion Representations.
1137. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Inventory Conduct.

Second FY15 rebate representations, opinions and conduct

1138. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Rebate Representations.
1139. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Rebate Opinion Representations.
1140. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Rebate Conduct.

Second FY15 impairment representations, opinions and conduct

1141. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Impairment Representation.
1142. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the Second FY15 Impairment Opinion Representation.
1143. Each of Raine, Murray, Tomlinson and Ishak and DSH relied on the Second FY15 Impairment Conduct.

FY15 anticipated unqualified audit report representations and conduct

1144. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Anticipated Unqualified Audit Report Representation.

1145. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Anticipated Unqualified Audit Report Conduct.

FY15 clearance representations, opinions and conduct

1146. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Clearance Representations.

1147. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Clearance Opinion Representations.

1148. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Clearance Conduct.

FY15 Corporations Act compliance representation, opinion and conduct

1149. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Corporations Act Compliance Representation.

1150. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Corporations Act Compliance Opinion Representation.

1151. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Corporations Act Compliance Conduct.

FY15 audit compliance representation, opinion and conduct

1152. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Audit Compliance Representation.

1153. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Audit Compliance Opinion Representation.

1154. Each of Raine, Murray, Tomlinson, Ishak and DSH relied on the FY15 Audit Compliance Conduct.

FY15 causation, lossor damage*First FY15 inventory representations, opinions and conduct*

1155. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the First FY15 Inventory Representations;
- (b) making the First FY15 Inventory Opinion Representations; or
- (c) engaging in the First FY15 Inventory Conduct,

in contravention of:

- (d) section 1041H(1) of the Corporations Act; and/or
- (e) section 12DA of the ASIC Act; and/or
- (f) section 18 of the ACL.

First FY15 rebate representations, opinions and conduct

1156. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the First FY15 Rebate Representations;
- (b) making the First FY15 Rebate Opinion Representations; or
- (c) engaging in the First FY15 Rebate Conduct,

in contravention of:

- (d) section 1041H(1) of the Corporations Act; and/or
- (e) section 12DA of the ASIC Act; and/or
- (f) section 18 of the ACL.

FY15 No Internal Control Deficiencies Representation

1157. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the FY15 No Internal Control Deficiencies Representation;
 - (b) making the FY15 No Internal Control Deficiencies Opinion Representation;
 - (c) engaging in the FY15 No Internal Control Deficiencies Conduct,
- in contravention of:
- (d) section 1041H(1) of the Corporations Act; and/or
 - (e) section 12DA of the ASIC Act; and/or
 - (f) section 18 of the ACL.

First FY15 Impairment Representations, opinion and conduct

1157A. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the First FY15 Impairment Representations;
 - (b) making the First FY15 Impairment Opinion Representations; or
 - (c) engaging in the First FY15 Impairment Conduct,
- in contravention of:
- (d) section 1041H(1) of the Corporations Act; and/or
 - (e) section 12DA of the ASIC Act; and/or
 - (f) section 18 of the ACL.

Second FY15 inventory representations, opinions and conduct

1158. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the Second FY15 Inventory Representations;
 - (b) making the Second FY15 Inventory Opinion Representations; or
 - (c) engaging in the Second FY15 Inventory Conduct,
- in contravention of:

- (d) section 1041H(1) of the Corporations Act; and/or
- (e) section 12DA of the ASIC Act; and/or
- (f) section 18 of the ACL.

Second FY15 rebate representations, opinions and conduct

1159. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the Second FY15 Rebate Representations;
- (b) making the Second FY15 Rebate Opinion Representations; or
- (c) engaging in the Second FY15 Rebate Conduct,

in contravention of:

- (d) section 1041H(1) of the Corporations Act; and/or
- (e) section 12DA of the ASIC Act; and/or
- (f) section 18 of the ACL.

FY15 anticipated unqualified audit report representations and conduct

1160. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the FY15 Anticipated Unqualified Audit Report Representations; or
- (b) engaging in the FY15 Anticipated Unqualified Audit Report Conduct,

in contravention of:

- (c) section 1041H(1) of the Corporations Act; and/or
- (d) section 12DA of the ASIC Act; and/or
- (e) section 18 of the ACL.

Second FY15 Impairment representations, opinion and conduct

1161. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the Second FY15 Impairment Representations;
- (b) making the Second FY15 Impairment Opinion Representations; or
- (c) engaging in the Second FY15 Impairment Conduct,

in contravention of:

- (d) section 1041H(1) of the Corporations Act; and/or
- (e) section 12DA of the ASIC Act; and/or
- (f) section 18 of the ACL.

FY15 clearance representations, opinions and conduct

1162. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the FY15 Clearance Representations;
- (b) making the FY15 Clearance Opinion Representations; or
- (c) engaging in the FY15 Clearance Conduct,

in contravention of:

- (d) section 1041H(1) of the Corporations Act; and/or
- (e) section 12DA of the ASIC Act; and/or
- (f) section 18 of the ACL.

FY15 Corporations Act compliance representation, opinion and conduct

1163. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

- (a) making the FY15 Corporations Act Compliance Representation;

(b) making the FY15 Corporations Act Compliance Opinion Representation; or

(c) engaging in the FY15 Corporations Act Compliance Conduct,

in contravention of:

(d) section 1041H(1) of the Corporations Act; and/or

(e) section 12DA of the ASIC Act; and/or

(f) section 18 of the ACL.

FY15 audit compliance representation, opinion and conduct

1164. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte:

(a) making the FY15 Audit Compliance Representation;

(b) making the FY15 Audit Compliance Opinion Representation; or

(c) engaging in the FY15 Audit Compliance Conduct,

in contravention of:

(d) section 1041H(1) of the Corporations Act; and/or

(e) section 12DA of the ASIC Act; and/or

(f) section 18 of the ACL.

FY15 recovery of loss or damage

First FY15 inventory representations, opinions and conduct

1165. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

(a) making the First FY15 Inventory Representations;

(b) making the First FY15 Inventory Opinion Representations; or

(c) engaging in the First FY15 Inventory Conduct,

pursuant to:

- (d) section 1041I of the Corporations Act; and/or
- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

First FY15 rebate representations, opinions and conduct

1166. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the First FY15 Rebate Representations;
- (b) making the First FY15 Rebate Opinion Representations; or
- (c) engaging in the First FY15 Rebate Conduct,
pursuant to:
 - (d) section 1041I of the Corporations Act; and/or
 - (e) section 12GF of the ASIC Act; and/or
 - (f) section 236 of the ACL.

FY15 No Internal Control Deficiencies Representation

1167. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the FY15 No Internal Control Deficiencies Representation;
- (b) making the FY15 No Internal Control Deficiencies Opinion Representation; or
- (c) engaging in the FY15 No Internal Control Deficiencies Conduct,
pursuant to:
 - (d) section 1041I of the Corporations Act; and/or
 - (e) section 12GF of the ASIC Act; and/or
 - (f) section 236 of the ACL.

First FY15 impairment representations, opinions and conduct

1167A. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the First FY15 Impairment Representations;
- (b) making the First FY15 Impairment Opinion Representations; or
- (c) engaging in the First FY15 Impairment Conduct,
pursuant to:
 - (d) section 1041I of the Corporations Act; and/or
 - (e) section 12GF of the ASIC Act; and/or
 - (f) section 236 of the ACL.

Second FY15 inventory representations, opinions and conduct

1168. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the Second FY15 Inventory Representations;
- (b) making the Second FY15 Inventory Opinion Representations; or
- (c) engaging in the Second FY15 Inventory Conduct,
pursuant to:
 - (d) section 1041I of the Corporations Act; and/or
 - (e) section 12GF of the ASIC Act; and/or
 - (f) section 236 of the ACL.

Second FY15 rebate representations, opinions and conduct

1169. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the Second FY15 Rebate Representations;

(b) making the Second FY15 Rebate Opinion Representations; or

(c) engaging in the Second FY15 Rebate Conduct,

pursuant to:

(d) section 1041I of the Corporations Act; and/or

(e) section 12GF of the ASIC Act; and/or

(f) section 236 of the ACL.

Second FY15 impairment representations, opinions and conduct

1169A. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

(g) making the Second FY15 Impairment Representations;

(h) making the Second FY15 Impairment Opinion Representations; or

(i) engaging in the Second FY15 Impairment Conduct,

pursuant to:

(j) section 1041I of the Corporations Act; and/or

(k) section 12GF of the ASIC Act; and/or

(l) section 236 of the ACL.

FY15 anticipated unqualified audit report representations and conduct

1170. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

(a) making the FY15 Anticipated Unqualified Audit Report Representations; or

(b) engaging in the FY15 Anticipated Unqualified Audit Report Conduct,

pursuant to:

(c) section 1041I of the Corporations Act; and/or

(d) section 12GF of the ASIC Act; and/or

- (e) section 236 of the ACL.

FY15 clearance representations, opinions and conduct

1171. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the FY15 Clearance Representations;
- (b) making the FY15 Clearance Opinion Representations; or
- (c) engaging in the FY15 Clearance Conduct,

pursuant to:

- (d) section 1041I of the Corporations Act; and/or
- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

FY15 Corporations Act compliance representation, opinion and conduct

1172. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the FY15 Corporations Act Compliance Representation;
- (b) making the FY15 Corporations Act Compliance Opinion Representation; or
- (c) engaging in the FY15 Corporations Act Compliance Conduct,

pursuant to:

- (d) section 1041I of the Corporations Act; and/or
- (e) section 12GF of the ASIC Act; and/or
- (f) section 236 of the ACL.

FY15 audit compliance representation, opinion and conduct

1173. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte:

- (a) making the FY15 Audit Compliance Representation;
- (b) making the FY15 Audit Compliance Opinion Representation; or
- (c) engaging in the FY15 Audit Compliance Conduct,
pursuant to:
 - (d) section 1041l of the Corporations Act; and/or
 - (e) section 12GF of the ASIC Act; and/or
 - (f) section 236 of the ACL.

FY15 representations that services were of a particular standard or quality

Australian Auditing Standards

- 1174. Further, or in the alternative, the FY15 Audit Compliance Representation was a representation that Deloitte had provided its services to a particular standard or quality, namely the Australian Auditing Standards.
- 1175. Deloitte did not conduct its audit of the FY15 Financial Report in accordance with Australian Auditing Standards.
- 1176. The FY15 Audit Compliance Representation was false or misleading.
- 1177. The FY15 Audit Compliance Representation was conduct by Deloitte in trade or commerce in connection with the supply of services within the meaning of section 29 of the ACL.
- 1178. Further, or alternatively, the FY15 Audit Compliance Representation was conduct by Deloitte in trade or commerce in connection with the supply of financial services within the meaning of section 12DB of the ASIC Act.
- 1179. By reason of the matters referred to at paragraphs 1091 and 1174 to 1175 above, by making the FY15 Audit Compliance Representation, Deloitte has contravened:
 - (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.

1180. Each of Raine Murray, Tomlinson and Ishak and DSH relied on the FY15 Audit Compliance Representation.
1181. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the FY15 Audit Compliance Representation in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1182. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte making the FY15 Audit Compliance Representation from Deloitte pursuant to:
- (a) section 12GF of the ASIC Act; and/or
 - (b) section 236 of the ACL.

Degree of skill, care and diligence expected of a professional providing services of the same kind and/or reasonable skill and care

1183. Further, or in the alternative, each of the
- (a) First FY15 Inventory Opinion Representations;
 - (b) First FY15 Rebate Opinion Representations;
 - (b1) FY15 No Internal Control Deficiencies Opinion Representations;
 - (c) First FY15 Impairment Opinion Representation;
 - (d) Second FY15 Inventory Opinion Representations;
 - (e) Second FY15 Rebate Opinion Representations;
 - (f) Second FY15 Impairment Opinion Representation;
 - (g) FY15 Anticipated Unqualified Audit Report Representations;
 - (h) FY15 Clearance Opinion Representations;
 - (i) FY15 Corporations Act Compliance Opinion Representations; and/or
 - (j) FY15 Audit Compliance Opinion Representations,

was a representation that Deloitte had provided its services to a particular standard or quality, namely with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.

1184. In making the First FY15 Inventory Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
1185. In making the First FY15 Rebate Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
- 1185A. In making the FY15 No Internal Control Deficiencies Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care
1186. In making the First FY15 Impairment Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
1187. In making the Second FY15 Inventory Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
1188. In making the Second FY15 Rebate Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
1189. In making the Second FY15 Impairment Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
1190. In making the FY15 Anticipated Unqualified Audit Report Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.
1191. In making the FY15 Clearance Opinion Representations, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.

1192. In making the FY15 Corporations Act Compliance Opinion Representation, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.

1193. In making the FY15 Audit Compliance Opinion Representation, Deloitte did not provide its services with the degree of skill, care and diligence expected of a professional providing services of the same kind and/or with reasonable skill and care.

1194. In the premises, each of the:

- (a) First FY15 Inventory Opinion Representations;
- (b) First FY15 Rebate Opinion Representations;
- (b1) FY15 No Internal Control Deficiencies Opinion Representations;
- (c) First FY15 Impairment Opinion Representation;
- (d) Second FY15 Inventory Opinion Representations;
- (e) Second FY15 Rebate Opinion Representations;
- (f) Second FY15 Impairment Opinion Representation;
- (g) FY15 Anticipated Unqualified Audit Report Representations;
- (h) FY15 Clearance Opinion Representations;
- (i) FY15 Corporations Act Compliance Opinion Representations; and/or
- (j) FY15 Audit Compliance Opinion Representations,

were false or misleading.

1195. The making of each of the:

- (a) First FY15 Inventory Opinion Representations;
- (b) First FY15 Rebate Opinion Representations;
- (b1) FY15 No Internal Control Deficiencies Opinion Representations'
- (c) First FY15 Impairment Opinion Representation;

- (d) Second FY15 Inventory Opinion Representations;
- (e) Second FY15 Rebate Opinion Representations;
- (f) Second FY15 Impairment Opinion Representation;
- (g) FY15 Anticipated Unqualified Audit Report Representations;
- (h) FY15 Clearance Opinion Representations;
- (i) FY15 Corporations Act Compliance Opinion Representations; and/or
- (j) FY15 Audit Compliance Opinion Representations;

was conduct by Deloitte:

- (k) in trade or commerce in connection with the supply of services within the meaning of section 29 of the ACL; and/or
- (l) in trade or commerce in connection with the supply of financial services within the meaning of section 12DB of the ASIC Act.

1196. By reason of the matters referred to at paragraphs 1066, 1183(a), 1184, 1194(a) and 1195(a) above, by making the First FY15 Inventory Opinion Representations, Deloitte has contravened:

- (a) section 12DB(1)(a) of the ASIC Act; and/or
- (b) section 29(1)(b) of the ACL.

1197. By reason of the matters referred to at paragraphs 1069, 1183(b), 1185, 1194(b) and 1195(b) above, by making the First FY15 Rebate Opinion Representations, Deloitte has contravened:

- (a) section 12DB(1)(a) of the ASIC Act; and/or
- (b) section 29(1)(b) of the ACL.

1197A. By reason of the matters referred to at paragraphs 1071A, 1183(b1), 1185A, 1194(b1) and 1195(b1) above, by making the FY15 No Internal Control Deficiencies Opinion Representations, Deloitte has contravened:

- (a) section 12DB(1)(a) of the ASIC Act; and/or

- (b) section 29(1)(b) of the ACL
1198. By reason of the matters referred to at paragraphs 1073, 1183(c), 1186, 1194(c) and 1195(c) above, by making the First FY15 Impairment Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
1199. By reason of the matters referred to at paragraphs 1075, 1183(d), 1187, 1194(d) and 1195(d) above, by making the Second FY15 Inventory Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
1200. By reason of the matters referred to at paragraphs 1078, 1183(e), 1188, 1194(e) and 1195(e) above, by making the Second FY15 Rebate Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
1201. By reason of the matters referred to at paragraphs 1081, 1183(f), 1189, 1194(f) and 1195(f) above, by making the Second FY15 Impairment Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
1202. By reason of the matters referred to at paragraphs 1083, 1183(g), 1190, 1194(g) and 1195(g) above, by making the FY15 Anticipated Unqualified Audit Report Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.

1203. By reason of the matters referred to at paragraphs 1086, 1183(h), 1191, 1194(h) and 1195(h) above, by making the FY15 Clearance Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
1204. By reason of the matters referred to at paragraphs 1089, 1183(i), 1192, 1194(i) and 1195(i) above, by making the FY15 Corporations Act Compliance Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
1205. By reason of the matters referred to at paragraphs 1092, 1183(j), 1193, 1194(j) and 1195(j) above, by making the FY15 Audit Compliance Opinion Representations, Deloitte has contravened:
- (a) section 12DB(1)(a) of the ASIC Act; and/or
 - (b) section 29(1)(b) of the ACL.
1206. Paragraphs 1126, 1129, 1133, 1136, 1139, 1142, 1144, 1147, 1150 and 1153 are repeated.
1207. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the First FY15 Inventory Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1208. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the First FY15 Rebate Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
- 1208A. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the FY15 No Internal Control Deficiencies Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.

1209. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the First FY15 Impairment Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1210. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the Second FY15 Inventory Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1211. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the Second FY15 Rebate Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1212. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the Second FY15 Impairment Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1213. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the FY15 Anticipated Unqualified Audit Report Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
- 1213A. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the FY15 Clearance Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1214. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the FY15 Corporations Act Compliance Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1215. Each of the NED Cross-Claimants and DSH has suffered loss or damage by the conduct of Deloitte making the FY15 Audit Compliance Opinion Representations in contravention of section 12DB(1)(a) of the ASIC Act and/or section 29(1)(b) of the ACL.
1216. Each of the NED Cross-Claimants and DSH is entitled to recover the amount of the loss or damage they have suffered by reason of Deloitte making the:
- (a) First FY15 Inventory Opinion Representations;
 - (b) First FY15 Rebate Opinion Representations;

- (b1) FY15 No Internal Control Deficiencies Opinion Representations;
- (c) First FY15 Impairment Opinion Representation;
- (d) Second FY15 Inventory Opinion Representations;
- (e) Second FY15 Rebate Opinion Representations;
- (f) Second FY15 Impairment Opinion Representation;
- (g) FY15 Anticipated Unqualified Audit Report Representations;
- (g1) FY15 Clearance Opinion Representations;
- (h) FY15 Corporations Act Compliance Opinion Representations; and/or
- (i) FY15 Audit Compliance Opinion Representations;

from Deloitte pursuant to:

- (j) section 12GF of the ASIC Act; and/or
- (k) section 236 of the ACL.

XX. FY15 BREACH OF DUTY OF CARE

FY15 Duty of Care

1217. Deloitte owed DSH a duty of care to exercise reasonable skill, care and diligence in performing its services as auditor pursuant to the FY15 Deloitte Retainer, including in auditing the FY15 Financial Report.
1218. Further, or in the alternative, Deloitte held itself out as having special, skill, knowledge and expertise as professional auditors to carry out the audit of the FY15 Financial Report as required by section 301 of the Corporations Act.
1219. Further, as auditors of DSH and the DSE Group, Deloitte owed the FY15 Statutory Auditing Obligations.
1220. Deloitte, by voluntarily accepting the FY15 Engagement and by permitting the accepting of that FY15 Engagement by White, accepted a general professional responsibility to ensure that the FY15 Engagement was carried out in relation to the

FY15 Audit with degree of care, skill and diligence expected of a professional providing the services of the same kind.

1221. Deloitte was paid by DSH for its professional services in carrying out the FY15 Audit.
1222. Deloitte had exclusive control over the carrying out of the audit of the FY15 Financial Report.
1223. At all material times, Deloitte was afforded access to:
- (a) the persons within DSH from whom Deloitte determined it necessary to obtain evidence; and
 - (b) all information of DSH that was relevant,
- in respect of the preparation of the FY15 Financial Report and the conduct of the FY15 Audit.
1224. Deloitte as auditors of the FY15 Financial Report was in a situation of particular advantage to know or ascertain whether DSH had complied with the Corporations Act in respect of the matters pleaded in paragraph 870 above.
1225. At all material times, DSH:
- (a) was vulnerable in that it was unable to protect itself from the consequences of Deloitte's failure to exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind;
 - (b) could suffer loss and damage if Deloitte did not exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind in carrying out an audit the FY15 Financial Report.
1226. In the premises, at all material times, Deloitte knew, or ought to have known:
- (a) of the matters set out in paragraph 1225 above;
 - (b) that DSH would rely upon Deloitte to exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind in:
 - (i) conducting the FY15 Audit; and
 - (ii) making statements or forming opinions in respect of the FY15 Financial Report; and

- (c) that DSH would be likely to suffer economic loss if Deloitte did not exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind in performing each of the matters referred to in paragraphs (b)(i) and (b)(ii) above.

1227. By reason of the matters pleaded in paragraphs 1218 to 1226 above, the relationship between DSH on the one hand, and Deloitte on the other was such that Deloitte owed to DSH a duty to exercise the degree of skill, care and diligence expected of a professional providing the services of the same kind, in:

- (a) conducting the FY15 Audit; and
- (b) making statements or forming opinions in respect of the FY15 Financial Report
(FY15 Duty of Care).

FY15 Breaches of the FY15 Duty of Care

1228. In breach of the FY15 Duty of Care, Deloitte failed to exercise the degree of skill, care and diligence expected of a professional providing services of the same kind when:

- (a) conducting the FY15 Audit; and
- (b) making statements or forming opinions in respect of the FY15 Financial Report,
(FY15 Breach).

1229. By reason of the FY15 Breach, DSH has suffered loss and damage.

FY15 Negligent Misstatement - DSH

1230. At all material times, Deloitte knew or ought to have known that DSH would rely upon its statements or opinions expressed in the course of performing the FY15 Deloitte Retainer in respect of the FY15 Audit, including in:

- (a) preparing a financial report for FY15 in compliance with the obligations alleged in paragraphs 868(b) to 868(d) above;
- (b) determining the accounting treatment of rebates in DSH's accounts which complied with Australian Accounting Standards;
- (c) maintaining or developing appropriate and effective inventory management systems;

- (d) determining the provisions to be made in respect of inventory, including whether the existing provisions were appropriate;
 - (e) determining whether or not to declare and pay the 2015 Final Dividend; and
 - (f) forming the view that the inventory acquired and being acquired by DSH was saleable at an appropriate margin and an appropriate timeframe.
1231. Deloitte, in making any statement or opinion expressed by Deloitte in the course of the performance of the FY15 Audit in accordance with the FY15 Deloitte Retainer, assumed the responsibility of exercising reasonable care in making any such statement or opinion.
1232. In the premises, Deloitte owed DSH a duty to use reasonable skill and care in making any statement or expressing any opinion in the course of the performance of the FY15 Audit in accordance with the FY15 Deloitte Retainer (**FY15 Misstatement Duty**).
1233. In breach of the FY15 Misstatement Duty, Deloitte failed to use reasonable care and skill in making statements or expressing opinions in the course of the performance of the FY15 Deloitte Retainer (**FY15 Misstatement Breach**).
1234. By reason of the FY15 Misstatement Breach, DSH has suffered loss or damage.

FY15 Contribution

1235. For the purpose of this cross-claim only, and without admission, the NED Cross-Claimants repeat paragraphs 1 to 124 of the TACLS.
1236. Further, or in the alternative, for the purpose of this cross-claim only, and without admission, the NED Cross-Claimants repeat paragraphs 25(b), 26, 99-113, 114(c)-(h), 115-116, 117(c)-(g), 118-119, 123(c)-(f), 124 and 125 of the TACLS.
1237. In the premises, if DSH establishes the matters alleged in paragraphs 1235 and 1236 above (which are denied), then by reason of the matters alleged in :
- (a) paragraphs 1217 to 1229 above;
 - (b) further or alternatively, paragraphs 1230 to 1234 above;
 - (c) further or alternatively, paragraphs 1065 to 1093 above,

Deloitte is a tortfeasor which, had it been sued by DSH, would have been liable in respect of the same damage for which the NED Cross-Claimants are sued in tort by DSH in the main proceedings.

1238. If the Plaintiff succeeds in its action against the NED Cross-Claimants in the main proceedings, the NED Cross-Claimants are entitled to recover contribution from Deloitte pursuant to section 5(1)(c) of the LRMPA in the amount that the Court finds to be just and equitable having regard to the extent of Deloitte's responsibility for that damage.

FY15 Equitable Contribution

1239. In the event only that DSH establishes that:

- (a) the NED Cross-Claimants breached the Alleged Duties; and
 - (b) by reason of those breaches, DSH has s have suffered loss and damage,
- the NED Cross-Claimants plead as follows.

1240. For the purposes only of this claim for contribution, and without admission, the NED Cross-Claimants repeats paragraphs 99-113, 114(c)-(h), 115-116, 117(c)-(g), 118-119, 123(c)-(f), 124 and 125 of the TACLS.

1241. If the matters alleged in:

- (a) paragraphs 114(c)-(h), 115 and 116 of the TACLS are established (which are denied) then by reason of the breaches of the Alleged Duties alleged in paragraph 114(c)-(h) of the TACLS, DSH suffered loss or damage by reason of the acquisition and accumulation of significant quantities of Bad Stock;
- (b) paragraphs 123(c)-(f), 124 and 125 of the TACLS are established (which are denied), then by reason of the breaches of the Alleged Duties alleged in paragraph 123(c)-(f) of the TACLS, DSH suffered loss or damage by reason of the paying of the 2015 Final Dividend.

1242. Further, by reason of the conduct of Deloitte alleged in paragraphs 1065 to 1093 above, which contravened section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act and/or section 29(1) of the ACL and/or section 12DB of the ASIC Act, DSH suffered loss or damage by reason of:

- (a) the acquisition and accumulation of significant quantities of Bad Stock;
- (b) the payment of the 2015 Final Dividend.

1243. Further, or in the alternative, by reason of the conduct of Deloitte alleged in paragraph 1175 and/or 1241 and/or 1242 above:

- (a) Deloitte has breached the term of the FY15 Deloitte Retainer alleged in paragraph 877 above;
- (b) further or alternatively, Deloitte has breached the term of the FY15 Deloitte Retainer alleged in paragraph 878 above;
- (c) further or alternatively, Deloitte has breached the term of the FY15 Deloitte Retainer alleged in paragraph 879 above.

1244. By reason of the breach or breaches alleged in paragraph 1243 above, DSH has suffered loss or damage by reason of:

- (a) the acquisition and accumulation of significant quantities of Bad Stock;
- (b) the payment of the 2015 Final Dividend.

1245. By reason of the matters referred to in paragraphs 1242 and/or 1243 to 1244 above:

- (a) Deloitte's contravening conduct caused the same loss or damage to DSH as that allegedly caused by the NED Cross-Claimants (which is denied);
- (b) Deloitte and the NED Cross-Claimants are co-ordinately liable to DSH in respect of any such loss or damage.

1246. By reason of the matters referred to in paragraph 1245 above, if it is established (which is denied) that the NED Cross-Claimants are liable for the loss or damage allegedly suffered by DSH, then the NED Cross-Claimants are entitled to recover contribution in respect of any such liability from Deloitte in equity.

D. QUESTION'S APPROPRIATE FOR REFERRAL TO A REFEREE

Nil

E. STATEMENT AS TO MEDIATION

The parties have not attempted mediation. The NED Cross-Claimants are willing to attempt mediation at the appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature



Capacity

Solicitor for the First to Fourth cross-claimants

Jonathan Milner, Arnold Bloch Liebler

Date of signature

27 August 2018

SIGNATURE OF LEGAL REPRESENTATIVE

Signature

Capacity

Solicitor for the Seventh cross-claimant

Antonia Rose, Webb Henderson

Date of signature

27 August 2018

SIGNATURE OF LEGAL REPRESENTATIVE

Signature

Capacity

Solicitor for the Eighth cross-claimant

Guy Foster, Allens

Date of signature

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Signature

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Solicitor for the Eighth cross-claimant

Guy Foster, Allens

Date of signature

27 August 2018

PARTY DETAILS**PARTIES TO THIS CROSS-CLAIM****Cross-claimants**

Robert Murray
(First cross-claimant / Fourth defendant)

Lorna Kathleen Raine
(Second cross-claimant / Sixth defendant)

Robert Ishak
(Third cross-claimant / Seventh defendant)

Jamie Clifford Tomlinson
(Fourth cross-claimant / Eighth defendant)

William Paul Renton Wavish
(Seventh Cross-claimant / Fifth Defendant)

Phillip John Cave
(Eighth cross-claimant / Third Defendant)

Cross-defendants

David Robert White
(First Cross-defendant)

Each of the persons listed in Schedule 1

SCHEDULE 1 – 2ND TO 454TH CROSS-DEFENDANTS

Cross-Defendant No.	Name
2	Brett Douglas Streatfeild
3	Sneza Pelusi
4	James Patrick Hickey
5	Alastair Banks
6	Tara Cathy Hill
7	Paul Jeremy Klein
8	Frank Scott Farrall
9	Christopher Donald Noble
10	Alec Paul Bash Insky
11	George Nicholas Kyriakakis
12	Roan Rolles Fryer
13	Stuart Johnston
14	Kaylene O'Brien
15	Craig Patrick O'Hagan
16	Leanne Karamfiles
17	Neil Graham Smith
18	Demostanies Krallis
19	David John Lombe
20	Christian John Biermann
21	Jonathan Paul
22	Michael James Clarke
23	Roger Jeffrey
24	Rachel Andrea Foley-Lewis
25	Franco Claudio Santucci
26	Michelle Robyn Hartman
27	Matthew Christopher Saines
28	Francis Thomas
29	Robert Basker
30	Alan Eckstein
31	Donal Graham
32	Andrew Raymond Hill
33	Patrick Mclay
34	Paul Bernal Liggins
35	David Ocello
36	Paul Scott Holman
37	Paul Robert Wiebusch
38	Murray Peck
39	Julie Michelle Stanley
40	John Bland
41	Timothy Carberry
42	Alvaro Ramos

43	Graeme John Adams
44	Suzanne Archbold
45	Tim Richards
46	Timothy Geoffrey Maddock
47	Xenia Delaney
48	Reuben Saayman
49	Ronaldus Lambertus Van Beek
50	Liesbet Ann Julliette Spanjaard
51	Christophe John Richardson
52	Martin Harry Read
53	Mark Reuter
54	Stuart Thomas Ciocarelli
55	Paul Wayne Hockridge
56	Vikas Khanna
57	Paul Thomas Carr
58	Weng Yen Ching
59	Rodger Stewart Muir
60	Mark Cover
61	Robert Hillard
62	Michael John Lynn
63	Gaile Anthea Pearce
64	Isabelle Emilienne Lefevre
65	Phillip Andrew Roberts
66	Stuart Alexander Rodger
67	Paul Leonard Wensor
68	Claudio Cimetta
69	Simon Tarte
70	Stephen Charles Gustafson
71	Geoffrey William Cowen
72	Geoffrey Gill
73	Steven John Simionato
74	Jason John Handel
75	Declan O'Callaghan
76	Michael Andrew Kissane
77	Kurt Proctor-Parker
78	Richard Davies Wanstall
79	Johan Simon Duivenvoorde
80	Benjamin John Shields
81	John Meacock
82	Ian Michael Turner
83	David Harradine
84	Muhunthan Kanagaratnam
85	Marc Philipp
86	Kamlee Anne Coorey
87	Hugh William Mosley

88	Paul Masters
89	David Shane Egan
90	Alison Margaret Brown
91	Stavroula Papadatos
92	Damien Tampling
93	Alexandra Jane Spark
94	Monica Ellen Campigli
95	Craig Peter Mitchell
96	Robert John Mcconnel
97	Alyson Rodi
98	Andrew Charles Price
99	Mark Hadassin
100	Anthony James Robinson
101	Garry Ian Millhouse
102	Ashley Graham Miller
103	Craig Stephen Smith
104	Margaret Lynne Pezzullo
105	Adam Barringer
106	Campbell James Jackson
107	Jason Charles Crawford
108	Kevin Michael Russo
109	Adele Christine Watson
110	Neil Anthony Brown
111	Gordon James Thring
112	Brett William Greig
113	Steven James Shirliff
114	Robert Donald Collie
115	Spyros Kotsopoulos
116	Austin John Scott
117	Jenny Lyn Wilson
118	Peter John Bars
119	Elizma Bolt
120	Stephen Thomas Harvey
121	Fiona Lea Cahill
122	Jonathan Mark Schneider
123	Michael McNulty
124	Katherine Louise Howard
125	Juliet Elizabeth Bourke
126	Peter Gerard Forrester
127	Carl Jonathan Gerrard
128	Jody Michelle Burton
129	Rachel Frances Smith
130	Peter Martin Rupp
131	Helen Elena Fisher
132	Geoffrey Ronald Sincock

133	Nicholas Harwood
134	John Clement Malcom Randall
135	Todd Kayle Fielding
136	Geoffrey Bruce Stalley
137	Russell Bradley Norman Mason
138	Paul Leon Rubinstein
139	Andrew Ignatius Muir
140	Lisa Barry
141	Alfred Alan Nehama
142	Michael Paul Stibbard
143	Paul Childers
144	Angelo Karelis
145	Sarah Caroline Woodhouse
146	Richard John Hughes
147	Christopher Robert Masterman
148	Robin Polson
149	Megan Joy Field
150	Christopher Guy Nunns
151	Clare Helen Hardin
152	Sion Cook
153	Stephen Carl Tarling
154	Leslie Coleman
155	Samuel James Vorverg
156	Helen Hamilton-James
157	Coert Grobbelaar Du Plessi
158	Stephen George Stavrou
159	Steven Christopher Cunico
160	Mark Ekkel
161	Soulla Mcfall
162	Leigh Matthew Pieroni
163	Mark Colin Woodley
164	Stephen James Healey
165	Sandeep Chadha
166	Margaret Clare Bower
167	Anna Victoria Crawford
168	Robert Howard Dowling
169	Greg Janes
170	Colin McKay Methven Scott
171	Richard Mark Simes
172	Dharmalingum Shunmugam Chithiray
173	Nicole Mari Vignaroli
174	John Giannakopoulos
175	Vaughan Neil Strawbridge
176	Judith Anne Donovan
177	Nicole Wakefield

178	Paula Teresa Capaldo
179	Michael Rath
180	Karen Rachel Stein
181	Brett Todd
182	Julian Craig Dolby
183	Robert Kim Arvai
184	Catherine Jane Hill
185	Richard Michael Thomas
186	Timothy John Gullifer
187	Peter James Pagnois
188	Michael Damon Cantwell
189	Joseph Frank Galea
190	Nicolette Louise Ivory
191	John Leotta
192	Darren James Hall
193	Stephen Huppert
194	Elma Von Vielligh-Louw
195	Michael Anthony Kennedy
196	Stuart James Alexander
197	Yi Mei Tsang
198	Christopher Wilson
199	Joshua David Tanchel
200	Tendal Sitenisiyo Mkwanzani
201	Richard Nigel Raphael
202	Jacqueline Ann Clarke
203	Rodney James Whitehead
204	Heather Park
205	John Lethbridge Greig
206	Adrian Charles O'Dea
207	Grant Cameron
208	Gregory Couttas
209	Steven Allan Hernyl
210	Gary John McLean
211	Jonathan Ma
212	Suzie Gough
213	Mark Douglas Ian Allsop
214	Jennifer Anne Exner
215	Ryan Quintin Hansen
216	Jamie Brian Hamilton
217	David Mark Hill
218	Jason Bruce Dunnachie
219	John Christopher McCourt
220	Gerhard Vorster
221	David John Boyd
222	Andrew Kingsley Johnstone-Burt

223	Dwayne Barrie Sleep
224	David Black
225	Gerard Michael Meade
226	Francis Patrick O'Toole
227	Tony Garrett
228	Danny Rezek
229	Mark Goldsmith
230	David Watkins
231	Patrick Broughan
232	Jeremy Drumm
233	Michael John Whyte
234	Mark Andrew Stretton
235	Weng Wee Ching
236	Robert Malcolm Spittle
237	Marisa Orbea
238	Frances Rita Borg
239	David Barrie Brown
240	David Sherwin McClosley
241	Philip Walter Teale
242	Jan Hein Alexander Alperfs
243	Katherine Anne Milesi
244	Kevin Kiazm Nevrous
245	Andrew Paul Annand
246	Carl Richard Harris
247	Philip Malcolm Moore Hardy
248	Derek Rodney Bryan
249	Gregory Gyorgy Janky
250	David John Redhill
251	Guillaume Johannes Swiegers
252	Peter Ronald Ryan
253	Brennan Ursula
254	Fiona Dawn Craig
255	Sarah Lane
256	George Stathos
257	Richard Adam Young
258	Marc Hofmann
259	Brad Joel Pollock
260	Mark Justin Kuzma
261	Warren Green
262	Stuart Osborne
263	Garry Lance Bourke
264	Andrew Vaughn Griffiths
265	Adam Powick
266	Margaret Dreyer
267	Timothy Bryce Norman

268	David McCarthy
269	Neil Pereira
270	Michael Robert Gastevich
271	Elizabeth Ann Brown
272	Lakshman Kumar Gunaratnam
273	Monish Paul
274	Alexander Collinson
275	Bruce John Williamson
276	Luke Bramwell Houghton
277	Aldrin Anthony De Silva
278	Neil McLeod
279	Gerard Lucien Belleville
280	Michael Kaplan
281	Mark David Irving
282	Alison Lorna White
283	Haiderali Hussein
284	Martyn Charles Barrett Strickland
285	Caroline Jane Bennet
286	Christopher Robert Campbell
287	Gary Peter Doran
288	Mark Steven Wright
289	Peter Matruglio
290	John Koutsogiannis
291	Selvvyn Peter D'Souza
292	Keith William Skinner
293	Clive Charles Alan Mottershead
294	Karen Lynette Green
295	Jason Mark Thorne
296	Andrew Stuart Christopher Reid
297	Mark Richard Weaver
298	Matthew Robert Broadfoot
299	Michael Mauro De Palo
300	Peter Arthur Caldwell
301	Tracey Con Dous
302	Shelley Rae Nolan
303	Ian Grant Levi
304	Grant Arthur Hyde
305	Timothy Francis Nugent
306	Andrea Csontos
307	Geoffrey Colin Lamont
308	Christopher John Nicoloff
309	Craig Maxwell Bryan
310	Peter Madden
311	Jeremy Jurriaan Wlaton Cooper
312	Neil Robert Cussen

313	Robert Southern
314	Andy Peck
315	Colin Radford
316	Hendri Mentz
317	Robert Nguyen
318	Shinji Tsutsui
319	Philippa Simone Dexter
320	Timothy Fleming
321	Cynthia Hook
322	James Campbell Down
323	Kate McDonald
324	Stephen John Coakley
325	Keith Francis Jones
326	Serg Duchini
327	Stephen James Reid
328	Max Andreas Persson
329	Graham Mott
330	Anthony John Viel
331	David Joseph Murray
332	Richard Antony Jamieson
333	Bradley James Burt
334	Anthony Goroslav Buntic
335	Paul Gerard Fogarty
336	Jamie Christopher Gatt
337	Geoffrey Ian Roberts
338	Melissa Jayne Cabban
339	Matthew Fraser
340	Thomas Fredrick Viljoen
341	Julie Christine Crisp
342	Paul Bernard Riley
343	Salvatore Algeri
344	Ross Ian Jerrard
345	Avi Sharabi
346	Ian Geoffrey Sanders
347	Dale McCauley
348	Iain Maxwell Gerrard
349	David Hobbis
350	Scott Conrad Bailey
351	Stephen Gregory Brown
352	Ian Ross Harper
353	Shashi Vicknekumeran Sivayoganathan
354	Jowita Gartlan
355	Mark Ingham
356	Viswa Phani Kumar Padiseti
357	Ian Charles Thatcher

358	Ian Andrew Trevorah
359	Dennis Leslie Moth
360	Jacques Louis Van Rhyn
361	Paul Swinhoe
362	Greg Fitzgerald
363	Steven Alexander Hallam
364	Stuart Lynn Black
365	Stephen Woosnam
366	Andrew John Culley
367	Stephen James Ferris
368	Timothy Arbuckie
369	David Arnis Rumbens
370	Matthew James Williams
371	Jason Frederick Bender
372	Patrick Lane
373	Martin Paul Langridge
374	Caithlin Mary McCabe
375	Simon Alexander Wallace-Smith
376	Adrian Clyde Batty
377	Tapan Parekh
378	Masaaki Mark Makamura
379	Roger Geoffrey McBain
380	Graeme John Hodge
381	Rick Shaw
382	Marina Ruth Stuart
383	Tom Christopher Imbesi
384	Eric Angelucci
385	Harvey Christophers
386	John Kingsley Rawson
387	Mark Richard Sercombe
388	Phillip Kravaritis
389	Gary Christie
390	Wayne Edward Walker
391	John Womack
392	Peter Grainger
393	Samantha Louise Lewis
394	Ashley Jonathon King
395	Peter Francis Williams
396	Alexander Aitken
397	Timothy Gordon Biggs
398	Ian McCall
399	Johannes Laubscher Venter
400	Roberto Dimonte
401	Alan Gordon Weeks
402	Ian John Breedon

403	Peter Michael Roberson
404	Michael David Nelson
405	Lindsay James Stanton
406	Craig Paul Johnson
407	Timothy Riordan
408	Anthony James Cipriano
409	Phil Hopwood
410	Dai-Trang Le Duncanson
411	David Jonathan Graham
412	Andre Spnovic
413	William Harold Wardrop
414	David Erskine Thompson
415	David Kyffin Wellington
416	Stephen Mark Holdstock
417	Dean John Grandy
418	Harold Scott Payne
419	Jean-Marie Ab-Ghanem
420	Fraser Ross
421	Roberto Krizman
422	Caroline McGlashan
423	William Robert McAinsh
424	Osamu Uchimura
425	Glendon Moss Sanford
426	Simon James Lester
427	Stephen James Jones
428	Kristen Jay Wydell
429	John Guthrie Hood
430	Paul Martin Radici
431	Frank Klasic
432	Mark John Pittorino
433	David Anthony Cooper
434	Matthew Sheerin
435	Tony Brain
436	Henry John Kidd
437	Matt Gerald Tengu Whitesky Kuperholz
438	Gordon Pattison
439	Branko Panich
440	Julian Christopher Cheng
441	David William Pring
442	Peter Andre Jovic
443	Craig Goldberg
444	Bruce Robert Dungey
445	Dean Robert Edward Kingsley
446	David Alan Watson
447	Bernard Spencer Gild

448	Graham John Newton
449	Dwight Murray Hooper
450	Michael Rosendorfer
451	Richard Roy Porter
452	John George Azarias
453	Donna Maree Carey
454	Christopher Paul Cass