

FILED

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Barr J.

THIRD CROSS-CLAIM (M.N.)

FURTHER AMENDED COMMERCIAL LIST CROSS-CLAIM STATEMENT

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity Division
List Commercial List
Registry Sydney
Case number 2017/81927 -004

TITLE OF PROCEEDINGS

Plaintiff **DSHE Holdings Pty Limited ACN 166237 841
(Receivers and Managers Appointed) (In Liquidation)**

First defendant **Nicholas Abboud**
Number of defendants 8

TITLE OF THIS CROSS-CLAIM

Cross-claimant **Michael Thomas Potts
(Sixth Cross-Claimant/Second Defendant)**

Cross-defendants **David White and the others listed in Schedule 1
trading as Deloitte Touche Tohmatsu (ABN 74 490 121
060)**

FILING DETAILS

Filed for **Michael Thomas Potts, Sixth Cross-Claimant**
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A. NATURE OF DISPUTE

1 The Plaintiff, DSHE Holdings Ltd (**DSH**), alleges that the Cross-claimant (**Potts**), a former director of DSH, breached his duties to DSH under the *Corporations Act 2001* (Cth) (the **Corporations Act**) and at general law by:

- (a) failing to prepare and approve financial reports with reasonable care and diligence;
- (b) failing to ensure that there was a proper or adequate basis for being satisfied that the financial statements of DSH as at 28 December 2014 and as at 28 June 2015 presented a true and fair view of DSH's financial position and performance and complied with Australian Accounting Standards, particularly so far as concerns accounting for inventory, and accounting for rebates paid by vendors;
- (c) failing to ensure that there was a proper or adequate basis for resolving, together with the other directors of DSH, in February 2015 that DSH declare and pay an interim dividend and for resolving in August 2015 that DSH declare and pay a final dividend;
- (d) giving a declaration under s.295A of the Corporations Act that the financial statements as at 28 June 2015 gave a true and fair view of DSH's financial position and performance and complied with Australian Accounting Standards, in circumstances where there was no proper or adequate basis for expressing that opinion; and
- (e) failing to implement systems to address Inadequate Inventory Management, including so as to ensure that inventory which was obsolete or near end-of-life was promptly written off in whole or in part in DSH's accounts.

1A Potts denies that he breached his duties to DSH, and denies that he is liable to DSH in the manner pleaded in the Third Amended Commercial List Statement, or at all.

1B In the event only that Potts is found liable to DSH on its claim (which is denied), Potts cross-claims against the Cross-defendants (**Deloitte**) for damages and/or contribution.

2 At the relevant time, ~~the Cross-defendants (Deloitte)~~ were the auditors of DSH. Deloitte audited the financial statements of DSH as at 29 June 2014 (the **FY2014 Report**), reviewed the financial statements of DSH as at 28 December 2014 (the **HY2015 Report**), and audited the financial statements of DSH as at 28 June 2015 (the **FY2015 Report**).

- 3 In the course of, and at the conclusion of, those audits and that review, Deloitte made a number of representations (pleaded below) regarding, inter alia, the appropriateness of the accounting treatment of rebates adopted by management of DSH, the appropriateness of the methodology adopted by the management of DSH for the provisioning of inventory and the appropriateness of warehouse and buying team costs being capitalised in the value of inventory, the Deloitte 2014 Audit Representations, the Deloitte Half-Year Representations and the Deloitte Full-Year Representations (which are defined below). At the conclusion of the review of the HY2015 Report and of the audit of the FY2015 Report, Deloitte expressed opinions concerning the compliance of those financial statements of DSH with Australian Accounting Standards and their giving a true and fair view of the financial position and performance of DSH and its controlled entities (the **DSE Group**).
- 3A Deloitte also made various implied representations (pleaded below), including that the opinions expressed by them had a reasonable basis, and were the result of review work or audit work that had been carried out with reasonable skill and care and in compliance with applicable Auditing Standards.
- 3B DSH alleges in these proceedings (which is denied) that the HY2015 Report and the FY2015 Report did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSE Group by reason, inter alia, that the accounting treatment of rebates adopted in those accounts was not appropriate, the assumptions and methodology used to determine inventory provisions were not appropriate, and warehouse and buying team costs should not have been capitalised in the value of inventory.
- 3C DSH further alleges (which is denied) that, by reason of those matters, there was no adequate or reasonable basis for Potts to form the opinion that the HY2015 Report and FY2015 Report complied with Australian Accounting Standards and gave a true and fair view of the financial position and performance of DSH and the DSE Group. If those matters are established, then Potts claims that there was likewise, by reason of those matters, no adequate or reasonable basis for Deloitte to form an opinion to similar effect; that there was no adequate or reasonable basis for the representations of Deloitte that the accounting treatment of rebates adopted by management in the financial statements was appropriate, or that the inventory provisioning methodology adopted by management was appropriate, or that it was appropriate for warehousing and buying team costs to be included in the value of inventory; and that, in respect of those matters, Deloitte failed to exercise reasonable skill and care and failed to comply

with the requirements of the Auditing Standards in conducting the HY2015 Review and the FY2015 Audit.

3D Accordingly, if DSH establishes (which is denied) that Potts breached his duties to DSH under the Corporations Act and at general law, then, for the reasons pleaded below, Potts claims that Deloitte also contravened s 1041H of the Corporations Act, or alternatively s 18 of the Australian Consumer Law (ACL), or alternatively s 12DA of the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) in making the representations which are the subject of this cross-claim. Further, in failing to exercise due skill and care in the conduct of the HY2015 Review and the FY2015 Audit, Deloitte breached its retainer with DSH and breached the duty of care which Deloitte owed to DSH.

4 Each of Potts and DSH relied on the representations of Deloitte referred to above.

4A Potts relied on those representations in joining in the resolutions to approve the issue of the HY2015 Report and the FY2015 Report, in making the s.295A declaration, and in joining in the resolutions to pay dividends from the profits disclosed in those reports. If Potts is found liable to DSH in these proceedings, he will have suffered loss or damage by, or resulting from, Deloitte's misleading or deceptive conduct.

5 DSH relied on those representations of Deloitte in issuing the HY2015 Report and the FY2015 Report, and in paying dividends from the profits disclosed in those reports. Accordingly, if DSH has suffered loss and damage by the payment of those dividends out of the profits purportedly disclosed by those reports, Deloitte's misleading conduct, breach of contract and negligence was a cause of any such loss or damage, and Deloitte is coordinately liable with Potts for any such loss or damage.

6 ~~In the event only that Potts is found liable to DSH on its claim (which is denied), Potts cross-claims against Deloitte for damages and/or contribution.~~

B. ISSUES LIKELY TO ARISE

- 1 Did Deloitte engage in misleading and deceptive conduct in making representations or expressing opinions concerning the ~~financial statements of DSH for the periods ended 29 June 2014, 28 December 2014 and 28 June 2015~~FY2014 Report, the HY2015 Report and the FY2015 Report?
- 2 Did Deloitte breach its retainer with DSH and/or its duty of care to DSH by failing to exercise reasonable skill and care in the performance of services as DSH's auditor in respect of its audit of the ~~financial statements of DSH for the period ended 29 June 2014~~FY2014 Report, its review of the ~~financial statements of DSH for the period ended 28 December 2014~~HY2015 Report and its audit of the ~~financial statements of DSH for the period ended 28 June 2015~~FY2015 Report?
- 3 Did Potts and/or DSH rely on the work performed by Deloitte, and the representations made by Deloitte, regarding the ~~financial statements of DSH for the periods ended 29 June 2014, 28 December 2014 and 28 June 2015~~FY2014 Report, the HY2015 Report and/or the FY2015 Report?
- 3A Has Potts or DSH suffered any loss or damage as a result of the conduct of Deloitte pleaded below?
- 4 In the event only that Potts is found liable to DSH for compensation for any alleged breach of duty:
 - (a) is Potts entitled to damages from Deloitte, such loss or damage being the amount of any liability of Potts to DSH?
 - (b) further or alternatively, is Potts entitled to ~~equitable~~ contribution from Deloitte to any liability that Potts might have to compensate DSH pursuant to ~~s.1317H of the Corporations Act~~section 5 of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW) or in equity?

C. CROSS-CLAIMANT'S CONTENTIONS

The Cross-claimant, Michael Thomas Potts, is the Second Defendant to the ~~Second~~ Third Amended Commercial List Statement filed ~~16 June 2017~~ 19 March 2018. (Unless otherwise indicated, defined terms in the ~~Second~~ Third Amended Commercial List Statement have the same meaning where used below.)

In the event only that it is found that Potts is liable to DSH in the manner pleaded in the ~~Second~~ Third Amended Commercial List Statement (which is denied), then Potts pleads as follows:

The Parties

- 1 Potts:
 - (a) was the finance director and chief financial officer of DSH between 25 October 2013 and 4 January 2016;
 - (b) was appointed a director of DSH on 12 August 2014; and
 - (c) was the company secretary of DSH from on or around 25 October 2013 to 12 August 2014.
- 2 The Cross-defendants, Deloitte, are, and at all material times were, persons carrying on business in partnership as chartered accountants and auditors, under the name Deloitte Touche Tohmatsu.
- 3 At all material times, Deloitte had professional expertise and competence in the provision of auditing and accounting services.

The Retainers

- 4 On 13 December 2013, Deloitte was retained by DSH to audit the FY2014 Report financial report of DSH for the financial year ended ~~29 June 2014~~ (the **FY2014 Retainer**).

Particulars

The FY2014 Retainer is in writing and is comprised of:

- (i) Letter of engagement dated 13 December 2013 from Deloitte to Bill Wavish, the Chairman of DSH's Finance and Audit Committee (the **FAC**), and signed by David White on behalf of Deloitte (the **2013 Engagement Letter**); and
- (ii) Document entitled "Deloitte Standard Terms and Conditions" effective from 21 March 2013 (the **Deloitte Standard Terms**).

- 5 On 13 November 2014, Deloitte was retained by DSH to:
- (a) review the HY2015 Report financial report of DSH for the half-year ending 28 December 2014 (the ~~December 2014~~ HY2015 Review); and
 - (b) audit the FY2015 Report financial report of DSH for the financial year ending 28 June 2015 (the ~~June 2015~~ FY2015 Audit).
- (the **FY2015 Retainer**)

Particulars

The FY2015 Retainer is in writing and is comprised of:

- (i) Letter of engagement dated 13 November 2014 from Deloitte to Bill Wavish, the Chairman of the FAC, and signed by David White on behalf of Deloitte (the **2014 Engagement Letter**); and
 - (ii) the Deloitte Standard Terms.
- 6 It was a term of the FY2014 Retainer that, in performing the audit of the FY2014 Report financial report of DSH as at 29 June 2014 (the ~~June 2014~~ FY2014 Audit), Deloitte would:
- (a) conduct its audit pursuant to the Corporations Act;
 - (b) conduct its audit in accordance with the Australian Auditing Standards;
 - (c) evaluate the appropriateness of DSH's accounting policies;
 - (d) evaluate the reasonableness of accounting estimates made by DSH's management;
 - (e) communicate with DSH in writing concerning any significant deficiencies in internal control relevant to the audit of the financial statements that Deloitte identified during the audit.

Particulars

The 2013 Engagement Letter, page 2.

- 7 It was a term of the FY2015 Retainer that:
- (a) in relation to the ~~December 2014~~ HY2015 Review, Deloitte would:
 - (i) report whether they have become aware of any matter that made Deloitte believe that the HY2015 Report was not prepared, in all material respects, give an opinion as to whether the interim financial report was in accordance with the Corporations Act and AASB 134 Interim Financial Reporting;

- (ii) review the HY2015 Report ~~interim financial report~~ in accordance with Australian Auditing Standard on Review Engagements ASRE 2410 *Review of a Financial Report Performed by the Independent Auditor of the Entity*;
- (b) in relation to ~~June 2015~~ FY2015 Audit, Deloitte would:
- (i) conduct its audit pursuant to the Corporations Act;
 - (ii) conduct its audit in accordance with the Australian Auditing Standards;
 - (iii) evaluate the appropriateness of DSH's accounting policies;
 - (iv) evaluate the reasonableness of accounting estimates made by DSH's management;
 - (v) communicate with DSH in writing concerning any significant deficiencies in internal control relevant to the audit of the financial statements that Deloitte identified during the audit; and
 - (vi) express an opinion on the financial report in the format outlined in the example Independent Auditor's Report as per Appendix A to the 2014 Engagement Letter.

Particulars

The 2014 Engagement Letter, page 2.

- 8 It was a term of each of the FY2014 Retainer and the FY2015 Retainer that Deloitte would exercise reasonable skill, care and diligence in the performance of services as auditor, including in performing, respectively, the ~~June 2014~~ FY2014 Audit, the ~~December 2014~~ HY2015 Review and the ~~June 2015~~ FY2015 Audit.

Particulars

Clause 3.1 of the Deloitte's Standard Terms and Conditions.

- 9 Further, Deloitte owed DSH a duty of care in tort to exercise reasonable skill, care and diligence in the performance of services as auditor, including in performing the ~~June 2014~~ FY2014 Audit, the ~~December 2014~~ HY2015 Review and the ~~June 2015~~ FY2015 Audit.

Accounting and Auditing Framework

Corporations Act

9A At all material times, DSH:

(a) was required by ss 286, 292 and 296 of the Corporations Act to prepare financial reports for a financial year in compliance with the accounting standards (as defined in s 9 of the Corporations Act); and

(b) was required by ss 286, 302 and 304 of the Corporations Act to prepare financial reports for a half year in compliance with the accounting standards (as defined in s 9 of the Corporations Act).

9B Further, at all material times, DSH was required by ss 297 and 305 of the Corporations Act to prepare financial statements and notes for each financial year and half-year which gave a true and fair view of the financial position and performance of DSH and of the DSE Group.

HY2015 Report

9C Pursuant to section 302 of the Corporations Act, DSH was required to have the HY2015 Report audited or reviewed in accordance with Part 2M.3 Division 3 of the Corporations Act, and to obtain an auditor's report.

9D Pursuant to s 307A of the Corporations Act, Deloitte was required to conduct the HY2015 Review in accordance with the auditing standards in force under section 336 of the Corporations Act (the **Auditing Standards**).

9E Pursuant to s 309 of the Corporations Act, Deloitte was required:

(a) to report to the members of DSH on whether Deloitte became aware of any matter in the course of the HY2015 Review that made Deloitte believe that the HY2015 Report did not comply with Part 2M.3 Div 2 of the Corporations Act (including s 304 (compliance with accounting standards) and s 305 (true and fair view)); and

(b) to describe in such report any such matter referred to in paragraph (a) above, and say why such matter made Deloitte believe that the HY2015 Report did not comply with Part 2M.3 Div 2 of the Corporations Act.

FY2014 Report and FY2015 Report

9F Pursuant to s 301 of the Corporations Act, DSH was required to have each of the FY2014 Report and the FY2015 Report audited in accordance with Part 2M.3 Div 3 of the Corporations Act and to obtain an auditor's report.

9G Pursuant to s 307A of the Corporations Act, Deloitte was required to conduct each of the FY2014 Audit and the FY2015 Audit in accordance with the Auditing Standards.

9H Pursuant to s 307 of the Corporations Act, Deloitte was required, in conducting the FY2014 Audit and the FY2015 Audit to form an opinion about, inter alia:

- (a) whether the annual financial report was in accordance with the Corporations Act, including s 296 (compliance with accounting standards) and section 297 (true and fair view);
- (b) whether Deloitte had been given all information, explanation and assistance necessary for the conduct of the audit; and
- (c) whether DSH had kept financial records sufficient to enable the annual financial report to be prepared and audited.

9I Pursuant to s 308 of the Corporations Act:

- (a) Deloitte was required to report to the members of DSH on whether Deloitte was of the opinion that the annual financial report was in accordance with the Corporations Act, including section 296 (compliance with accounting standards) and section 297 (true and fair view) and, if not of such opinion, to say why;
- (b) If Deloitte was of the opinion that the annual financial report did not comply with an accounting standard, Deloitte's report was required, to the extent practicable to do so, to quantify the effect that non-compliance had on the annual financial report, and if not practicable to quantify the effect fully, to say why; and
- (c) Deloitte was required in its report to describe any defect or irregularity in the annual financial report, and any deficiency, failure or shortcoming in respect of the matters referred to at paragraphs 9H(b)-(c) above.

9J Pursuant to s 310 of the Corporations Act, Deloitte:

- (a) had a right of access at all reasonable times to the books of DSH; and
- (b) could require any officer of DSH to give Deloitte information, explanations or other assistance for the purposes of the FY2014 Audit, the HY2015 Review or the FY2015 Audit, so long as such request was reasonable.

Accounting Standards

9K At all relevant times, the accounting standards (within the meaning of s.9 of the Corporations Act) included:

- (a) Australian Accounting Standard AASB 101 Presentation of Financial Statements (AASB 101); and
- (b) Australian Accounting Standard AASB 102 Inventories (AASB 102).

AASB 101

9L In complying with AASB 101, DSH was required:

- (a) to prepare financial statements which presented fairly the financial position, financial performance and cash flows of DSH and of the DSE Group;
- (b) to faithfully represent the effects of transactions, other events and conditions in accordance with the definitions and recognition criteria for assets, liabilities, income, and expenses set out in the *Australian Accounting Standards Board Framework for the Preparation and Presentation of Financial Statements (the AASB Framework)*;
- (c) to recognise assets only when it was probable that future economic benefits would flow to it and these benefits had a cost or value which could be measured reliably; and
- (d) to select and present financial information:
 - (i) neutrally, such that financial information was not slanted, weighted, emphasised, de-emphasised, or otherwise manipulated to increase the probability it would be received favourably or unfavourably by users of that information;
 - (ii) completely, such that the depiction of a group of assets include, at a minimum, a description of the nature of the assets in the group, a numerical depiction of all of the assets in the group, and a description of what the numerical depiction represents; and
 - (iii) free from error, such that there are no errors or omissions in the description of the phenomenon, and the process used to produce the reported information has been selected and applied with no errors in the process.

Particulars

AASB 101 paragraph 15.

AASB Framework paragraph 89.

AASB Framework Appendix, Chapter 3, QCI2-15.

AASB 102

9M At all material times, AASB 102 provided that:

- (a) the costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the entity from the

taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and services; and

(b) trade discounts, rebates and other similar items are deducted in determining the costs of purchase.

Particulars

AASB 102 paragraph 11.

9N AASB 102 further provided that:

- (a) the cost of inventories shall comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition (paragraph 10);
- (b) other costs are included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition (paragraph 15); and
- (c) examples of costs excluded from the cost of inventories and recognised as expenses in the period in which they are incurred include:
 - (i) storage costs (unless those costs are necessary in the production process before a further production stage); and
 - (ii) administrative overheads that do not contribute to bringing inventories to their present location and condition (paragraph 16).

Auditing Standards

ASRE 2410

9O In performing the HY2015 Review, Deloitte was required to comply with *Auditing Standard on Review Engagements ASRE 2410 Review of a Financial Report Performed by the Independent Auditor of the Entity (ASRE 2410)*. Potts relies on the whole of ASRE 2410 for its terms and effect.

Particulars

Corporations Act, s 307A; ASRE 2410, paras 1(a) and 6.

9P At all relevant times ASRE 2410 provided, inter alia, that:

- (a) the objective of the auditor is to plan and perform the review to enable the auditor to express a conclusion whether, on the basis of the review, anything had come to the auditor's attention that caused the auditor to believe that the financial report, or complete set of financial statements, are not prepared, in all material

respects, in accordance with the applicable financial reporting framework (ASRE 2410 para 4);

- (b) the auditor shall plan and perform the review by exercising professional judgement and with an attitude of professional scepticism (ASRE 2410 para 10);
- (c) the auditor must obtain an understanding of the entity and its environment, including its internal controls, as it relates to the preparation of both the annual and interim financial reports, sufficient to plan and conduct the engagement, so as to be able to identify the types of potential material misstatements and consider the likelihood of their occurrence, and to select the enquiries, analytical and other review procedures that will provide the auditor with a basis for reporting whether anything has come to the auditor's attention that causes the auditor to believe that the financial report is not prepared, in all material respects, in accordance with the applicable financial reporting framework (ASRE 2410 para 13), such review procedures ordinarily including the matters at ASRE 2410 paras 16-20, A11 and A19-A20;
- (d) the auditor must make enquiries, primarily of persons responsible for financial and accounting matters, and must perform analytical and other review procedures to enable the auditor to conclude whether, on the basis of the procedures performed, anything has come to the auditor's attention that causes the auditor to believe that the financial report is not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 para 16);
- (e) if a matter comes to the auditor's attention that leads the auditor to question whether a material adjustment should be made for the financial report to be prepared in all material respects in accordance with the applicable financial reporting framework, the auditor must make additional enquiries or perform other procedures to enable the auditor to express a conclusion in the review report (ASRE 2410 para 20);
- (f) if, as a result of performing a review, a matter comes to the auditor's attention that causes the auditor to believe it is necessary to make a material adjustment to the financial report in order for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework, the auditor must communicate this matter as soon as practicable to the appropriate level of management and, if management does not respond appropriately in a

reasonable time, to those charged with governance (ASRE 2410 paras 27 and 28);

- (g) the auditor must communicate relevant matters of governance interest arising from the review of the financial report to those charged with governance (ASRE 2410 para 31);
- (h) the auditor must issue a written report that contains, inter alia, the auditor's conclusion as to whether anything has come to the auditor's attention that causes the auditor to believe that the financial report does not present fairly, or if applicable, is not true and fair, in all material respects, in accordance with the applicable financial reporting framework (ASRE 2410 para 32); and
- (i) the auditor must express a qualified or adverse conclusion when a matter has come to the auditor's attention that causes the auditor to believe that a material adjustment should be made to the financial report for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework. When the effect of the departure is so material and pervasive to the financial report that the auditor concludes a qualified conclusion is not adequate to disclose the misleading or incomplete nature of the financial report, the auditor shall express an adverse conclusion (ASRE 2410 paras 33 and 34).

ASA 200

9Q In performing the FY2014 Audit and the FY2015 Audit, Deloitte was required to comply with Auditing Standard ASA 200 Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards (ASA 200). Potts relies on the whole of ASA 200 for its terms and effect.

Particulars

Corporations Act, s 307A; ASA 200, para Aus 0.1.

9R At all relevant times ASA 200 provided, inter alia, that:

- (a) as the basis for the auditor's opinion, the Auditing Standards require the auditor to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance and is obtained when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk (that is, the risk that the auditor expresses an inappropriate opinion when the financial report is materially misstated) to an acceptably low level (ASA 200 para 5);

- (b) in conducting an audit, the overall objectives of the auditor are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial report is prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the financial report in accordance with the auditor's findings (ASA 200 para 11);
- (c) to obtain reasonable assurance, the auditor must obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor's opinion (ASA 200 para 17); and
- (d) the auditor must comply with all Auditing Standards relevant to the audit (ASA 200 paras 18-20).

ASA 500

9S In performing the FY2014 Audit and the FY2015 Audit, Deloitte was required to comply with Auditing Standard ASA 500 Audit Evidence (ASA 500). Potts relies on the whole of ASA 500 for its terms and effect.

Particulars

Corporations Act, s 307A; ASA 500, paras Aus 0.1 and 2.

9T At all relevant times, ASA 500 provided, inter alia, that:

- (a) the auditor must design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence, so as to be able to draw reasonable conclusions on which to base the auditor's opinion and so as to support the auditor's opinion and report (ASA 500 paras 4-7, A1-A25); and
- (b) when using information produced by DSH, the auditor must evaluate whether the information is sufficiently reliable for the auditor's purposes, including, as necessary in the circumstances, obtaining audit evidence about the accuracy and completeness of the information and evaluating whether the information is sufficiently precise and detailed for the auditor's purposes (ASA 500 paras 7, 9, A26-A33, A49-A51).

ASA 315

9U In performing the FY2014 Audit and the FY2015 Audit, Deloitte was required to comply with Auditing Standard ASA 315 Identifying and Assessing the Risk of Material Misstatement through Understanding the Entity and its Environment (ASA 315). Potts relies on the whole of ASA 315 for its terms and effect.

Particulars

Corporations Act, s 307A; ASA 315, para Aus 0.1.

9V At all relevant times ASA 315 provided, inter alia, that:

- (a) the auditor must perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial report and assertion levels (ASA 315 para 5);
- (b) the risk assessment procedures must include enquiries of management and of others within the entity who in the auditor's judgment may have information that is likely to assist in identifying risks of material misstatement due to fraud or error, analytical procedures, and observation and inspection (ASA 315 paras 6, A6-A18);
- (c) if the audit engagement partner has performed other engagements for the entity, the engagement partner shall consider whether information obtained is relevant to identifying risks of material misstatement. If the auditor intends to use information obtained from the auditor's previous experience with the entity, the auditor must determine whether changes have occurred since the previous audit that may affect its relevance to the current audit (ASA 315 paras 8 and 9);
- (d) the auditor must obtain an understanding of the entity's selection and application of accounting policies, including the reasons for changes thereto, and must evaluate whether the entity's accounting policies are appropriate for its business and consistent with the applicable financial reporting framework and accounting policies used in the relevant industry (ASA 315 para 11(c));
- (e) the auditor must obtain an understanding of internal controls relevant to the audit, and must evaluate the design of those controls and determine whether they have been implemented, by performing procedures in addition to enquiry of the entity's personnel (ASA 315 paras 12-14, 18, 20-22); and
- (f) the auditor must 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, in order to provide a basis for designing and performing further audit procedures (ASA 315 paras 25-26).

ASA 330

9W In performing the FY2014 Audit and the FY2015 Audit, Deloitte was required to comply with Auditing Standard ASA 330 The Auditor's Responses to Assessed Risks (ASA 330). Potts relies on the whole of ASA 330 for its terms and effect.

Particulars

Corporations Act, s 307A; ASA 330, para Aus 0.1.

9X At all relevant times ASA 330 provided, inter alia, that:

- (a) the objective of the auditor is to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement, through designing and implementing appropriate responses to those risks (ASA 330 para 3);
- (b) the auditor must design and implement overall responses to address the assessed risks of material misstatement at the financial report level, and must design and perform further audit procedures whose nature, timing and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level (ASA 330 paras 5-7);
- (c) the auditor must design and perform tests of controls so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls if the auditor's assessment of risks of material misstatement at the assertion level includes an expectation that the controls are operating effectively (that is, the auditor intends to rely on the operating effectiveness of controls in determining the nature, timing and extent of substantive procedures) or substantive procedures alone cannot provide sufficient appropriate audit evidence at the assertion level (ASA 330 paras 8-10, 16 and 17);
- (d) if an auditor has determined that an assessed risk of material misstatement at the assertion level is a significant risk, the auditor must perform substantive procedures that are specifically responsive to that risk (ASA 330 para 21);
- (e) the auditor must perform audit procedures to evaluate whether the overall presentation of the financial report is in accordance with the applicable financial reporting framework (ASA 330 para 24);
- (f) based on the audit procedures performed and the audit evidence obtained, the auditor must evaluate before the conclusion of the audit whether the assessment

of the risks of material misstatement at the assertion level remain appropriate and must conclude whether sufficient appropriate audit evidence has been obtained (ASA 330 paras 25-26); and

- (g) if the auditor has not obtained sufficient appropriate audit evidence, the auditor must attempt to obtain further audit evidence and, if the auditor is unable to obtain sufficient appropriate audit evidence, the auditor must express a qualified opinion or disclaim an opinion on the financial report (ASA 330 para 27).

ASA 260

9Y In performing the FY2014 Audit and the FY2015 Audit, Deloitte was required to comply with Auditing Standard ASA 260 Communications with Those Charged with Governance (ASA 260). Potts relies on the whole of ASA 260 for its terms and effect.

Particulars

Corporations Act, s 307A; ASA 260, para Aus 0.1.

9Z At all relevant times ASA 260 provided, inter alia, that:

- (a) the auditor must communicate with those charged with governance the auditor's views about significant qualitative aspects of the entity's accounting practices, significant difficulties, if any, encountered during the audit, significant matters, if any, arising from the audit that were discussed or subject to correspondence with management and written representations requested by the auditor, and other matters, if any, arising from the audit that, in the auditor's professional judgment, are significant to the oversight of the financial reporting process (ASA 260 para 16);
- (b) if the auditor encounters significant difficulties, in some circumstances such difficulties may constitute a scope limitation that leads to a modification of the auditor's opinion (ASA 260 para A18), such significant difficulties ordinarily including the matters at ASA 260 para A18;
- (c) the auditor may discuss many matters with management in the ordinary course of an audit, including matters required by this Auditing Standard to be communicated with those charged with governance (ASA 260 para A32); and
- (d) before communicating matters with those charged with governance, the auditor may discuss them with management, unless that is inappropriate, and these initial discussions may clarify facts and issues and give management an opportunity to provide further information and explanations (ASA 260 para A33).

Procedures in respect of Rebates and Inventory

10 Deloitte informed DSH that the ~~The~~ procedures which would be undertaken were adopted by Deloitte in respect of the accounting treatment of rebates, when performing work under the FY2014 Retainer and the FY2015 Retainer and auditing the financial statements of DSH, included:

(a) for the financial year ending 29 June 2014:

- (i) confirming the key controls associated with the completeness and validity of the recording of rebate revenues;
- (ii) performing substantive testing on a sample of rebates recorded in the year; and
- (iii) assessing the provision for any disputed claims which were expected to be granted by the vendors.

(the **FY2014 Audit Rebate Procedures**)

Particulars

Deloitte presentation to DSH headed "External audit strategy for the financial year ending 29 June 2014", dated January 2014 (the **FY2014 Audit Strategy Presentation**), p. 11.

(b) for the financial year ending 28 June 2015:

- (i) understanding the key controls associated with the completeness and validity of the recording of rebate income;
- (ii) critically evaluating management's methodologies in capturing, calculating and recognising rebates received and receivable, including the underlying key assumptions;
- (iii) testing the controls in place to ensure that they are operating effectively throughout the year;
- (iv) performing substantive testing on a sample of rebates recorded or accrued at balance sheet date as well as reviewing a sample of supplier agreements to ensure they have been correctly treated; and
- (v) assessing the completeness and accuracy of the provision for any disputed claims with suppliers.

(the **FY2015 Audit Rebate Procedures**)

Particulars

Deloitte presentation to DSH headed "External audit strategy for the year ending 28 June 2015", dated 18 November 2014 (the **FY2015 Audit Strategy Presentation**), p. 8.

11 Deloitte informed DSH that the ~~The~~ procedures which would be undertaken ~~were adopted~~ by Deloitte in respect of inventory provisions, when auditing the financial statements of DSH, in accordance with the FY2014 and FY2015 Retainers:

(a) included for the financial year ending 29 June 2014:

- (i) reviewing the inventory costing and provisioning methodologies adopted as required under AASB 102 *Inventories*;
- (ii) reviewing management's evolving provision methodologies and providing guidance as to the appropriateness of the methodology for both pre- and post- acquisition inventory balances;
- (iii) analysing reports developed by management to track actual selling prices for stock sold during the period and the allocation of 'scan' provision utilisation rates; and
- (iv) reviewing management's allocation of 1.0% of purchases as a balance sheet-only adjustment with recognition in the profit and loss on sale of the products to ensure that the appropriate amount has been taken to profit or loss relating to inventory purchases;

(the **FY2014 Audit Inventory Procedures**)

Particulars

The **FY2014 Audit Strategy Presentation**, p. 8.

(b) included for the financial year ending 28 June 2015:

- (i) testing of controls around the inventory obsolescence, reconciliation, review and approvals process;
- (ii) reviewing the inventory costing and provisioning methodologies adopted as required under AASB 102 *Inventories*;
- (iii) using data analytics to analyse reports developed by management to track actual selling prices for stock sold;

- (iv) reviewing management's assessment of provisions based on this information and other evidence as to the appropriateness of the percentages provided on stock lines;

(the **FY2015 Audit Inventory Procedures**)

Particulars

The FY2015 Audit Strategy Presentation, p. 8.

(c) required consideration of:

- (i) whether DSH and DSE Group had in place adequate procedures practices or systems to determine the necessity for, or sufficiency of, any provision for, or write-off of, obsolete inventory; and
- (ii) the appropriate carrying value for inventory held by DSH at each balance date, including whether any provision or write-off was required for obsolete or end-of-life inventory.

Particulars

The Particulars to sub-paragraphs (a) and (b) above are repeated.

The June 2014 FY2014 Audit

12 Deloitte performed the ~~June 2014~~ FY2014 Audit in about May to August 2014.

Accounting treatment of rebates in the FY2014 Report

13 The accounting treatment of rebates in the FY2014 Report was identified by Deloitte as a key area of focus and audit response for Deloitte in the course of the ~~June 2014~~ FY2014 Audit.

Particulars

Report by Deloitte headed "Report to the Finance and Audit Committee for the year ended 29 June 2014" and dated 6 August 2014 (~~Deloitte June 2014~~ **FY2014 FAC Report**), section 3.3.

14 On or about 6 August 2014, Deloitte reported that the ~~The~~ procedures carried out by Deloitte in the ~~June 2014~~ FY2014 Audit in respect of the accounting treatment of rebates in the FY2014 Report ~~included the FY14 Audit Rebate Procedures and also~~ included:

- (a) discussing the rebates with key members of DSH's management;
- (b) analysing the various types of rebates recognised;

- (c) performing detailed testing of a sample of rebates recognised throughout the year, with a focus on the rebates accrued as at 29 June 2014; and
- (d) assessing whether any of these rebates represented amounts which should be deferred and recognised in profit or loss in the next financial year;

Particulars

~~Deloitte June 2014~~FY2014 FAC Report, p.11.

- 15 In the course of the FY2014 Audit, in order for Deloitte to provide its view on the accounting treatment of O&A rebates in the ~~financial statements of DSH for the period ended 29 June 2014~~FY2014 Report, Deloitte requested, and Potts provided to Deloitte, information on the manner in which such rebates were recognised and treated in the accounts of DSH (**the Rebate Accounting Approach**).

Particulars

Email from Damien Cork of Deloitte to Potts, copied to Nigel Mills of DSH and to David White of Deloitte, sent on Monday 26 May 2014, and headed "Dick Smith: O&A Rebates"

Email from Potts to David White of Deloitte, copied to Damien Cork of Deloitte, sent on Friday 6 June 2014 and headed "RE:O&A", attaching two papers, headed:

- (i) "Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH"
- (ii) "Vendor Rebates – O&A".

- 15A The Rebate Accounting Approach involved recognising O&A rebates in the Profit and Loss Statement, either as a Cost of Doing Business, or as a Cost of Sales which derived the Gross Margin, depending on the purpose for which the O&A rebate was allowed to DSH.

Particulars

"Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH".

- 15B The information provided to Deloitte, referred to in paragraph 15 above, included a paper prepared by DSH management referring to the proposed reallocation of an amount of \$17.6m in respect of O&A Rebates from marketing expenses in the Costs of Doing Business to the Gross Margin (the **Reallocation of O&A Rebates**).

Particulars

Paper headed "Vendor Rebates – O&A" attached to the email of 6 June 2014 referred to in paragraph 15 above.

16 On or about 6 August 2014, ~~having performed the procedures referred to in paragraph 14 above,~~ Deloitte represented that:

- (a) Deloitte was of the opinion that the Rebate Accounting Approach complied with Australian Accounting Standards ~~Deloitte concurred with the accounting treatment of rebates which had been adopted by management of DSH in preparing the accounts of DSH, referred to in paragraph 15 above, which in the case of O&A rebates recognised such rebates immediately in the Profit and Loss Statement, either as a Cost of Doing Business, or as a Cost of Sales which derived the Gross Margin, depending on the purpose for which the O&A rebate was allowed to DSH;~~

Particulars

The representation is implied from the matters in paragraphs 15-15A above and the express statement in the FY2014 FAC Report (p. 11) that Deloitte concurred with the accounting treatment of rebates which had been adopted by management of DSH in preparing the accounts of DSH (being the Rebate Accounting Approach described in paragraphs 15-15A above).

Deloitte June 2014 FAC Report, p. 11.

- (b) Deloitte was of the opinion that the Reallocation of O&A Rebates was appropriate, complied with Australian Accounting Standards and did not have a material impact ~~there were no material deficiencies in the controls and systems which were in place at DSH in respect of recording, calculating and recognising rebates;~~

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated (FY2014 FAC Report p.11) that: "In the HY14 financial statements, the over and above rebates were recognised as a recovery of marketing and sale expenses. ... During the second half of the year, management undertook a review of the appropriateness of the classification of the over and above rebates. As these amounts are essentially a contribution to the selling costs of the inventory being cleared, it was determined that they should instead be

recognised within cost of sales. We concur with this treatment and note that the reclassification does not have a material impact on the comparatives reported."

To the extent it is implied, it is implied from those express statements, from Deloitte's description of the FY14 Audit Rebate Procedures, and the fact that Deloitte, having performed those procedures, did not identify and report any material deficiency in the controls and systems in place at DSH in respect of recording, calculating and recognising rebates.

- (c) Deloitte had a reasonable basis for the representations/opinions in paragraphs (a)-(b) above, and in particular the view conveyed by each representation was based upon sufficient appropriate audit evidence in relation to rebates and the accounting treatment of them in the DSH accounts, and based on a proper interpretation of Australian Accounting Standards concerning the accounting treatment of rebates—those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY2014 Audit, having performed the FY2014 Audit Rebate Procedures and also the procedures in paragraphs 14–15 above, and having complied with Auditing Standards in respect of the work by Deloitte in relation to rebates in the course of the FY2014 Audit.

Particulars

The representation was implied from the matters in paragraphs 3, 6, 8, 9, 9G, 9Q-9Z and 13-16 above—representations in paragraphs (a) and (b) above, from Deloitte's identification of the accounting treatment of rebates as a key area of focus and review response in the course of the June 2014 Audit, from Deloitte's description of the FY14 Audit Rebate Procedures, from Deloitte's description of the work undertaken by it in respect of rebates (on p 11 of the Deloitte June 2014 FAC Report), and from Deloitte's expertise in auditing and accounting matters.

(the FY2014 Rebate Representations)

Inventory provisions Review of the Revised Inventory Obsolescence Methodology

- 17 The inventory provisions in the financial report of DSH as at 29 June 2014 the FY2014 Report were was identified by Deloitte as a key area of focus and audit response for Deloitte in the course of the June 2014 FY2014 Audit.

Particulars

Deloitte June 2014 FY2014 FAC Report, section 3.2.

- 18 On or about 6 August 2014, Deloitte reported that tThe procedures carried out by Deloitte in the ~~June 2014~~ FY2014 Audit in respect of inventory provisions included the ~~FY14 Audit Inventory Procedures and also included~~ reviewing both the assumptions and methodology which were to be applied by management in the financial year ending 28 June 2015 in determining inventory provisions ~~(the 2015 Inventory Provisions Methodology).~~

Particulars

~~Deloitte June 2014~~ FY2014 FAC Report, p.10.

- 19 On or about 6 August 2014, at the conclusion of the FY2014 Audit, having performed the procedures referred to in paragraph 18 above, Deloitte represented~~reported~~ that:
- (a) DSH's methodology used to calculate the provision for inventory obsolescence had been evolving as more historical data was available under the restructured business model;
 - (b) whilst the gross inventory balance had increased, the inventory provision had decreased mainly due to an improvement in the quality and ageing of inventory, and in addition management had implemented an 'End of life' category which identified the inventory approaching the end of its life cycle but not under an active clearance program;
 - (c) as at 29 June 2014, a process was undertaken to assess the inventory obsolescence provision based on:
 - (i) inventory status;
 - (ii) inventory aging;
 - (iii) sell through rates and months cover;
 - (iv) negative margins at current selling prices;
 - (v) current promotions or other adjustments;

(the Revised Inventory Obsolescence Methodology)
 - (d) this process included investigation of major product lines with the buying team to understand the expected future sell through and potential future write-downs;
 - (e) the calculation of the obsolescence provision based on the Revised Inventory Obsolescence Methodology resulted in a provision of \$7.2 million, compared to the provision recognised under the previous methodology of \$8.7 million.

- (f) no adjustment had been made by management as at 29 June 2014 to reflect the Revised Inventory Obsolescence Methodology on the basis that the previous assumptions were built into the prospectus forecast, but the Revised Inventory Obsolescence Methodology would be implemented in FY2015; and
- (g) Deloitte had reviewed the assumptions and methodology applied and concurred with the Revised Inventory Obsolescence Methodology.

Particulars

FY2014 FAC Report, p. 10.

~~Deloitte concurred with the 2015 Inventory Provisions Methodology and with the provisions made for inventory obsolescence applying that methodology; and~~

Particulars

~~Deloitte June 2014 FAC Report, p. 10.~~

~~Deloitte had a reasonable basis for the representation in paragraph (a) above, and in particular the view conveyed by that representation was based upon sufficient appropriate audit evidence in respect of the assumptions and methodology for determining the inventory provisions, and based on a proper interpretation of Australian Accounting Standards concerning provisions.~~

Particulars

~~The representation was implied from the representation in paragraph (a) above, from Deloitte's identification of inventory provisions as a key area of focus and review response in the course of the June 2014 Audit, from Deloitte's description of the work undertaken by it in respect of inventory provisions (on p 10 of the Deloitte June 2014 FAC Report), and from Deloitte's expertise in auditing and accounting matters.~~

19A On or about 6 August 2014, Deloitte represented that:

- (a) Deloitte was of the opinion that the assumptions and methodology in the Revised Inventory Obsolescence Methodology were appropriate, and that the provision in respect of inventory obsolescence derived by using that methodology complied with AASB 102;

Particulars

The representation is partly express and partly implied.

To the extent it is express, Potts repeats paragraphs 19 above.

To the extent it is implied, it is implied from those express statements.

- (b) Deloitte had a reasonable basis for the opinions in paragraph (a) above, and those opinions were the result of Deloitte having exercised reasonable skill and care in reviewing the Revised Inventory Obsolescence Methodology, and having complied with Auditing Standards in respect of its work in relation to inventory in the course of the FY2014 Audit.

Particulars

The representation was implied from the matters in paragraphs 3, 6, 8, 9, 9G, 9Q-9Z and 17-19 above.

(the FY2014 Inventory Representations).

~~Deloitte's June 2014 Members Report~~

- 20 ~~[deleted] On 18 August 2014 Deloitte, by its Audit Partner, Mr David White, at a meeting of the directors of DSH advised Potts and the other directors of DSH, that Deloitte "gave clearance on the accounts" of DSH for the period ended 29 June 2014.~~

~~Particulars~~

~~Minutes of meeting of the board of directors of DSH held on 18 August 2014 "Adoption of Full Year Accounts".~~

- 21 ~~[deleted] On 18 August 2014 at the conclusion of the June 2014 Audit, Deloitte represented that:~~

- ~~(a) Deloitte was of the opinion that the full year financial statement of DSH as at 29 June 2014:~~
- ~~(i) was in accordance with the Corporations Act, including:

 - ~~A. giving a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ending on that date; and~~
 - ~~B. complying with Australian Accounting Standards and Corporations Regulations 2001;~~~~
 - ~~(ii) complied with International Reporting Standards;~~

~~Particulars~~

~~Independent Auditor's report to the members of DSH dated 18 August 2014.~~

- (b) ~~Deloitte had a reasonable basis for the representation in paragraph (a) above and in particular the view conveyed by that representation was based upon sufficient appropriate audit evidence, and based on a proper interpretation of Australian Accounting Standards.~~

Particulars

~~The representation was implied from the representation in paragraph (a) above, from Deloitte's description in the Deloitte June 2014 Members Report of the work it had undertaken in the course of the June 2014 Audit, from Deloitte's obligation to exercise due skill and care in the provision of services relating to the June 2014 Audit and from Deloitte's expertise in auditing and accounting matters.~~

22 ~~[deleted] The representations referred to in paragraphs 16, 19 and 21 above (the **Deloitte 2014 Audit Representations**) constituted conduct by Deloitte:~~

- ~~(a) in trade or commerce within the meaning of section 18 of the *Australian Consumer Law (ACL)*; and/or~~
- ~~(b) in relation to a financial product or a financial service within the meaning of section 1041H of the *Corporations Act 2001 (Cth)* (**Corporations Act**); and/or~~
- ~~(c) in relation to financial services within the meaning of section 12DA of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**).~~

22A ~~[deleted] Further or alternatively, the Deloitte 2014 Audit Representations constituted or conveyed representations:~~

- ~~(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or.~~
- ~~(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.~~

FY2014 Capitalised Costs Representations

22B The capitalisation of costs in the value of inventory in the FY2014 Report was identified by Deloitte as a key area of focus and audit response in the course of the FY2014 Audit.

Particulars

FY2014 FAC Report, pp. 5, 9.

22C In the FY2014 Report, DSH included in the value of inventory:

- (a) capitalised warehouse costs; and
- (b) 60% of the costs of the buying team.

(the FY2014 Capitalised Costs)

Particulars

FY2014 FAC Report, p. 9.

22D At the conclusion of the FY2014 Audit, Deloitte, in its report to the FAC, referred to the requirements of AASB 102 regarding capitalisation of costs in the value of inventory, and reported that Deloitte had audited the calculations and estimates made by management in relation to the FY2014 Capitalised Costs, and concurred with the FY2014 Capitalised Costs recognised in the FY2014 Report.

Particulars

FY2014 FAC Report, p. 9.

The December 2014- HY2015 Review

23 Deloitte performed the ~~December 2014~~ HY2015 Review in about January and February 2015.

Accounting treatment of rebates in the HY2015 Report

23A In the HY2015 Report, DSH adopted the Rebate Accounting Approach which had been reviewed and approved by Deloitte in the course of the FY2014 Audit.

24 The accounting treatment of supplier rebates in the HY2015 Report was identified by Deloitte as a key area of focus and review audit response for Deloitte in the course of the ~~December 2014~~ HY2015 Review.

Particulars

Report by Deloitte headed "Report to the Finance and Audit Committee for the half year ended 28 December 2014" and dated 11 February 2015 (~~Deloitte 2014 Half-Year~~ HY2015 FAC Report), section 3.2a.

25 On or about 11 February 2015, Deloitte reported that the ~~The~~ procedures carried out by Deloitte in the ~~December 2014~~ HY2015 Review in respect of the accounting treatment of supplier rebates in the HY2015 Report included:

- (a) analysing the various types of rebates recognised;
- (b) reviewing the rebates receivable as at 28 December 2014;

- (c) assessing whether any rebates represented amounts which should be deferred; and
- (d) analysing the gross margin, net advertising costs and overall costs of doing business as a percentage of sales to determine whether the recognition of rebates was reasonable and reflected the fundamental economic nature of the activities.

Particulars

~~Deloitte 2014 Half-Year~~ HY2015 FAC Report, pp. 8 and 9.

26 On or about 11 February 2015, ~~having performed the procedures referred to in paragraph 25 above,~~ Deloitte represented that:

- (a) ~~nothing had come to its attention that the manner in which rebates were recognised in the financial report of DSH as at 28 December 2014 was not appropriate~~ Deloitte was of the opinion that the Rebate Accounting Approach adopted in the HY2015 Report complied with Australian Accounting Standards; and

Particulars

The representation was implied:

- (i) from the circumstances that Deloitte had made the representations at paragraph 16(a)-(b) above in the course of the FY2014 Audit and did not, having carried out the procedures at paragraph 25 above, express any qualification or variation to those representations in the course of the HY2015 Review; and
- (ii) from Deloitte's express statements in the HY2015 FAC Report (p. 9) that Deloitte had undertaken procedures to determine whether the recognition of rebates was reasonable and reflected the fundamental economic nature of the activities, and that nothing had come to its attention that the manner in which rebates were recognised in the HY2015 Report was not appropriate.

Particulars

~~Deloitte 2014 Half-Year~~ HY2015 FAC Report, p. 9.

- (a1) Deloitte's review work had not identified any material deficiencies in the controls and systems which were in place at DSH in respect of recording, calculating and recognising rebates;

Particulars

The representation is implied (i) from the circumstances that Deloitte, having expressly stated that Deloitte had performed the procedures set out in paragraph 25 above, did not identify and report any material deficiency in the controls and systems in place at DSH in respect of recording, calculating and recognising rebates, and (ii) from the express statements in the HY2015 FAC Report (p. 8) that there had been, since the conclusion of the FY2014 Audit, a significant improvement in the quality of the information and supporting evidence for rebates accrued.

- (b) Deloitte had a reasonable basis for the representations in subparagraphs (a) and (a1) above, and those representations were the result of Deloitte having exercised reasonable skill and care in performing the HY2015 Review, having performed the procedures referred to in paragraph 25 above, and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the HY2015 Review in particular the view conveyed by that representation was based upon sufficient appropriate audit evidence in relation to rebates and the accounting treatment of them in the DSH accounts, and based on a proper interpretation of Australian Accounting Standards concerning the accounting treatment of rebates.

Particulars

The representation was implied from the matters in paragraphs 3, 5, 7-9, 9D, 9O-9P and 23A-25 above representation in paragraph (a) above, from Deloitte's identification of the accounting treatment of rebates as a key area of focus and review response in the course of the December 2014 Review, from Deloitte's description of the work undertaken by it in respect of rebates (on pp 8-9 of the Deloitte 2014 Half Year FAC Report), from Deloitte's obligation to exercise due skill and care in the provision of services relating to the December 2014 Review, and from Deloitte's expertise in auditing and accounting matters.

(the HY2015 Rebate Representations)

Inventory provisions in the HY2015 Report

- 27 The inventory provisions in the financial report of DSH as at 28 December 2014 HY2015 Report were identified by Deloitte as a key area of focus and review audit response in the course of the December 2014 HY2015 Review.

Particulars

~~Deloitte 2014 Half-Year~~ HY2015 FAC Report, section 3.3b.

28 On or about 11 February 2015, Deloitte represented that:

- (a) the inventory provisions had been calculated and recorded in the ~~financial report of DSH as at 29 December 2014~~ HY2015 Report on the basis of the 2015 Revised Inventory Provisions Obsolescence Methodology, subject to a refinement whereby aged stock items which were selling at significant positive margins were provided for, which resulted in an adjustment of \$1.26m;

Particulars

HY2015 FAC Report, section 3.3b.

- (b) there was a level of uncertainty as to whether the inventory balances no longer provided for as a result of the amendment referred to in paragraph (a) above would be sold above cost, and consequently Deloitte had included in its summary of unadjusted differences a judgmental error of \$1.26m;

Particulars

~~Deloitte 2014 Half-Year~~ HY2015 FAC Report, p. 11.

- (c) the unadjusted difference referred to in paragraph (b) above could not, either individually or in aggregate with other unadjusted differences identified in the course of the ~~2014 December~~ HY2015 Review, have a material effect on the ~~financial statements for the period ended 28 December 2014~~ HY2015 Report; and

Particulars

~~Deloitte 2014 Half-Year~~ HY2015 FAC Report, p. 4 (“Summary of unadjusted differences”).

~~subject to the matters recorded in subparagraphs (a) to (c), Deloitte concurred with the provision made for inventory obsolescence.~~

Particulars

~~Deloitte 2014 Half-Year~~ FAC Report (p 11).

~~Deloitte had a reasonable basis for the representations in paragraphs (a)-(d) above, and in particular the views conveyed by those representations were based upon sufficient appropriate audit evidence in relation to inventory provisions and the methodology used to calculate them in the DSH accounts,~~

~~and based on a proper interpretation of Australian Accounting Standards regarding inventory provisions.~~

Particulars

~~The representation was implied from the representations in paragraphs (a)-(d) above, from Deloitte's identification of inventory provisions as a key area of focus and review response in the course of the December 2014 Review, from Deloitte's description in section 3.3b of the Deloitte 2014 Half-Year FAC Report of the work undertaken by Deloitte in relation to inventory provisions, from Deloitte's obligation to exercise due skill and care in the provision of services relating to the December 2014 Review, and from Deloitte's expertise in auditing and accounting matters.~~

28A On or about 11 February 2015, Deloitte represented that:

- (a) Deloitte was of the opinion that the assumptions and methodology applied by DSH management in determining inventory provisions in the HY2015 Report were appropriate, and that the provision in respect of inventory obsolescence in the HY2015 Report complied with AASB 102;

Particulars

The representation is partly express and partly implied.

To the extent it is express, Potts repeats paragraphs 19 and 28 above.

To the extent it is implied, it is implied from those express statements.

- (b) Deloitte had a reasonable basis for the opinions in paragraph (a) above, and those opinions were the result of Deloitte having exercised reasonable skill and care in performing the HY2015 Review, and having complied with Auditing Standards in respect of its work in relation to inventory in the course of the HY2015 Review.

Particulars

The representation was implied from the matters in paragraphs 3, 5, 7-9, 9D, 9O-9P, 17-19 and 27-28 above.

(the HY2015 Inventory Representations).

Capitalisation of Costs in the HY2015 Report

28B The capitalisation of costs in the value of inventory in the HY2015 Report was identified by Deloitte as a key area of focus and review response in the course of the HY2015 Review.

Particulars

HY2015 FAC Report, pp. 5, 10.

28C In the HY2015 Report, DSH included in the value of inventory:

- (a) warehouse costs; and
- (b) 90% of the costs of the buying team.

(the HY2015 Capitalised Costs)

Particulars

HY2015 FAC Report, p. 10.

28D At the conclusion of the HY2015 Review, Deloitte, in its report to the FAC, referred to the requirements of AASB 102 regarding capitalisation of costs in the value of inventory, and reported that Deloitte had reviewed the changes in the assumptions made by management in calculating the HY2015 Capitalised Costs and had concluded that they were not unreasonable.

Particulars

HY2015 FAC Report, p. 10.

28E On or about 11 February 2015, Deloitte represented that:

- (a) Deloitte was of the opinion that the inclusion of the HY2015 Capitalised Costs in the value of inventories in the HY2015 Report complied with Australian Accounting Standards;

Particulars

The representation is implied from the circumstances that:

- (i) in the course of the FY2014 Audit, Deloitte had audited the calculations and estimates for the capitalisation of costs in the FY2014 Report (including warehouse costs and the costs of the buying team: see paragraph 22C above), and had reported as pleaded in paragraph 22D above;

- (ii) in respect of the HY2015 Review, Deloitte was obliged to report any matter which came to its attention that caused it to believe that the HY2015 Report did not comply with accounting standards or did not give a true and fair view of the financial position and performance of DSH and the DSH Group;
 - (ii) Deloitte reviewed the HY2015 Report, and identified the HY2015 Capitalised Costs as a key area of focus and review response;
 - (iii) at the conclusion of the HY2015 Review, Deloitte reported the matters set out at paragraph 28D above; and
 - (iv) Deloitte did not advise the FAC or DSH management that the HY2015 Capitalised Costs did not comply with Australian Accounting Standards.
- (b) Deloitte had a reasonable basis for the opinion in paragraph (a) above, and this opinion was the result of Deloitte having exercised reasonable skill and care in performing the HY2015 Review, and having complied with Auditing Standards in respect of its work in relation to the HY2015 Capitalised Costs in the course of the HY2015 Review.

Particulars

The representation is implied from the matters in paragraphs 3, 5, 7-9, 9D, 9O-9P, 22B-22D and 28B-28D above.

(the HY2015 Capitalised Costs Representations)

Deloitte's 2014 Half-Year Members HY2015 Review Report

- 29 On or about 16 February 2015, Deloitte represented to Potts and the other directors of DSH that it would be issuing an unqualified review report on its review of the financial report of DSH for the period ended 28 December 2014 HY2015 Report, being a review report that made representations to the effect of those set out in paragraph 30 below.

Particulars

Minutes of meeting of the board of directors of DSH held on 16 February 2015.

- 30 On or about 16 February 2015, at the conclusion of the ~~December 2014~~ HY2015 Review, Deloitte issued a review report which stated, inter alia, that Deloitte had not become aware of any matter that made it believe that the HY2015 Report was not in accordance with the Corporations Act, including giving a true and fair view of DSH's

financial position as at 28 December 2014 and of its performance for the 26 weeks then ended and complying with AASB 134 (the **Unqualified Review Statement**).

Particulars

Independent Auditor's Review Report to the Members of DSH dated 16 February 2015 (HY2015 Review Report), represented that:

- (a) ~~it had not become aware of any matter that made it believe that the half-year financial report of DSH as at 28 December 2014 was not in accordance with the Corporations Act, including giving a true and fair view of DSH's financial position as at 28 December 2014 and of its performance for the 26 weeks then ended and complying with AASB 134; and~~

Particulars

~~Independent Auditor's Review Report to the Members of DSH dated 16 February 2015 (Deloitte 2014 Half-Year Members Report).~~

- (b) ~~Deloitte had a reasonable basis for the representation in paragraph (a) above, and in particular the view conveyed by that representation was based upon sufficient appropriate audit evidence, and based on a proper interpretation of Australian Accounting Standards.~~

Particulars

~~The representation was implied from the representation in paragraph (a) above, from Deloitte's description in the Deloitte 2014 Half-Year Members Report of the work that it had undertaken in the course of the December 2014 Review, from Deloitte's obligation to exercise due skill and care in the provision of services relating to the December 2014 Review, and from Deloitte's expertise in auditing and accounting matters.~~

30A In making the Unqualified Review Statement, Deloitte represented that it had a reasonable basis for that statement, and that the Unqualified Review Statement was the result of Deloitte having exercised reasonable skill and care in performing the HY2015 Review, and having complied with Auditing Standards in the course of the HY2015 Review (the **HY2015 Review Report Representation**).

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated in the HY2015 Review Report that: "We conducted our review in accordance with Auditing Standard on Review

Engagements ASRE 2410 Review of a Financial Report Performed by the Independent Auditor of the Entity, in order to state whether, on the basis of the procedures described, we have become of any matter that makes us believe that the [HY2015 Report] is not in accordance with Corporations Act 2001 including: giving a true and fair view of [DSH's] financial position as at 28 December 2014 and its performance for the half-year ended on that date; and complying with Accounting Standard AASB 134 Interim Financial Reporting and the Corporations Regulations 2001."

To the extent it is implied, it is implied from the matters in 3, 5, 7-9, 9D, 9O-9P and 29-30 above.

31 ~~[deleted] The representations referred to in paragraphs 26 and 28-30 above (the **Deloitte Half-Year Representations**) constituted conduct by Deloitte:~~

- ~~(a) in trade or commerce within the meaning of section 18 of the ACL; and/or~~
- ~~(b) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; and/or~~
- ~~(c) in relation to financial services within the meaning of section 12DA of the ASIC Act.~~

31A ~~[deleted] Further or alternatively, the Deloitte Half-Year Representations constituted or conveyed representations:~~

- ~~(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or~~
- ~~(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.~~

The June 2015 FY2015 Audit

32 Deloitte performed the June 2015 FY2015 Audit in about July and August 2015.

Accounting treatment of rebates in the FY2015 Report

32A In the FY2015 Report DSH adopted the Rebate Accounting Approach which had been reviewed and approved by Deloitte in the course of the FY2014 Audit and the HY2015 Review.

- 33 The accounting treatment of supplier rebates in the FY2015 Report was identified by Deloitte as a “key area of focus and audit response” for Deloitte in the course of the June 2015 FY2015 Audit.

Particulars

Report by Deloitte headed “Report to the Finance and Audit Committee for the year ended 28 June 2015” and dated 6 August 2015 (~~Deloitte June 2015~~FY2015 FAC Report), pp. 10-11.

- 34 On or about 6 August 2015, Deloitte reported that the The procedures carried out by Deloitte in the course of the June FY2015 Audit in respect of the accounting treatment of supplier rebates in the FY2015 Report included the ~~FY15 Audit Rebate Procedures~~ and also included:

- (a) analysing the various types of rebates recognised, by assessing the nature and the classification of the rebates,
- (b) performing a walkthrough of the process for classifying rebates,
- (c) 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,
- (d) assessing whether any supplier rebates represented amounts which should be deferred; and
- (e) analysing the gross margin, net advertising costs and overall costs of doing business as a percentage of sales to determine whether the recognition of rebates was reasonable and reflected the fundamental economic nature of the activities;

Particulars

~~Deloitte June 2015~~FY2015 FAC Report, pp. 10 and 11.

- 35 On or about 6 August 2015, ~~having performed the procedures referred to in paragraph 34 above,~~ Deloitte represented that:

- (a) Deloitte was of the opinion that the Rebate Accounting Approach adopted concurred with management’s accounting treatment of O&A Rebates in the financial report of DSH as at 28 June 2015 FY2015 Report complied with Australian Accounting Standards;

Particulars

Deloitte June 2015 FAC Report, p. 10. The representation in paragraph (a) is partly express and partly implied.

To the extent it is express, Deloitte stated in the FY2015 FAC Report that Deloitte concurred with management's accounting treatment of O&A Rebates in the FY2015 Report (p. 10); and that Deloitte concurred with the reallocation by DSH management of a portion of the O&A Rebates in cost of sales where the rebates exceed the underlying promotional costs (p. 11).

To the extent it is implied, it is implied from those express statements.

- (b) Deloitte was of the opinion that the Reallocation of O&A in the FY2015 Report from marketing expenses in Costs of Doing Business to costs of sales which derived the Gross Margin was appropriate and complied with Australian Accounting Standards DSH's processes, reconciliations and supporting evidence for O&A Rebates had significantly improved compared to the previous financial year ending 29 June 2014, with those rebates accrued in the accounts being based on supporting evidence provided by the buyers and reviewed by finance before accruals were raised;

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated in the ~~Deloitte June 2015~~ FY2015 FAC Report, p. 10, as follows: "management recognises a portion of the O&A Rebates in cost of sales where the rebates exceed the underlying promotional costs. Our procedures have included an analysis of gross margin, net advertising costs and overall costs of doing business as a percentage of sales to determine whether the allocation is reasonable and reflects the fundamental economic nature of the activity. We concur with the basis of reallocation of this income as at 28 June 2015."

To the extent it is implied, it is implied from that express representation.

- (c) Deloitte was of the opinion that there were no material deficiencies in the controls and systems which were in place at DSH in respect of recording, calculating and recognising rebates;

Particulars

The representation is implied from the circumstances that:

- (i) Deloitte stated that it would perform the FY2015 Audit Rebate Procedures in paragraph 10(b) above in the course of the FY2015 Audit (including critically evaluating management's methodologies in capturing and recognising rebates received and receivable, testing the key controls associated with the completeness and validity of recording of rebate income, and performing substantive testing on a sample of rebates recorded or accrued);
- (ii) Deloitte stated that it had performed in the course of the FY2015 Audit the procedures in relation to rebates which are described in paragraph 34 above (including performing a walkthrough of the process for classifying rebates and performing detailed testing of a sample of rebates recognised throughout the year by tracing to supporting documentation);
- (iii) Deloitte reported in the FY2015 FAC Report (p. 10) that Deloitte was of the view that DSH's processes, reconciliations and supporting evidence for O&A Rebates had significantly improved compared to the previous financial year ending 29 June 2014, with those rebates accrued in the accounts being based on supporting evidence provided by the buyers and reviewed by finance before accruals were raised;
- (iv) Deloitte reported in the FY2015 FAC Report (p. 15) that Deloitte had not identified, in the course of the FY2015 Audit, any significant deficiencies in internal controls relating to the prevention and detection of fraud or error which would impact upon Deloitte's ability to provide an opinion on the FY2015 Report; and
- (v) Deloitte's description of the FY15 Audit Rebate Procedures, the representation referred to in (b) above, and the fact that Deloitte, having performed the FY15 Audit Rebate Procedures, did not, on the basis of any procedures referred to in paragraph (i) or (ii) above, identify and report any material deficiency in the controls and systems in place at DSH in respect of recording, calculating and recognising rebates and did not identify any unadjusted differences (FY2015 FAC Report, p. 10).

- (d) ~~[deleted] based on the procedures performed by Deloitte, Deloitte had not identified any unadjusted differences in respect of supplier rebates in the financial statements as at 28 June 2015;~~

Particulars

~~Deloitte June 2015 FAC Report, p. 10.~~

- (e) ~~[deleted] Deloitte concurred with the allocation by DSH management of a portion of the O&A Rebates in cost of sales where the rebates exceed the underlying promotional costs; and~~

Particulars

~~Deloitte June 2015 FAC Report, p. 11.~~

- (f) ~~Deloitte had a reasonable basis for the representations/opinions in paragraphs (a), (b) and (c) above, and those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY2015 Audit, having performed the procedures referred to in paragraphs 10(b) and 34 above, and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY2015 Audit in particular the views conveyed by these representations were based upon sufficient appropriate audit evidence in relation to rebates and the accounting treatment of them in the DSH accounts, and based on a proper interpretation of Australian Accounting Standards concerning the accounting treatment of rebates.~~

Particulars

~~The representation was implied from the matters in paragraphs 3, 5, 7-9, 9G, 9Q-9Z and 33-34 above representations in paragraphs (a)-(e) above, from Deloitte's identification of the accounting treatment of rebates as a key area of focus and review response in the course of the June 2015 Audit, from Deloitte's description of the FY15 Audit Rebate Procedures and of the work undertaken by it in respect of rebates (on pp 10-11 of the Deloitte June 2015 FAC Report), from Deloitte's obligation to exercise due skill and care in the provision of services relating to the June 2015 Audit, and from Deloitte's expertise in auditing and accounting matters.~~

(the FY2015 Rebate Representations)

Inventory provisions in the FY2015 Report

- 36 The inventory provisions in the ~~financial report of DSH as at 28 June 2015~~ FY2015 Report were identified by Deloitte as a key area of focus and audit response for Deloitte in the course of the June 2015 FY2015 Audit.

Particulars

~~Deloitte June 2015~~ FY2015 FAC Report, section 3.2.

- 37 On or about 6 August 2015, Deloitte reported that in ~~in the course of the June 2015~~ FY2015 Audit, Deloitte performed the FY15 Audit Inventory Procedures and also had assessed the assumptions and methodology applied by management in determining inventory provisions in the ~~financial report of DSH as at 28 June 2015~~ FY2015 Report.

Particulars

~~Deloitte June 2015~~ FY2015 FAC Report, p. 9.

- 38 On or about 6 August 2015, ~~having performed the procedures referred to in paragraph 37 above,~~ Deloitte represented that:

- (a) Deloitte was of the opinion that the assumptions and methodology applied by DSH management in determining inventory provisions in the FY2015 Report were appropriate, and that the provision in respect of inventory obsolescence in the FY2015 Report complied with AASB 102 the 2015 Inventory Provisions Methodology had been adopted in the financial report of DSH as at 28 June 2015, subject to the refinement referred to in paragraph 28(a) above;

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated in the FY2015 FAC Report that:

- (i) the Revised Inventory Obsolescence Methodology (being the methodology which had been reviewed and approved by Deloitte in the course of the FY2014 Audit: paragraphs 18-19 above) had been adopted in the FY2015 Report, subject to the refinement which had been adopted in the HY2015 Report, referred to in paragraph 28(a) above (pp. 5 and 9); and
- (ii) Deloitte had assessed the assumptions and methodology applied by DSH and concurred with the revised methodology and with the provision made for inventory obsolescence applying that methodology (pp. 5 and 9).

To the extent it is implied, it is implied from those express statements.

~~Deloitte June 2015 FAC Report, pp. 5 and 9.~~

- (b) ~~[deleted] Deloitte had assessed the assumptions and methodology applied by DSH in its accounts and concurred with the revised methodology and with the provision made for inventory obsolescence applying that methodology;~~

Particulars

~~Deloitte June 2015 FAC Report, pp. 5 and 9.~~

- (c) ~~[deleted] the overall costs which had been recognised in the total cost of inventory under Accounting Standard AASB 102 *Inventories* were appropriate;~~

Particulars

~~Deloitte June 2015 FAC Report, p. 5.~~

- (d) ~~[deleted] there were no material deficiencies in the controls and systems which were in place at DSH in respect of the inventory obsolescence reconciliation, review and approval process, or the inventory costing and provisioning methodologies;~~

Particulars

~~The representation is implied from Deloitte's description of the FY15 Audit Inventory Procedures, the representations referred to in (a)-(c) above, and the fact that Deloitte, having performed the FY15 Audit Inventory Procedures, did not identify and report any material deficiency in the controls and systems in place at DSH in respect of inventory provisions.~~

- (e) ~~Deloitte had a reasonable basis for the opinions representations in paragraphs (a)-(d) above, and those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY2015 Audit, having performed the procedures referred to in paragraphs 11 and 37 above, and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY2015 Audit in particular the views conveyed by those representations were based upon sufficient appropriate audit evidence in relation to inventory provisions and the methodology used to calculate them in the DSH accounts, and based on a proper interpretation of Australian Accounting Standards regarding inventory provisions.~~

Particulars

The representation was implied from the matters in paragraphs 3, 5, 7-9, 9G, 9Q-9Z and 36-37 above ~~representations in paragraphs (a)-(d) above, from Deloitte's identification of inventory provisions as a key area of focus and review response in the course of the June 2015 Audit, from Deloitte's description of the FY15 Audit Inventory Procedures and the description in section 3.2 of the Deloitte June 2015 FAC Report of the work undertaken by Deloitte in relation to inventory provisions, from Deloitte's obligation to exercise due skill and care in the provision of services relating to the June 2015 Audit, and from Deloitte's expertise in auditing and accounting matters.~~

(the FY2015 Inventory Representations)

Capitalisation of Costs in the FY2015 Report

38A The capitalisation of costs in the value of inventory in the FY2015 Report was identified by Deloitte as a key area of focus and audit response in the course of the FY2015 Audit.

Particulars

FY2015 FAC Report, pp. 5, 8.

38B In the FY2015 Report, DSH included in the value of inventory:

- (a) warehouse costs; and
- (b) costs of the buying team.

(the FY2015 Capitalised Costs)

Particulars

FY2015 FAC Report, p. 8.

38C On or about 6 August 2015, Deloitte, in its report to the FAC, referred to the requirements of AASB 102 regarding capitalisation of costs in the value of inventory, and reported that the increase in the allocation of the buying team costs from 60% to 90% was made to better reflect the time spent by the buying team on its core activities, and that Deloitte was satisfied that the FY2015 Capitalised Costs were appropriate.

Particulars

FY2015 FAC Report, p. 8.

38D On or about 6 August 2015, Deloitte represented that:

- (a) Deloitte was of the opinion that the inclusion of the FY2015 Capitalised Costs in the value of inventories in the FY2015 Report complied with Australian Accounting Standards;

Particulars

The representation is implied from the circumstances that:

- (i) Deloitte was obliged to report its opinion whether the FY2015 Report complied with accounting standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group;
 - (ii) Deloitte audited the FY2015 Report, and identified the FY2015 Capitalised Costs as a key area of focus and audit response; and
 - (iii) at the conclusion of the FY2015 Audit, Deloitte reported the matters set out at paragraph 38C above.
- (b) Deloitte had a reasonable basis for the opinion in paragraph (a) above, and this opinion was the result of Deloitte having exercised reasonable skill and care in performing the FY2015 Audit, and having complied with Auditing Standards in respect of its work in relation to the FY2015 Capitalised Costs in the course of the FY2015 Audit.

Particulars

The representation is implied from the matters in paragraphs 3, 5, 7-9, 9G, 9Q-9Z and 38A-38C above.

(the FY2015 Capitalised Costs Representations)

Deloitte June 2015 Members FY2015 Audit Report

- 39 On or about 17 August 2015, Deloitte stated to Potts and the other directors of DSH that Deloitte would be issuing an unqualified audit report on its audit of the FY2015 Report, being an audit report that contained Unqualified Audit Statements to the effect set out in paragraph 40 below“gave clearance on the accounts” of DSH as at 28 June 2015.

Particulars

Minutes of the meeting of the board of directors of DSH held on 17 August 2015, “Adoption of full year accounts”: statement by Deloitte that it “gave clearance on the accounts”.

40 On or about 17 August 2015, at the conclusion of the June 2015 FY2015 Audit, Deloitte issued an audit report which stated, inter alia, represented that:~~(a)~~—Deloitte was of the opinion that the full-year financial statements as at 28 June 2015FY2015 Report:

~~(a)(i)~~—werewas in accordance with the Corporations Act, including:

~~(i)(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 ending on that date; and

~~(ii)(B)~~ complying with Australian Accounting Standards and Corporations Regulations 2001;

~~(b)(ii)~~ complied with International Reporting Standards;

(the **Unqualified Audit Statements**)

Particulars

Independent Auditor's Report to the Members of DSH dated 17 August 2015
(the **FY2015 Audit Report**).

40A ~~(b)~~In making the Unqualified Audit Statements, Deloitte represented that it had a reasonable basis for these opinions~~representation in paragraph (a) above, and that these opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY2015 Audit, and having complied with Auditing Standards in the course of the FY2015 Audit (the **FY2015 Audit Report Representation**).~~in particular the view conveyed by that representation was based upon sufficient appropriate audit evidence, and based on a proper interpretation of Australian Accounting Standards.

Particulars

The FY2015 Audit Report Representation is partly express and partly implied.

To the extent it is express, Deloitte stated in the FY2015 Audit Report as follows: "Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. ... An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. ... We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion."

~~To the extent it is implied, the~~ The representation was implied from the express statements in the FY2015 Audit Report and from the matters in paragraphs 3, 5, 7-9, 9G and 9Q-9Z above ~~representation in paragraph (a) above, from Deloitte's description in the Deloitte June 2015 Members Report of the work that it had undertaken in the course of the June 2015 Audit, from Deloitte's obligation to exercise due skill and care in the provision of services relating to the June 2015 Audit, and from Deloitte's expertise in auditing and accounting matters.~~

41 ~~[deleted]~~ The representations referred to in paragraphs 35 and 38-40 above (the **Deloitte Full-Year Representations**) constituted conduct by Deloitte:

- ~~(a) in trade or commerce within the meaning of section 18 of the ACL; and/or~~
- ~~(b) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; and/or~~
- ~~(c) in relation to financial services within the meaning of section 12DA of the ASIC Act.~~

41A ~~[deleted]~~ Further or alternatively, the Deloitte Full-Year Representations constituted or conveyed representations:

- ~~(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or~~
- ~~(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.~~

Misleading and deceptive conduct by Deloitte – Deloitte Rebate Representations

41B The FY2014 Rebate Representations, the HY2015 Rebate Representations and the FY2015 Rebate Representations (the **Deloitte Rebate Representations**) constituted conduct by Deloitte:

- (a) in trade or commerce within the meaning of section 18 of the ACL; and/or
- (b) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; and/or
- (c) in relation to financial services within the meaning of section 12DA of the ASIC Act.

41C Further or alternatively, the representations pleaded at paragraphs 16(c), 26(b) and 35(f) above were representations by Deloitte:

- (a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or
- (b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.

Particulars

The services supplied by Deloitte were its services as auditor of DSH in respect of each of the FY2014 Audit, the HY2015 Review and the FY2015 Audit.

The representations pleaded in paragraphs 16(c), 26(b) and 35(f) above, being representations that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in relation to (respectively) the FY2014 Audit, the HY2015 Review and the FY2015 Audit, were representations regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of those engagements.

Allegations by Plaintiff in respect of Rebates

42 For the purposes only of this cross-claim, and without admission, Potts repeats paragraphs ~~38-41, 43, 49-53, 61 and 64-68~~ 38-40, 43, 51, 51A(a), 52, 65, 65A(a), 66 and 67 of the ~~Second~~ Third Amended Commercial List Statement, and the consolidated particulars thereto, as if set out herein.

42A The plaintiff alleges (which is denied) that:

- (a) the Rebate Accounting Approach, being the accounting approach which was adopted in each of:
 - (i) the FY2014 Report (as pleaded in paragraphs 15-15B above),
 - (ii) the HY2015 Report (as pleaded in paragraph 23A above), and
 - (iii) the FY2015 Report (as pleaded in paragraph 32A above)

including the Reallocation of O&A Rebates in the FY2014 Report and in the FY2015 Report (pleaded in paragraphs 15B and 35(b) above), did not comply with Australian Accounting Standards;

Particulars

Plaintiff's Consolidated Particulars to the Third Amended Commercial List Statement, paragraphs 54 and 56.

Report of Mr Wayne Basford dated 1 December 2017 (**Basford Report**), paragraphs 61-67 and 88-97.

- (b) there were material deficiencies in the controls and systems at DSH in respect of the recording, calculation and recognition of rebates in each of the HY2015 Report and the FY2015 Report, in that:
- (i) O&A rebates were accounted for contrary to Australian Accounting Standards, because there was no proper or adequate basis to recognise these amounts as assets at the relevant balance date; and/or

Particulars

Plaintiff's Consolidated Particulars to the Third Amended Commercial List Statement, paragraphs 54 and 55.

Basford Report, paragraphs 49-60 and 85-87.

- (ii) O&A rebates from non-merchandise suppliers were inappropriately treated in the accounts;

Particulars

Plaintiff's Consolidated Particulars to the Third Amended Commercial List Statement, paragraphs 54 and 57.

Basford Report, paragraphs 68-74 and 98-101.

42AA If the matters in paragraph 42A(a) above are established, then:

- (a) it was not appropriate to include in the FY2014 Report the amount of \$15,940,108 as a receivable on the balance sheet and as a reduction in costs of goods sold in the profit and loss, with the result that the current assets, total assets, gross profit and net profit in the FY2014 Report should have been \$15,940,108 less than in fact reported; and

Particulars

Basford Report at paragraphs 104(a).

- (b) the FY2014 Report did not give a true and fair view of the financial position and performance of DSH and the DSE Group, and did not comply with Australian Accounting Standards.

42AB If the matters in paragraphs 42A(a) and/or 42A(b) above are established, then:

- (a) it was not appropriate to reflect in the HY2015 Report the amount of \$32,695,838 as a receivable on the balance sheet and as a reduction in costs of goods sold in the profit and loss, with the result that current assets and total assets in the HY2015 Report should have been \$32,695,838 less than in fact reported, and gross profit and net profit should have been \$16,755,730 less than in fact reported; and

Particulars

Basford Report at paragraphs 104(b) and 201.

- (b) the HY2015 Report did not give a true and fair view of the financial position and performance of DSH and the DSE Group, and did not comply with Australian Accounting Standards.

42AC If the matters in paragraphs 42A(a) and/or 42A(b) above are established, then:

- (a) it was not appropriate to reflect in the FY2015 Report the amount of \$30,056,033 as a receivable on the balance sheet and as a reduction in costs of goods sold in the profit and loss, with the result that current assets and total assets in the FY2015 Report should have been \$30,056,033 less than in fact reported, and gross profit and net profit should have been \$12,934,075 less than in fact reported; and

Particulars

Basford Report at paragraphs 104(c) and 203.

- (c) the FY2015 Report did not give a true and fair view of the financial position and performance of DSH and the DSE Group, and did not comply with Australian Accounting Standards.

Deloitte's failure to comply with Auditing Standards - Rebates

42B If the matters in paragraph 42A(a) above are established, then:

- (a) Deloitte, in representing (as pleaded in paragraphs 16(a)-(b), 26(a) and 35(a)-(b) above) that it was of the opinion that the Rebate Accounting Approach and the Reallocation of O&A Rebates complied with Australian Accounting Standards, either:
- (i) failed properly to understand the Rebate Accounting Approach and the Reallocation of O&A Rebates, or

- (ii) failed properly to apply the requirements of the Australian Accounting Standards to the Rebate Accounting Approach and the Reallocation of O&A Rebates; and
- (b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of the accounting treatment of rebates, and failed to exercise reasonable skill and care in performing such work, in that:
- (i) in respect of the HY2015 Review, Deloitte failed adequately to perform, as required by ASRE 2410 para 16, analytical and other review procedures to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including insofar as it adopted the Rebate Accounting Approach and the Reallocation of O&A Rebates) was not prepared, in all material respects, in accordance with the applicable financial accounting framework; and
- (ii) in respect of the FY2014 Audit and the FY2015 Audit:
- (A) Deloitte failed adequately to evaluate, as required by ASA 315 para 11, whether the adoption of the Rebate Accounting Approach and the Reallocation of O&A Rebates in the FY2014 Report and in the FY2015 Report were consistent with the applicable financial reporting framework and accounting policies used in the relevant industry; and/or
- (B) Deloitte failed adequately to perform, as required by ASA 330 para 24, audit procedures so as to evaluate whether the overall presentation of the FY2014 Report or the FY2015 Report, including in respect of the Rebate Accounting Approach and the Reallocation of O&A Rebates, was in accordance with the applicable financial reporting framework.

Particulars

Deloitte was aware of the Rebate Accounting Approach and the Reallocation of O&A Rebates (see paragraphs 15-15B above).

A reasonable auditor in Deloitte's position, who was aware of the Rebate Accounting Approach and the Reallocation of O&A Rebates, would have:

- obtained an understanding of the basis and application of the Rebate Accounting Approach in each of the FY2014 Report, the HY2015 Report and the FY2015 Report;

- obtained an understanding of the basis and application of the Reallocation of O&A Rebates in each of the FY2014 Report and the FY2015 Report;
- determined whether the Rebate Accounting Approach and the Reallocation of O&A Rebates complied with Australian Accounting Standards by:
 - 1) obtaining an understanding of the processes for dealing with rebates and in particular with O&A rebates;
 - 2) ascertaining the level of risk relating to the accounting treatment of rebates;
 - 3) having regard to the level of risk, designed testing work to consider an appropriately sized sample that took account of the different providers of rebates;
 - 4) obtaining, in respect of the rebates within that sample, evidence of the nature of any marketing and promotional support, the terms of such support, or whether those terms had been fulfilled, in order to form a view whether it was appropriate for such rebates to be taken up in profits in the reporting period;
 - 5) making enquiries of management as to whether the services to be provided in exchange for the rebate had been fully provided by DSH; and
 - 6) considering whether there was a basis for relying on the systems and processes used to determine whether rebates were included in profits.

Deloitte's work papers do not establish that Deloitte designed and implemented adequate testing work in order to obtain reasonable assurance whether the Rebate Accounting Approach and the Reallocation of O&A Rebates complied with Australian Accounting Standards.

In respect of the testing work in the HY2015 Review and the FY2015 Audit, Potts refers to and relies upon the particulars to paragraph 42C below.

In respect of the FY2014 Audit, Deloitte's work papers do not establish that Deloitte:

- tested the credit side of transactions selected from the 1392 account in order to determine in which account the credit had been recorded (namely, the CODB account or the COS Account or some other account), determined whether there was justification for crediting the rebate in the respective account, and obtained reasonable assurance about whether the Rebate Accounting Approach complied with AASB 102; and
- tested the substance of transactions reclassified from CODB to COS in order to obtain reasonable assurance whether the Reallocation of O&A Rebates in the FY2014 Report was in accordance with the requirements of AASB 101 and 102.

Deloitte's testing in respect of the 1392 account for the purposes of the FY2014 Audit is documented in its work papers DEL.001.001.3952, Del.001.001.3953 and DEL.001.001.3973. The testing did not address the matters outlined above. Deloitte thereby failed to consider the requirements of the applicable Accounting Standards which required Deloitte to ensure line items in the profit and loss accounts of DSH reflected the business of DSH.

The plaintiff contends that the Rebate Accounting Approach and the Reallocation of O&A Rebates were contrary to Australian Accounting Standards (see particulars to paragraph 42A(a) above).

If those matters are established (which are denied), then an auditor exercising reasonable skill and care, who had obtained a proper understanding of the basis and the application of the Rebate Accounting Approach and the Reallocation of Rebates, and who had performed audit procedures so as to evaluate whether those matters were in accordance with the applicable financial reporting framework (including tests of the type outlined above), would have concluded that those matters did not comply with Australian Accounting Standards, and would have so reported. Deloitte failed to do so and thereby failed to meet the requirements of a reasonable auditor and failed to comply with the Auditing Standards identified in paragraph 42B(b) above.

Further particulars may be provided after discovery and expert evidence.

42C Further or alternatively, if the plaintiffs establish the matters referred to in paragraph 42A(b) above, then:

- (a) Deloitte, in representing that the Rebate Accounting Approach complied with Australian Accounting Standards and that there were no material deficiencies in the controls and systems at DSH in respect of the recording, calculation and recognition of rebates in respect of the HY2015 Report and the FY2015 Report (as pleaded in paragraphs 26(a)-(a1) and 35(a) and (c) above), either:
- (i) failed to become aware, in the course of the HY2015 Review or the FY2015 Audit, of the deficiencies identified in the Basford Report at paragraphs 84-103 and/or the Plaintiff's Consolidated Particulars to paragraphs 38-40 of the Third Amended Commercial List Statement, or
 - (ii) became aware of those matters, but failed to appreciate that those matters constituted or gave rise to deficiencies in the recording, calculation and recognition of Rebates in the HY2015 Report or in the FY2015 Report, or
 - (iii) failed to appreciate that such deficiencies were material; and
- (b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of the recognition of rebates in the HY2015 Report, and failed to exercise reasonable skill and care in performing such work, in that:
- (i) Deloitte failed to obtain an adequate understanding of DSH and its environment, including its internal control as it relates to the preparation of financial reports (including in respect of recording of rebates), sufficient to plan and conduct the HY2015 Review (ASRE 2410 paras 13 and A11);
 - (ii) Deloitte failed adequately to make enquiries or to perform analytical and other review procedures to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in respect of the recording of rebates) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 para 16); and
 - (iii) having identified the accounting treatment of rebates in the HY2015 Report as an area where a material adjustment might have to be made, Deloitte failed to make additional enquiries or perform other procedures sufficient to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in respect of the recording of rebates) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 para 20);

Particulars

A reasonable auditor in Deloitte's position would have, in the course of the HY2015 Review, determined whether the Rebate Accounting Approach and the Reallocation of O&A Rebates complied with Australian Accounting Standards by:

- obtaining an understanding of the processes for dealing with rebates and in particular with O&A rebates;
- ascertaining the level of risk relating to the accounting treatment of rebates;
- having regard to the level of risk, designed testing work to consider an appropriately sized sample that took account of the different providers of rebates;
- obtaining, in respect of the rebates within that sample, evidence of the nature of any marketing and promotional support, the terms of such support, or whether those terms had been fulfilled, in order to form a view whether it was appropriate for such rebates to be taken up in profits in the reporting period;
- making enquiries of management as to whether the services to be provided in exchange for the rebate had been fully provided by DSH;
- considering whether there was a basis for relying on the systems and processes used to determine whether rebates were included in profits.

DEL.001.003.1480 sets out Deloitte's understanding of the processes for dealing with rebates and in particular O&A rebates accounted for in the 1392 account. Deloitte categorised this as a high risk area in the HY2015 Review.

DEL.001.003.1473 sets out at tab 4 Deloitte's testing of O&A rebates in the course of the HY2015 Review. This is a limited sample and deals only with rebates from merchandise suppliers. The deficiencies in this working paper include that:

- notwithstanding Deloitte's view that this was a high risk area, the working paper does not demonstrate that Deloitte obtained knowledge of the population of rebates so as to design a test to

consider an appropriately sized sample that took account of the different providers of rebates, and instead tested only rebates from vendors of product rather than providers of other services; and

- the material in tab 4 does not identify, for particular O&A rebates, the nature of any marketing and promotional support, the terms of such support, or whether those terms had been fulfilled, and does not indicate why it was appropriate for such rebates to be taken up in profits in the reporting period.

ASRE 2410 paras 20 and A27 obliged Deloitte to design testing work that was free of the above deficiencies.

The work papers for the HY2015 Review do not demonstrate, as required by ASRE 2410 paras 13 and A11:

- the basis for relying on the systems and processes used to determine whether rebates were included in profits (and, if such processes were tested in the FY2014 Audit, the work papers do not record that fact and do not contain any enquiry as to whether there had been changes in the processes); and
- enquiries of management as to whether the services to be provided in exchange for the rebate had been fully provided by DSH. Such enquiries would include: understanding the processes used by management to monitor rebates against service delivery; understanding management's basis for determining whether any rebates related to inventory items on hand as at 28 December 2014; and understanding how management accounted for and monitored revenue received in advance, its allocation to profits as contractual obligations were met, and the creation of accruals for deferred revenue where contractual obligations had not been fulfilled.

ASRE 2410 paras 16 and 20 obliged Deloitte to design testing work that was free of the above deficiencies in order to have a sufficient or reasonable basis to form the view that the inventory accounting complied with AASB 102 or to issue the opinion required by s 309 of the Corporations Act whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in

respect of the recording of rebates) was not prepared, in all material respects, in accordance with the applicable financial accounting framework.

If Deloitte had taken the steps that a reasonable auditor would have taken in respect of rebates in the course of the HY2015 Review, as outlined above, then (assuming that the plaintiff establishes the deficiencies in the recording of rebates referred to in paragraphs 85-87 and 98-101 of the Basford Report), Deloitte would have ascertained and reported those matters to Potts and/or Abboud and the other directors of DSH (ASA 260, paras A18, A32-A33).

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

- (c) Deloitte failed to comply with the Auditing Standards in carrying out its work in respect of the recognition of rebates in the FY2015 Report, and failed to exercise reasonable skill and care in performing such work, in that:
- (i) Deloitte failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the recording, calculation and recognition of rebates in the FY2015 Report (ASA 500 paras 4, 6, A1-A25);
 - (ii) Deloitte failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (one of the key areas of risk identified by Deloitte being the recording of rebates in the FY2015 Report), through designing and implementing appropriate responses to those risks (ASA 330 paras 3, 5-7);
 - (iii) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the recording of rebates so as to reduce audit risk to an acceptably low level:
 - (A) Deloitte failed to obtain reasonable assurance about whether the FY2015 Report as a whole was free from material misstatement, whether due to fraud or error (ASA 200 para 5); and
 - (B) Deloitte was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY2015 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2015 Report in accordance with the auditor's findings (ASA 200 paras 11, 17);

- (iv) Deloitte failed to perform risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures (ASA 315 paras 5-6, paras 25-26);
- (v) Deloitte failed to obtain an understanding of the application of accounting policies by DSH in respect of rebates, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 para 11);
- (vi) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 para 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 para 25); and
- (vii) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the recording of rebates in the FY2015 Report, Deloitte failed to express a qualified opinion or disclaim an opinion on the FY2015 Report (ASA 330 paras 26-27).

Particulars

A reasonable auditor in Deloitte's position would have, in the course of the FY2015 Audit, determined whether the Rebate Accounting Approach and the Reallocation of O&A Rebates complied with Australian Accounting Standards by:

- obtaining an understanding of the processes for dealing with rebates and in particular with O&A rebates;
- ascertaining the level of risk relating to the accounting treatment of rebates;
- having regard to the level of risk, designed testing work to consider an appropriately sized sample that took account of the different providers of rebates;
- obtaining, in respect of the rebates within that sample, evidence of the nature of any marketing and promotional support, the terms of such support, or whether those terms had been fulfilled,

in order to form a view whether it was appropriate for such rebates to be taken up in profits in the reporting period;

- making enquiries of management as to whether the services to be provided in exchange for the rebate had been fully provided by DSH;
- considering whether there was a basis for relying on the systems and processes used to determine whether rebates were included in profits.

DEL.001.002.1449 identified that O&A rebates were an area of significant risk in the FY2015 Report and that Deloitte staff should concentrate on ensuring the appropriate authority for them by looking at emails and other documents supporting the rebates.

Deloitte's testing, in the course of the FY2015 Audit, of rebates posted to the 1392 account is at DEL.001.002.1462 under tab 3. The material at tab 3 is insufficient to enable an auditor to determine:

- the strength of the evidentiary support for the transactions;
- whether the sample selected was representative of the population of O&A rebate transactions so as to provide a basis for any audit conclusion;
- whether DSH had performed all activities necessary for it to earn the rebates by 28 June 2015 or whether some part of the O&A rebates should be held back as deferred revenue;
- whether some of the O&A rebates were closely related to inventory purchases and thus should be set against the cost of inventory;
- whether under the terms of the O&A arrangements it was appropriate to include the amounts in profits in the FY2015 Report;
- whether there was an economic reason for non-merchandise suppliers to provide rebates, other than for continuance or renewal of a service contract, such that those rebates should be taken to profits over the term of those contracts.

Deloitte's work papers for the FY2015 Audit do not therefore provide evidence that their audit work met the requirements of ASA 200, ASA 315, ASA 330, or ASA 500 set out above. The work papers do not

provide sufficient appropriate audit evidence that the requirements of AASB 101 and AASB 102 have been met in respect of the recording of rebates in the FY2015 Report. Accordingly, Deloitte did not have a sufficient or reasonable basis to form the view required by s 307(a)(i) of the Corporations Act or to issue the opinion required by s 308 of the Corporations Act.

If Deloitte had taken the steps that a reasonable auditor would have taken in respect of rebates in the course of the FY2015 Audit, as outlined above, then (assuming that the plaintiff establishes the deficiencies in the recording of rebates referred to in paragraphs 85-87 and 98-101 of the Basford Report), Deloitte would have ascertained and reported those matters to Potts and/or Abboud and the other directors of DSH (ASA 260, paras A18, A32-A33).

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

Contravention of ACL and/or Corporations Act and/or ASIC Act – Deloitte Rebate Representations

42D If the matters in paragraphs 42-42C above are established, then Deloitte, in making the Deloitte Rebate Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY2014 Audit, pleaded in paragraph 42B above, Deloitte did not (contrary to the representation pleaded in paragraph 16(c)) have a reasonable basis for the representations of opinion pleaded in paragraphs 16(a)-(b) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY2014 Audit.

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the HY2015 Review, pleaded in paragraph 42B and further or alternatively paragraph 42C above, Deloitte did not (contrary to the representation pleaded in paragraph 26(b) above) have a reasonable basis for the representations of opinion pleaded in

paragraphs 26(a)-(a1) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the HY2015 Review.

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY2015 Audit, pleaded in paragraph 42B and further or alternatively paragraph 42C above, Deloitte did not (contrary to the representation pleaded in paragraph 35(f) above) have a reasonable basis for the representations of opinion pleaded in paragraphs 35(a)-(c) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY2015 Audit.

42E Further or in the alternative, if the matters in paragraphs 42-42C above are established, then Deloitte, in making the representations pleaded in paragraphs 16(c), 26(b) and 35(f) above, made a false or misleading representation in connection with the supply of services and/or financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL and/or section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph 41C above.

The representation pleaded in paragraph 16(c) above was false or misleading by reason that Deloitte had failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY2014 Audit, for the reasons pleaded in paragraphs 42B above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the FY2014 Audit, which are pleaded in paragraphs 16(a)-(b) above.

The representation pleaded in paragraph 26(b) above was false or misleading by reason that Deloitte had failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the HY2015 Review for the reasons pleaded in paragraphs 42B and/or 42C above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the HY2015 Review which are pleaded in paragraphs 26(a)-(a1) above.

The representation pleaded in paragraph 35(f) above was false or misleading by reason that Deloitte had failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY2015 Audit, for the reasons pleaded in paragraphs 42B and/or 42C above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the FY2015 Audit which are pleaded in paragraphs 35(a)-(c) above.

Misleading or Deceptive Conduct by Deloitte – Deloitte Inventory Representations

42F The FY2014 Inventory Representations, the HY2015 Inventory Representations and the FY2015 Inventory Representations (the **Deloitte Inventory Representations**) constituted conduct by Deloitte:

- (a) in trade or commerce within the meaning of section 18 of the ACL; and/or
- (b) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; and/or
- (c) in relation to financial services within the meaning of section 12DA of the ASIC Act.

42G Further or alternatively, the representations pleaded at paragraphs 19A(b), 28A(b) and 38(e) above were representations by Deloitte:

- (a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or
- (b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.

Particulars

The services supplied by Deloitte were its services as auditor of DSH in respect of each of the FY2014 Audit, the HY2015 Review and the FY2015 Audit.

The representations pleaded in paragraphs 19A(b), 28A(b) and 38(e) above, being representations that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in relation to (respectively) the FY2014 Audit, the HY2015 Review and the FY2015 Audit, were

representations regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of those engagements.

Allegations by Plaintiff in respect of Inventory Provisions

42H For the purpose only of this cross claim, and without admission, Potts repeats paragraphs 41, 43, 51, 51A(b), 52, 61, 65, 65A(b) and 67 of the Third Amended Commercial List Statement, and the consolidated particulars thereto, as if set out herein.

42I The plaintiff alleges (which is denied) that:

- (a) at all material times, DSH and the DSE Group did not have any adequate systems in place to properly classify inventory, write down stock and take provisions for obsolete or near end-of-life stock, and the provisioning policy which was in existence was flawed and did not provide an appropriate measure of the cost of DSH's inventory as required by AASB 102;

Particulars

Plaintiff's Consolidated Particulars to paragraph 41 of the Third Amended Commercial List Statement.

Basford Report, paragraphs 122, 128-159.

According to paragraph 130 of the Basford Report, the provisioning policy did not provide an appropriate measure of the cost of inventory as required by AASB 102 because, inter alia:

- (i) DSH should have, but failed to, analyse the number of weeks cover it held for each product line and make an assessment of whether that amount of stock was likely to be saleable given the nature of the product;
- (ii) DSH was not accurately characterising stock as "Active"; and
- (iii) the trigger for the provision policy for Active and End of Life was flawed and did not calculate the net realisable value because it applied a lookback method, rather than considering the likely realizable value of the inventory based on likely future sales.
- (b) by reason of the matters in paragraph (a) above, the Revised Inventory Obsolescence Methodology as applied by DSH in the financial year ending 28 June 2015 was not appropriate and did not provide an appropriate measure of the cost of DSH's inventory as required by AASB 102;

- (c) in the HY2015 Report, DSH ought to have made a provision of \$58,236,949 in respect of inventory, and instead only made a provision of \$4,271,416, such that its reported profits and net assets should have been \$53,965,533 lower than in fact reported;

Particulars

Plaintiff's Consolidated Particulars to paragraph 43 of the Third Amended Commercial List Statement.

Basford Report, paragraphs 162-163 and 201.

- (d) in the FY2015 Report, DSH ought to have made a provision of \$55,861,519 in respect of inventory, and instead only made a provision of \$4,241,464, such that its reported profits and net assets should have been \$51,620,055 lower than in fact reported; and

Particulars.

Basford Report, paragraphs 162-163 and 203.

- (e) by reason of the matters in paragraphs (a)-(d) above, each of the HY2015 Report and the FY2015 Report did not give a true and fair view of the financial position and performance of DSH and the DSE Group, and did not comply with Australian Accounting Standards.

Deloitte's failure to comply with Auditing Standards – Inventory Provisions

42J If the matters in paragraph 42I above are established, then:

- (a) Deloitte, in representing (as pleaded in paragraphs 19A(a), 28A(a) and 38(a) above) that it was of the opinion that the assumptions and methodology applied by DSH management in the financial year ending 28 June 2015 in order to determine inventory provisions were appropriate, and that the provision in respect of inventory obsolescence in each of the HY2015 Report and the FY2015 Report complied with AASB 102, either:
- (i) failed properly to understand the assumptions and methodology applied by DSH management in determining inventory provisions; or
- (ii) failed to gather sufficient appropriate audit evidence in order to enable Deloitte to express an opinion on whether the assumptions and methodology applied by management in determining the inventory provisions in the financial year ending 28 June 2015 were appropriate, or whether the provision

- in respect of inventory in the HY2015 Report or the FY2015 Report complied with AASB 102; or
- (iii) failed properly to apply the requirements of AASB 102 to such audit evidence as Deloitte obtained in assessing the issue whether the inventory provisions in the HY2015 Report and the FY2015 Report complied with AASB 102;
- (b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of the Revised Inventory Obsolescence Methodology, and failed to exercise reasonable skill and care in performing such work, in that:
- (i) in respect of the HY2015 Review, Deloitte failed adequately to perform, as required by ASRE 2410 para 16, analytical and other review procedures to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including insofar as it adopted the Revised Inventory Obsolescence Methodology) was not prepared, in all material respects, in accordance with the applicable financial accounting framework; and
- (ii) in respect of the FY2014 Audit and the FY2015 Audit, Deloitte failed adequately to evaluate, as required by ASA 315 para 11, whether the adoption of the Revised Inventory Obsolescence Methodology was consistent with the applicable financial reporting framework and accounting policies used in the relevant industry;

Particulars

Deloitte was aware of the Revised Inventory Obsolescence Methodology, and considered and commented on the appropriateness of that methodology in the course of each of the FY2014 Audit, the HY2015 Review and the FY2015 Audit.

A reasonable auditor in Deloitte's position, who was aware of the Revised Inventory Obsolescence Methodology, would have taken steps to understand the basis and application of that methodology, and would have identified and considered the appropriateness of the assumptions used in that methodology, in order to ascertain, and report, whether the application of the methodology provided an appropriate measure of the cost of DSH's inventory as required by AASB 102.

The Basford Report contends that the Revised Inventory Obsolescence Methodology was flawed and did not provide an appropriate measure of the cost of DSH's inventory as required by AASB 102 (Basford Report, paragraph 128-130).

If those matters are established (which are denied), then an auditor exercising reasonable skill and care, who had obtained a proper understanding of the Revised Inventory Obsolescence Methodology, and who had performed audit procedures so as to evaluate whether that methodology was appropriate and whether it provided an appropriate measure of the cost of inventory in accordance with the applicable financial reporting framework, would have concluded that methodology was flawed and did not provide an appropriate measure of the cost of inventory as required by AASB 102, and would have so reported.

(c) further or alternatively, Deloitte failed to comply with the Auditing Standards in carrying out its work in respect of inventory provisions in course of the HY2015 Review, and failed to exercise reasonable skill and care in performing such work, in that:

- (i) Deloitte failed to obtain an adequate understanding of DSH and its environment, including its internal control as it relates to the preparation of financial reports (including in respect of inventory provisions), sufficient to plan and conduct the HY2015 Review (ASRE 2410 paras 13 and A11);
- (ii) Deloitte failed adequately to make enquiries or to perform analytical and other review procedures to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in respect of inventory provisions) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 para 16); and
- (iii) having identified the inventory provisions in the HY2015 Report as an area where a material adjustment might have to be made, Deloitte failed to make additional enquiries or perform other procedures sufficient to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in respect of the inventory provisions) was not prepared, in

all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 para 20);

Particulars

A reasonable auditor in Deloitte's position would have, in the course of the HY2015 Review:

- determined the methodology used by DSH to assess whether a provision should be made to reduce inventory to the lower of cost or the amount for which the inventory could be sold;
- determined the process by which DSH undertook its analysis used in the provisioning process (whether based on age, future sales or re-order profile), and would have determined the controls and processes adopted by DSH to ensure the accuracy of the analysis;
- determined whether or not to rely on the controls and checks operated by DSH. If the auditor chose to rely on such controls, he or she would have tested the operation of those controls through an appropriately sized sample. If the auditor chose not to rely on such controls, he or she would have selected a sample of inventory items for testing to determine whether, based on that sample, he or she could conclude that DSH's estimation of the amount of the provision to reduce inventory to the lower of cost and net realisable value was appropriate; and
- insofar as such review work identified any deficiencies in the provisioning process or methodology undertaken by DSH, reported such matters to the directors of DSH.

Deloitte's working paper DEL.001.003.1488 includes notes on analytical review work and a comparison between the levels (and ageing) of inventory between June 2014 and December 2014. The work papers do not demonstrate as required by ASRE 2410 paras 13 and A11 (j), (k) and(l):

- the basis for relying on the systems and processes used to determine the age of inventory and its categorisation into the categories ("no reorder" etc.) used by DSH to determine its

obsolescence provision in the HY2015 Report; and if the process was tested in the FY2014 Audit, the work papers do not contain any enquiry as to whether there had been changes in the processes; and

- enquiries of management as to whether inventory was capable of being sold at the amounts that were included in the financial report. Such enquiries would include: understanding the processes used by management to monitor sales and the prices at which goods were being sold; and understanding management's analysis of the level of inventory items relative to achieved and foreseeable sales.

Such steps were necessary to determine whether management's processes were sufficient to assess whether a provision was required to reduce inventory to its net realisable value.

By failing to undertake the above work Deloitte failed to undertake the work necessary to form an opinion as required by ASRE 2410 paragraphs 16, 20 and A27. Accordingly, Deloitte did not have a sufficient or appropriate basis to form the view that the inventory accounting in the HY2015 Report complied with AASB 102 or to issue the opinion which was required by s309 of the Corporations Act.

If Deloitte had taken the steps that a reasonable auditor in Deloitte's position would have taken in the course of the HY2015 Review in relation to inventory provisioning, which are outlined above, then (assuming that the plaintiff establishes the matters referred to in paragraph 42I(a)-(c) and (e) above in relation to the HY2015 Report, which are denied), Deloitte would have ascertained those matters and would have reported them to Potts and/or Abboud and the other directors of DSH (ASA 260 paras A18, A32-A33).

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

(d) further or alternatively, Deloitte failed to comply with the Auditing Standards in carrying out its work in respect of inventory provisions in course of the FY2015 Audit, and failed to exercise reasonable skill and care in performing such work, in that:

- (i) Deloitte failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY2015 Report (ASA 500 paras 4-6, A1-A3, A10, A14-A15);
- (ii) Deloitte failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (one of the key areas of risk identified by Deloitte being the inventory provisions in the FY2015 Report), through designing and implementing appropriate responses to those risks (ASA 330 paras 3, 5-7);
- (iii) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY2015 Report so as to reduce audit risk to an acceptably low level:
 - (A) Deloitte failed to obtain reasonable assurance about whether the FY2015 Report as a whole was free from material misstatement, whether due to fraud or error (ASA 200 para 5 and 17); and
 - (B) Deloitte was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY2015 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2015 Report in accordance with the auditor's findings (ASA 200 paras 11 and 17);
- (iv) Deloitte failed to perform risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures in respect of inventory provisions (ASA 315 paras 5-6, 25-26);
- (v) Deloitte failed to obtain an adequate understanding of the application of accounting policies by DSH in respect of inventory provisioning, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 para 11);

- (vi) Deloitte failed to obtain an adequate understanding of DSH's internal controls in respect of provisioning for inventory or of the activities undertaken by DSH to monitor such controls (ASA 315 paras 11-15, 18, 20-22);
- (vii) Deloitte failed to design and perform tests of controls in relation to inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paras 8-10, 16);
- (viii) Deloitte, having determined that there was a significant risk of material misstatement in respect of inventory provisions in the FY2015 Report, failed to perform substantive procedures that are specifically responsive to that risk (ASA 330 para 21);
- (ix) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 para 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 para 25); and/or
- (x) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the provisioning for inventory in the FY2015 Report, Deloitte failed to express a qualified opinion or disclaim an opinion on the FY2015 Report (ASA 330 paras 26-27; ASA 260 paras A18).

Particulars

A reasonable auditor in Deloitte's position would have, in the course of the FY2015 Audit:

- determined the methodology used by DSH to assess whether a provision should be made to reduce inventory to the lower of cost or the amount for which the inventory could be sold;
- determined the process by which DSH undertook its analysis used in the provisioning process (whether based on age, future sales or re-order profile), and would have determined the controls and processes adopted by DSH to ensure the accuracy of the analysis;
- determined whether or not to rely on the controls and checks operated by DSH. If the auditor chose to rely on such controls, he or she would have tested the operation of those controls through an appropriately sized sample. If the auditor chose not

to rely on such controls, he or she would have selected a sample of inventory items for testing to determine whether, based on that sample, he or she could conclude that DSH's estimation of the amount of the provision to reduce inventory to the lower of cost and net realisable value was appropriate; and

- insofar as such audit work identified any deficiencies in the provisioning process or methodology undertaken by DSH, reported such matters to the directors of DSH.

DEL.001.002.1498 sets out Deloitte's understanding of the assumptions and methodology used by DSH in respect of inventory provisions in the FY2015 Report. That description is deficient in that it does not include the use of estimated future sales as a methodology for the calculation of the inventory provision.

There is no, or no adequate, analysis in the work papers for the FY2015 Audit of the process by which DSH undertook its analysis used in the provisioning process (whether based on age, future sales or re-order profile), or of the controls and processes adopted by DSH to ensure the accuracy of the analysis. Deloitte thereby failed to comply with ASA 315 (paras 11-15, 18, 20-22 and 25-26) and with ASA 330 (paras 5-10 and 16).

The testing undertaken by Deloitte in DEL.001.002.1509 and DEL.001.002.1498 were deficient, in that they did not enable the auditor to conclude that DSH's estimation of the amount of the provision to reduce inventory to the lower of cost and net realisable value was appropriate. This is contrary to ASA 500 (paras 4, A1-A3, A10 and A14-A15), ASA 315 (paras 5, 11, 25-26) and ASA 330 (paras 5-7, 21, 24-27).

Accordingly, these work papers for the FY2015 Audit do not (contrary to ASA 200, ASA 500 and ASA 330) provide sufficient appropriate audit evidence that the requirements of AASB 102 were met in respect of inventory provisions in the FY2015 Report, such that Deloitte did not have a sufficient or reasonable basis to form the view required by s 307(a)(i) of the Corporations Act or to issue the opinion required by s 308 of the Corporations Act.

If Deloitte had taken the steps that a reasonable auditor in Deloitte's position would have taken in the course of the FY2015 Audit in relation

to inventory provisioning, which are outlined above, then (assuming that the plaintiff establishes the matters referred to in paragraph 42I(a)-(b) and (d)-(e) above in relation to the FY2015 Report, which are denied), Deloitte would have ascertained those matters and would have reported them to Potts and/or Abboud and the other directors of DSH (ASA 260 paras A18, A32-A33).

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

Contravention of ACL and/or Corporations Act and/or ASIC Act – Deloitte Inventory

Representations

42K If the matters in paragraphs 42H-42J above are established, then Deloitte, in making the Deloitte Inventory Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY2014 Audit, pleaded in paragraph 42J(a)-(b) above, Deloitte did not (contrary to the representation pleaded in paragraph 19A(b) above) have a reasonable basis for the representations of opinion pleaded in paragraph 19A(a) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY2014 Audit.

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the HY2015 Review, pleaded in paragraph 42J(a)-(c) above, Deloitte did not (contrary to the representation pleaded in paragraph 28A(b) above) have a reasonable basis for the representations of opinion pleaded in paragraph 28A(a) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the HY2015 Review.

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY2015 Audit, pleaded in paragraph 42J(a)-(b) and (d) above, Deloitte did not (contrary to the representations pleaded in paragraph 38(e) above) have a reasonable

basis for the representations of opinion pleaded in paragraph 38(a) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY2015 Audit.

42L Further or in the alternative, if the matters in paragraphs 42H-42J above are established, then Deloitte, in making the representations pleaded in paragraphs 19A(b), 28A(b) and 38(e) above, made a false or misleading representation in connection with the supply of services and/or financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL and/or section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph 42G above.

The representation pleaded in paragraph 19A(b) above was false or misleading by reason that Deloitte had failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY2014 Audit, for the reasons pleaded in paragraph 42J(a)-(b) above, and therefore Deloitte did not have a reasonable basis for the representations of opinion made at the conclusion of the FY2014 Audit pleaded in paragraph 19A(a) above.

The representation pleaded in paragraph 28A(b) above was false or misleading by reason that Deloitte had failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the HY2015 Review, for the reasons pleaded in paragraph 42J(a)-(c) above, and therefore Deloitte did not have a reasonable basis for the representations of opinion made at the conclusion of the HY2015 Review, pleaded in paragraph 28A(a) above.

The representation pleaded in paragraph 38(e) above was false or misleading by reason that Deloitte had failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY2015 Audit, for the reasons pleaded in paragraph 42J(a)-(b) and (d) above, and therefore Deloitte did not have a reasonable basis for the representations of opinion made at the conclusion of the FY2015 Audit, pleaded in paragraph 38(a) above.

Misleading or Deceptive Conduct by Deloitte – Deloitte Capitalised Costs Representations

42M The HY2015 Capitalised Costs Representations and the FY2015 Capitalised Costs Representations (the **Deloitte Capitalised Costs Representations**) constituted conduct by Deloitte:

(a) in trade or commerce within the meaning of section 18 of the ACL; and/or

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

(c) in relation to financial services within the meaning of section 12DA of the ASIC Act.

42N Further or alternatively, the representations pleaded at paragraphs 28E(b) and 38D(b) above were representations by Deloitte:

(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.

Particulars

The services supplied by Deloitte were its services as auditor of DSH in respect of each of the HY2015 Review and the FY2015 Audit.

The representations pleaded in paragraphs 28E(b) and 38D(b) above, being representations that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in relation to (respectively) the HY2015 Review and the FY2015 Audit, were representations regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of those engagements.

Allegations by Plaintiff in respect of Capitalisation of Costs

42O For the purpose only of this cross claim, and without admission, Potts repeats paragraphs 51, 51A(c), 52, 65, 65A(c) and 67 of the Third Amended Commercial List Statement, and the consolidated particulars thereto, as if set out herein.

42P If the plaintiffs establish the matters referred to in paragraph 42O above (which are denied), then:

- (a) in each of the HY2015 Report and the FY2015 Report, DSH incorrectly capitalised certain overhead costs into inventory, contrary to the requirements of AASB 102, including warehouse costs and buying department costs;

Particulars

Basford Report, paragraphs 121 and 124-127.

AASB 102, paragraphs 10 and 11(b).

- (b) by reason of the matters in paragraph (a) above, the value of inventories, and therefore the current assets and net assets were overstated in each of the HY2015 Report and the FY2015 Report, as follows:

- (i) in the HY2015 Report, by an amount of \$5.635m; and
 (ii) in the FY2015 Report, by an amount of \$5.100m.

Particulars

Basford Report, paragraphs 124, 201-203.

- (c) by reason of the matters in paragraphs (a)-(b) above, each of the HY2015 Report and the FY2015 Report did not give a true and fair view of the financial position and performance of DSH and the DSH Group, and did not comply with Australian Accounting Standards.

Deloitte's failure to comply with Auditing Standards – Capitalisation of Costs

42Q If the matters in paragraphs 42O-42P are established, then:

- (a) Deloitte, in representing (as pleaded in paragraphs 28E(a) and 38D(a) above) that it was of the opinion that the inclusion of costs in respect of warehousing and the buying team in the value of inventories in each of the HY2015 Report and the FY2015 Report complied with AASB 102, either:
- (i) failed properly to understand the nature of the costs which were being included in the value of inventory; or
- (ii) failed to gather sufficient appropriate audit evidence in order to enable Deloitte to express an opinion on whether the inclusion of those costs in the value of inventory complied with AASB 102; or
- (iii) failed properly to apply the requirements of AASB 102 to such audit evidence as Deloitte obtained in assessing the issue whether the inclusion of those costs in the value of inventory complied with AASB 102; and

- (b) Deloitte failed to comply with the Auditing Standards in the course of the HY2015 Review in carrying out its work in respect of the capitalisation of costs in inventory in the HY2015 Report, and failed to exercise reasonable skill and care in performing such work, in that:
- (i) Deloitte failed adequately to make enquiries or to perform analytical and other review procedures to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in respect of capitalisation of costs in inventory) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 para 16);
 - (ii) having identified the capitalisation of certain costs in inventory in the HY2015 Report as an area where a material adjustment might have to be made, Deloitte failed to make additional enquiries or perform other procedures sufficient to enable Deloitte to conclude whether, on the basis of the procedures performed, anything had come to Deloitte's attention that caused Deloitte to believe that the HY2015 Report (including in respect of the capitalisation of costs in inventory) was not prepared, in all material respects, in accordance with the applicable financial accounting framework (ASRE 2410 para 20);

Particulars

Deloitte's working paper DEL.001.003.1497 deals with the inclusion of overheads in the cost of inventory in the HY2015 Report. Included in overheads on this working paper are warehousing costs; and buying department costs.

The Basford Report asserts that the inclusion of warehousing costs is contrary to AASB 102 paragraph 11(b) which specifically precludes the inclusion of such costs in accounting for inventory. If this is established, then it follows that a reasonable auditor would have concluded that the inclusion of warehousing costs in the value of inventory was contrary to AASB 102. However, Deloitte accepted the inclusion of these costs as part the cost of inventory without any analysis (DEL.001.003.1497). This is contrary to the requirements of ASRE 2410 paras 16 and 20.

The Basford Report asserts that it is not appropriate to capitalise the cost of the buying team into inventory as this is not part of the cost of bringing the inventory to its present location and condition as required by AASB 102. Deloitte noted that the allocation of buying costs had increased from 60% of the cost of the buying team to 90% of the cost of the buying team. Their working paper states that this is a result of the buying department spending more time on its core activities DEL.001.003.1497.

A reasonable auditor would have undertaken further work to determine what level of buying department costs should be included in the cost of inventory. Deloitte did not undertake such work. This was contrary to the requirements of ASRE 2410 paras 20 and A27.

By reason of the matters set out above, Deloitte did not have an adequate basis to form the view that the inventory accounting in the HY2015 Report complied with AASB 102 or to issue the opinion required by s 309 of the Corporations Act.

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

- (c) Deloitte failed to comply with the Auditing Standards in the course of the FY2015 Audit in carrying out its work in respect of the capitalisation of costs in inventory in the FY2015 Report, and failed to exercise reasonable skill and care in performing such work, in that:
- (i) Deloitte failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the costs included in the value of inventory in the FY2015 Report (ASA 500 paras 4, A1-A3, A10);
 - (ii) Deloitte failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (one of the key areas of risk identified by Deloitte being the capitalisation of costs in the value of inventory in the FY2015 Report), through designing and implementing appropriate responses to those risks (ASA 330 paras 3, 5-7);
 - (iii) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the costs included in the value of inventory in the FY2015 Report, so as to reduce audit risk to an acceptably low level:

- (A) Deloitte failed to obtain reasonable assurance about whether the FY2015 Report as a whole was free from material misstatement, whether due to fraud or error (ASA 200 para 5 and 17);
- (B) Deloitte was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY2015 Report was prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY2015 Report in accordance with the auditor's findings (ASA 200 paras 11 and 17);
- (iv) Deloitte failed to perform risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level (ASA 315 para 5);
- (v) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the FY2015 Report was in accordance with the applicable financial reporting framework (ASA 330 para 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 para 25); and/or
- (vi) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the capitalisation of costs in the value of inventory in the FY2015 Report, Deloitte failed to express a qualified opinion or disclaim an opinion on the FY2015 Report (ASA 330 paras 26-27).

Particulars

Deloitte's working paper DEL.001.002.1483 deals with the inclusion of overheads in the cost of inventory in the FY2015 Report. Included in overheads on this working paper are warehousing costs; and buying department costs.

The Basford Report asserts that the inclusion of warehousing costs is contrary to AASB 102 paragraph 11(b) which specifically precludes the inclusion of such costs in accounting for inventory. Contrary to AASB 102 Deloitte accepted the inclusion of these costs as part the cost of inventory without any analysis (DEL.001.002.1483).

The Basford Report asserts that it is not appropriate to capitalise the cost of buyers into inventory as this is not part of the cost of

bringing the inventory to its present location and condition as required by AASB 102. Deloitte noted that the allocation of buying costs had increased from 60% of the cost of the buying team to 90% of the cost of the buying team. Their working paper states that this is a result of the buying department spending more time on buying DEL.001.002.1483.

A reasonable auditor would have undertaken further work to determine what level of buying department costs should be included in the cost of inventory. Deloitte's working papers contain no testing of underlying accounting records to support the propositions contained in DEL.001.002.1483. Their work on DEL.001.002.1490 (specifically the tab titled "3. Rebates") consists only of comparisons of total information without any testing of the underlying information to support the amounts shown in that schedule. Thus there is insufficient audit evidence to conclude what activities were being undertaken by the buying department and the extent of those activities and so whether any part of those costs should be capitalised.

This is contrary to: ASA 500, paras 4, A1, A2, A3, A10; ASA 200, paras 5, 11, 17; ASA 315, para 5; and ASA 330, paras 5-7 and 24-27.

By reason of the matters set out above, Deloitte did not have an adequate basis to form the view or issue the opinion required by ss 307 and 308 of the Corporations Act.

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

Contravention of ACL and/or Corporations Act and/or ASIC Act – Deloitte Capitalised Costs Representations

42R If the matters in paragraphs 42O-42Q above are established, then Deloitte, in making the Deloitte Capitalised Costs Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care, pleaded in paragraph 42Q above, Deloitte did not (contrary to the representations pleaded in paragraphs 28E(b) and 38D(b) above) have a reasonable basis for the statements pleaded in paragraphs 28E(a) and 38D(a) above, and those statements were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the HY2015 Review, or the FY2015 Audit.

42S Further or in the alternative, if the matters in paragraphs 42O-42Q above are established, then Deloitte, in making the representations pleaded in paragraphs 28E(b) and 38D(b) above, made a false or misleading representation in connection with the supply of services and/or financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL and/or section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph 42N above.

The representations pleaded in paragraphs 28E(b) and 38D(b) above were false or misleading by reason that Deloitte had failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the HY2015 Review and the FY2015 Audit, for the reasons pleaded in paragraph 42Q above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the HY2015 Review and the FY2015 Audit which are pleaded, respectively, in paragraphs 28E(a) and 38D(a) above.

Misleading or Deceptive Conduct by Deloitte – Deloitte Report Representations

42T The issuing of the HY2015 Review Report and the FY2015 Audit Report, and the making thereby of the Unqualified Review Statement, the HY2015 Review Report Representation, the Unqualified Audit Statements and the FY2015 Audit Report Representation constituted conduct by Deloitte:

- (a) in trade or commerce within the meaning of section 18 of the ACL; and/or
- (b) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; and/or
- (c) in relation to financial services within the meaning of section 12DA of the ASIC Act.

42U Further or alternatively, the HY2015 Review Report Representation and the FY2015 Audit Report Representation were representations by Deloitte in connection with the supply of services and/or financial services, being the services supplied by Deloitte in (respectively) the HY2015 Review and the FY2015 Audit, that those services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL and/or section 12DB(1)(a) of the ASIC Act.

Particulars

The services supplied by Deloitte were its services as auditor of DSH in respect of the HY2015 Review and the FY2015 Audit.

The HY2015 Review Report Representation and the FY2015 Audit Report Representation, each being a representation that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in respect of its work in relation to (respectively) the HY2015 Review and the FY2015 Audit, were representations regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of those engagements.

Misleading or Deceptive Conduct - HY2015 Review Report Representation

42V For the purposes only of this cross claim, Potts repeats paragraphs 38-41, 43 and 51-53 of the Third Amended Commercial List Statement, and the consolidated particulars thereto, as if set out in full herein.

43 If (which is denied) DSH establishes the matters referred to in paragraph 42V above, then:

- (a) the accounting treatment in respect of rebates adopted in the financial report of DSH as at 28 December 2014~~HY2015 Report~~ did not comply with accounting standards; or

Particulars

Potts repeats paragraph 42A above and the particulars thereto.

- (b) ~~the provision adopted in respect of inventory in the financial report of DSH as at 28 December 2014 was inadequate, and/or the assumptions or methodology used to determine that provision were inadequate~~the HY2015 Report failed to account for inventory at its net realisable value, as required by AASB 102; or

Particulars

Potts repeats paragraph 42I above and the particulars thereto.

- (c) the systems in place at DSH in the period to 28 December 2014 in respect of managing inventory and assessing inventory obsolescence were inadequate~~the HY2015 Report incorrectly capitalised certain overhead costs into inventory, contrary to the requirements of AASB 102;~~

Particulars

Potts repeats paragraph 42P above and the particulars thereto.

- (c1) by reason of accounting for the matters referred to in paragraphs (a)-(c) above in a manner that was contrary to Australian Accounting Standards, the HY2015 Report:
- (i) reported current assets, net assets, gross profit and net profit at a level materially higher than should have been reported;
 - (ii) failed to recognise onerous lease provisions, as required by AASB 137;
 - (iii) failed to impair DSH's property, plant and equipment, as required by AASB 136;
 - (iv) incorrectly recognised deferred tax assets, contrary to the requirements of AASB 112; and
 - (v) 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;

Particulars

Basford Report, paragraphs 164-203.

- (d) by reason of the matters in paragraphs (a)-(c1) above, the financial report of DSH as at 28 December 2014~~HY2015 Report:~~
- (i) did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at the reporting date~~28 December 2014;~~
or
 - (ii) did not comply with the Corporations Act; or
 - (iii) did not comply with Australian Accounting Standards;~~or,~~
- (e) ~~there was no proper or adequate basis to form the view that the financial report of DSH as at 28 December 2014:~~
- ~~(i) gave a true and fair view of the financial position and performance of DSH and the DSE Group as at the reporting date; or~~

- ~~(ii) complied with the Corporations Act; or~~
- ~~(iii) complied with Australian Accounting Standards;~~
- ~~(f) there was no proper or adequate basis for Potts, as a director of DSH, to approve and participate in a resolution to approve the payment of the 2015 Interim Dividend;~~

~~then Deloitte, in making the Deloitte 2014 Audit Representations and the Deloitte Half-Year Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act.~~

Particulars

~~If the matters established in any of paragraphs (a)-(f) are established, then Deloitte did not have a reasonable basis for the Deloitte Half-Year Representations, and/or did not have sufficient appropriate audit evidence in respect of the matters the subject of the Deloitte Half-Year Representations, and/or the Deloitte Half-Year Representations were not based upon a proper interpretation of Australian Accounting Standards.~~

~~If the matters established in any of paragraphs (a)-(e) are established, then Deloitte did not have a reasonable basis for the Deloitte 2014 Audit Representations, and/or did not have sufficient appropriate audit evidence in respect of the matters the subject of the Deloitte 2014 Audit Representations, and/or the Deloitte 2014 Audit Representations were not based upon a proper interpretation of Australian Accounting Standards.~~

43AA If the matters in paragraphs 42V and 43 above are established (which are denied), then Deloitte, in issuing the HY2015 Review Report and thereby making the Unqualified Review Statement and the HY2015 Review Report Representation, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in performing work in respect of the HY2015 Review, pleaded in paragraphs 42B-42C, 42J and 42Q above, Deloitte did not (contrary to the HY2015 Review Report Representation) have a reasonable basis for the Unqualified Review Statement, and that

statement was not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in the course of the HY2015 Review.

43A Further or alternatively, if (which is denied) DSH establishes the matters referred to in paragraphs ~~43(a)-(f)~~ 42V and 43 above, then Deloitte, in making the ~~Deloitte 2014 Audit Representations and the Deloitte Half-Year Representations~~ HY2015 Review Report Representation, made a false or misleading representation:

- (a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or
- (b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph ~~43~~ 42U above.

The HY2015 Review Report Representation was false or misleading by reason that Deloitte had, contrary to that representation, failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the HY2015 Review, for the reasons pleaded in paragraphs 42B-42C, 42J and 42Q above, and therefore Deloitte did not have a reasonable basis for the Unqualified Review Statement.

Misleading or Deceptive Conduct - FY2015 Audit Report Representation

43B For the purposes only of this cross claim, Potts repeats paragraphs 38-41, 61, 65-65A and 67 of the Third Amended Commercial List Statement, and the consolidated particulars thereto, as if set out in full herein.

44 If (which is denied) DSH establishes the matters referred to in paragraph 43B above that, then:

- (a) the accounting treatment in respect of supplier rebates adopted by DSH in its financial report ~~as at 28 June 2015~~ the FY2015 Report did not comply with accounting standards; or

Particulars

Potts repeats paragraph 42A above and the particulars thereto.

- (b) ~~the provision adopted in respect of inventory in the financial report of DSH as at 28 June 2015 was inadequate, and/or the assumptions or methodology used to determine that provision were inadequate~~ the FY2015 Report failed to account for inventory at its net realisable value, as required by AASB 102; or

Particulars

Potts repeats paragraph 42I above and the particulars thereto.

- (c) ~~the systems in place at DSH in the period to 28 June 2015 in respect of managing inventory were inadequate, and in particular were not adequate to ensure that inventory which was obsolete or near end-of-life was promptly written off in whole or part in DSH's accounts~~ the FY2015 Report incorrectly capitalised certain overhead costs into inventory, contrary to the requirements of AASB 102;

Particulars

Potts repeats paragraph 42P above and the particulars thereto.

- (c1) by reason of accounting for the matters referred to in paragraphs (a)-(c) above in a manner that was contrary to Australian Accounting Standards, the FY2015 Report:
- (i) reported current assets, net assets, gross profit and net profit at a level materially higher than should have been reported;
 - (ii) failed to recognise onerous lease provisions, as required by AASB 137;
 - (iii) failed to impair DSH's property, plant and equipment, as required by AASB 136;
 - (iv) incorrectly recognised deferred tax assets, contrary to the requirements of AASB 112; and
 - (v) 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;

Particulars

Basford Report, paragraphs 164-203.

- (d) by reason of the matters in paragraphs (a)-(c1) above, the financial report of DSH as at 28 June 2015 FY2015 Report:
- (i) did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at the reporting date 28 June 2015; or
 - (ii) did not comply with the Corporations Act; or and

- (iii) did not comply with Australian Accounting Standards; or,
- (e) there was no proper or adequate basis to form the view that the financial report of DSH as at 28 June 2015:
- (i) gave a true and fair view of the financial position and performance of DSH and the DSE Group as at the reporting date; or
 - (ii) complied with the Corporations Act; or
 - (iii) complied with Australian Accounting Standards;
- (f) there was no proper, or adequate, basis for Potts to approve and participate in a resolution to approve the payment of the 2015 Final Dividend;

then Deloitte, in making the Deloitte Full-Year Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act.

Particulars

If the matters established in any of paragraphs (a)–(f) are established, then Deloitte did not have a reasonable basis for the Deloitte Full-Year Representations, and/or did not have sufficient appropriate audit evidence in respect of the matters the subject of the Deloitte Full-Year Representations, and/or the Deloitte Full-Year Representations were not based upon a proper interpretation of Australian Accounting Standards.

44AA If the matters in paragraphs 43B and 44 above are established (which are denied), then Deloitte, in issuing the FY2015 Audit Report and thereby making the Unqualified Audit Statements and the FY2015 Audit Report Representation, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of section 18 of the ACL and/or section 1041H of the Corporations Act and/or section 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in performing work in respect of the FY2015 Audit, pleaded in paragraphs 42B-42C, 42J and 42Q above, Deloitte did not (contrary to the FY2015 Audit Report Representation) have a reasonable basis for the Unqualified Audit Statements, and those statements

were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in the course of the FY2015 Audit.

44A Further or alternatively, if (which is denied) DSH establishes the matters referred to in paragraphs ~~44(a)-(f)~~ ~~43B~~ and ~~44~~ above, then Deloitte, in making the FY2015 Audit Report Representation~~Deloitte Full-Year Representations~~, made a false or misleading representation:

- (a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or
- (b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph ~~44~~42U above.

The FY2015 Audit Report Representation was false or misleading by reason that Deloitte had, contrary to that representation, failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY2015 Audit, for the reasons pleaded in paragraphs 42B-42C, 42J and 42Q above, and therefore Deloitte did not have a reasonable basis for the Unqualified Audit Statements.

Claim by Potts for damages

45 In the event only that DSH establishes that Potts is liable to DSH for the loss claimed by it in these proceedings, then Potts pleads as follows.

Claim by Potts in relation to the HY2015 Report

45A As at 16 February 2015, Potts had reviewed the FY2014 FAC Report and the HY2015 FAC Report, and was aware of the statements made by Deloitte in those reports, including the matters which are pleaded in paragraphs 13-16, 17-19, 22B-22E and 23A-28E above, and was aware of the representations that Deloitte was proposing to make by the HY2015 Review Report, as pleaded in paragraphs 29-30A above, including the Unqualified Review Statement and the HY2015 Review Report Representation.

45B On 16 February 2015:

- (a) Potts joined with the other directors of DSH in passing a resolution that the HY2015 Report be adopted; and
- (b) Potts joined with the other directors of DSH in passing a resolution that DSH pay an interim dividend of 7 cents with a record date of 12 March 2015 and a payment date of 30 April 2015 (the 2015 Interim Dividend).

45C On 16 February 2015, DSH issued the HY2015 Report in the form approved by the DSH directors pursuant to the resolution in paragraph 45B(a) above, which reported NPAT of \$25.204m.

45D On 30 April 2015, DSH paid the 2015 Interim Dividend in the total amount of \$16,555,000 pursuant to the authorisation given by the resolution in paragraph 45B(b) above.

45E In reliance on the FY2014 Rebate Representations, the HY2015 Rebate Representations, the Unqualified Review Statement and the HY2015 Review Report Representation, Potts was of the view, as at 16 February 2015, that the accounting treatment of rebates in the HY2015 Report complied with Australian Accounting Standards.

45F In reliance on the FY2014 Inventory Representations, the HY2015 Inventory Representations, the Unqualified Review Statement and the HY2015 Review Report Representation, Potts was of the view, as at 16 February 2015, that the assumptions and methodology used by DSH management to determine inventory provisions in the HY2015 Report were appropriate and resulted in a provision which complied with Australian Accounting Standards.

45G In reliance on the HY2015 Capitalised Costs Representations, the Unqualified Review Statement and the HY2015 Review Report Representation, Potts was of the view, as at 16 February 2015, that the inclusion of warehouse costs and buying team costs in the value of inventory in the HY2015 Report complied with Australian Accounting Standards.

46 In reliance on the representations by Deloitte referred to in paragraphs 45E-45G above ~~Deloitte 2014 Audit Representations and the Deloitte Half Year Representations~~, Potts:

- (a) ~~[deleted]formed the view that DSH had appropriate and effective inventory management practices so as to ensure that inventory which was obsolete, or near end-of-life was written off in whole or part;~~

- (b) ~~[deleted]formed the view that the accounting treatment of rebates in DSH's accounts as at 28 December 2014 complied with accounting standards;~~
- (c) ~~formed was of the view, as at 16 February 2015, that the financial report of DSH as at 28 December 2014~~HY2015 Report:
- (i) gave a true and fair view of the position and performance of DSH and the DSE Group as at the reporting date;
 - (ii) complied with the Corporations Act;
 - (iii) complied with Australian Accounting Standards; and
- (d) ~~voted for the resolutions referred to in paragraph 50 of the Second Amended Commercial List Statement~~45B above.

46A For the purposes only of this cross claim, and without admission, Potts repeats paragraphs 51A-53, 96 and 117-119 of the Third Amended Commercial List Statement.

47 If DSH establishes (which is denied) that:

- (a) ~~DSH did not have appropriate, or effective inventory management practices, so as to ensure that inventory which was obsolete, or near end-of-life was written off in whole or part~~the assumptions and methodology used by DSH management to determine inventory provisions in the HY2015 Report were not appropriate, and the provision for inventory in the HY2015 Report did not comply with Australian Accounting Standards;
- (b) ~~the accounting treatment of rebates in DSH's accounts as at 28 December 2014~~the HY2015 Report did not comply with Australian Accounting Standards;
- (b1) the inclusion of warehousing costs and buying team costs in the value of inventory in the HY2015 Report did not comply with Australian Accounting Standards;
- (c) by reason of any or all of the matters in paragraphs (a)-(b1) above, there was no proper or adequate basis for Potts to form the view that the financial report of DSH as at 28 December 2014the HY2015 Report:
 - (i) gave a true and fair view of the position and performance of DSH and the DSE Group as at the reporting date;
 - (ii) complied with the Corporations Act; and
 - (iii) complied with Australian Accounting Standards; ~~and~~

- (d) by reason of the matters in paragraphs (a)-(c) above, there was no proper or adequate basis for Potts to vote in favour of the resolutions referred to in paragraph 50 of the Second Amended Commercial List Statements 45B above;
and
- (e) Potts breached his duties as a director of DSH by voting in favour of the resolutions referred to in paragraph 50 of the Second Amended Commercial List Statement paragraph 45B above;
- (f) such alleged breach caused DSH to pay the 2015 Interim Dividend and, but for such breach, the 2015 Interim Dividend would not have been paid at all or in the amount that it was paid; and
- (g) by reason of the matters set out above, Potts and is liable to pay compensation to DSH for the loss suffered by reason of his having done so in breach of his duties as a result of the 2015 Interim Dividend having been paid by DSH,

then Potts will have suffered loss or damage by the misleading or deceptive conduct of Deloitte in making the Deloitte 2014 Audit Representations and the Deloitte Half-Year Representations in making the FY2014 Rebate Representations, the HY2015 Rebate Representations, the FY2014 Inventory Representations, the HY2015 Inventory Representations, the HY2015 Capitalised Costs Representations, the Unqualified Review Statement and/or the HY2015 Review Report Representation.

Particulars

Potts relies on the particulars to repeats paragraphs 42-42C, 42H-42J, 42O-42Q and 42V-43A above 49 below and the particulars thereto.

If Deloitte had taken the steps in respect of the accounting treatment of rebates which Deloitte ought to have taken in order to comply with Auditing Standards and which Deloitte failed to take (pleaded in paragraphs 42B and 42C above), then, on the basis that DSH establishes (which is denied) that the recording of rebates in the HY2015 Report did not in fact comply with Australian Accounting Standards (see paragraphs 42A and 42AB above), Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH such non-compliance (see ASRE 2410 paras 27-28 and 31-33).

If Deloitte had taken the steps in respect of the provisioning for inventory which Deloitte ought to have taken in order to comply with Auditing Standards and which Deloitte failed to take (pleaded in paragraph 42J

above), then, on the basis that DSH establishes (which is denied) that the HY2015 Report failed to account for inventory at its net realisable value, contrary to AASB 102 (see paragraph 42I above), Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH such non-compliance (see ASRE 2410 paras 27-28 and 31-33).

If Deloitte had taken the steps in respect of the capitalisation of overhead costs in inventory which Deloitte ought to have taken in order to comply with Auditing Standards and which it failed to take (pleaded in paragraph 42Q above), then, on the basis that DSH establishes (which is denied) that the capitalisation of certain overhead costs in the value of inventory in the HY2015 Report did not comply with AASB 102 (see paragraph 42Q above), Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH such non-compliance (see ASRE 2410 paras 27-28 and 31-33).

If Deloitte had ascertained and reported any or all of the matters set out above, then Deloitte would have ascertained and reported to the management of DSH that, by reason of one or more of those matters, the HY2015 Report did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at 28 December 2014.

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

Had Deloitte informed Potts and the other directors of DSH of those matters, then:

- (1) Potts and the other directors would not have approved the issue of the HY2015 Report in the form in which it was in fact issued;
- (2) Potts and the other directors of DSH would have ensured that:
 - the accounting treatment of rebates in the HY2015 Report
 - the provisioning for inventory in the HY2015 Report, and
 - the capitalisation of overhead costs in the value of inventory in the HY2015 Report

complied with Australian Accounting Standards, by addressing such deficiencies as were identified by Deloitte;

(3) the HY2015 Report would not have reported NPAT of \$25.204m (and, if the matters in paragraph 201 of the Basford Report are established, would have reported a loss);

(4) Potts and the other directors of DSH would not have passed the resolution referred to in paragraph 45B(b) above;

(5) the 2015 Interim Dividend would not have been paid.

The consequence of (1) to (5) above is that, but for Deloitte's misleading conduct, Potts would not have any liability (which is denied) to DSH in respect of the payment of the 2015 Interim Dividend.

Accordingly, if Potts is found liable to DSH for any loss allegedly suffered by reason of Potts' alleged breach of duty (which is denied) in passing the resolutions referred to in paragraph 45B above, which led to the payment of the 2015 Interim Dividend, then Potts will have suffered loss and damage as a result of the misleading conduct of Deloitte, in the amount of any order made against him Potts in the main proceeding for damages, compensation, interest and/or costs in respect of payment of the 2015 Interim Dividend, together with the amount of his own legal costs.

Claim by Potts in relation to the FY2015 Report

47A As at 17 August 2015, Potts had reviewed the FY2014 FAC Report, the HY2015 FAC Report, the HY2015 Review Report and the FY2015 FAC Report, and was aware of the statements made by Deloitte in those reports, including the matters which are pleaded in paragraphs 13-16, 17-19, 22B-22E, 23A-30A and 33-38D above, and was aware of the representations that Deloitte was proposing to make by the FY2015 Audit Report, as pleaded in paragraphs 39-40A above, including the Unqualified Audit Statements and the FY2015 Audit Report Representation.

47B On 17 August 2015:

- (a) Potts joined with the other directors of DSH in passing a resolution that the FY2015 Report be adopted; and
- (b) Potts joined with the other directors of DSH in passing a resolution that DSH pay a final dividend of 5 cents with a record date of 30 September 2015 and a payment date of 30 September 2015 (the **2015 Final Dividend**).

- 47C On 17 August 2015, Potts gave a declaration pursuant to section 295A of the Corporations Act for the year ended 28 June 2015 (**Section 295A Declaration**) that:
- (a) the financial records of DSH for the financial year had been properly maintained in accordance with section 286 of the Corporations Act;
 - (b) the FY2015 Report complied with Australian Accounting Standards;
 - (c) the FY2015 Report gave a true and fair view of the financial position and performance of DSH.
- 47D On 17 August 2015, DSH issued the FY2015 Report in the form approved by the DSH directors pursuant to the resolution in paragraph 47B(a) above, which reported NPAT of \$37.905m.
- 47E On 30 September 2015, DSH paid the 2015 Final Dividend in the total amount of \$11,826,000 pursuant to the authorisation given by the resolution in paragraph 47B(b) above.
- 47F In reliance on the Deloitte Rebate Representations, the Unqualified Audit Statements and the FY2015 Audit Report Representation, Potts was of the view, as at 17 August 2015, that the accounting treatment of rebates in the FY2015 Report complied with Australian Accounting Standards.
- 47G In reliance on the Deloitte Inventory Representations, the Unqualified Audit Statements and the FY2015 Audit Report Representation, Potts was of the view, as at 17 August 2015, that the assumptions and methodology used by DSH management to determine inventory provisions in the FY2015 Report were appropriate and resulted in a provision which complied with Australian Accounting Standards.
- 47H In reliance on the Deloitte Capitalised Costs Representations, the Unqualified Audit Statements and the FY2015 Audit Report Representation, Potts was of the view, as at 17 August 2015, that the inclusion of warehouse costs and buying team costs in the value of inventory in the FY2015 Report complied with Australian Accounting Standards.
- 48 In reliance on the Deloitte Rebate Representations, the Deloitte Inventory Representations, the Deloitte Capitalised Costs Representations, the Unqualified Audit Statements and the FY2015 Audit Report Representation ~~Deloitte 2014 Audit Representations, the Deloitte Half-Year and the Deloitte Full-Year Representations,~~ Potts:

- (a) ~~[deleted]~~formed the view that DSH had appropriate and effective inventory management practices, so as to ensure that inventory which was obsolete or near end-of-life was written off in whole or part;
- (b) ~~[deleted]~~formed the view that the accounting treatment of rebates in DSH's accounts as at 28 June 2015 complied with accounting standards;
- (c) ~~formed~~was of the view, as at 17 August 2015, that the financial report of DSH as at ~~28 June 2015~~FY2015 Report:
 - (i) gave a true and fair view of the position and performance of DSH and the DSE Group as at the reporting date;
 - (ii) complied with the Corporations Act;
 - (iii) complied with Australian Accounting Standards; and
- (d) voted for the resolutions referred to in paragraph ~~64 of the Second Amended Commercial List Statement~~47B above; and
- (e) gave the Section 295A Declaration referred to in paragraph ~~66 of the Second Amended Commercial List Statement~~47C above.

48A For the purposes only of this cross claim, and without admission, Potts repeats paragraphs 65A, 67-68, 97-98 and 120-125 of the Third Amended Commercial List Statement.

49 If the Plaintiffs DSH establishes (which is denied) that:

- (a) ~~DSH did not have appropriate or effective inventory management practices, so as to ensure that inventory which was obsolete or near end-of-life was written off in whole or part in DSH's accounts~~the assumptions and methodology used by DSH management to determine inventory provisions in the FY2015 Report were not appropriate, and the provision for inventory in the FY2015 Report did not comply with Australian Accounting Standards;
- (b) ~~the accounting treatment of rebates in DSH's accounts as at 28 June 2015~~the FY2015 Report did not comply with Australian Accounting Standards;
- (b1) the inclusion of warehousing costs and buying team costs in the value of inventory in the FY2015 Report did not comply with Australian Accounting Standards;
- (c) by reason of any or all of the matters in paragraphs (a)-(b1) above, there was no proper or adequate basis for Potts to form the view that the financial report of DSH as at ~~28 June 2015~~FY2015 Report:

- (i) gave a true and fair view of the position and performance of DSH and the DSE Group as at the reporting date;
 - (ii) complied with the Corporations Act; and
 - (iii) complied with Australian Accounting Standards; and
- (d) by reason of the matters in paragraphs (a)-(c) above, there was no proper or adequate basis for Potts to vote in favour of the resolutions referred to in paragraph 64 of the Second Amended Commercial List Statements 47B above, or to give the Section 295A Declaration; and
- (e) Potts breached his duties as a director of DSH by voting in favour of the resolutions referred to in paragraph 64 of the Second Amended Commercial List Statement 47B above and by giving the Section 295A Declaration;
- (f) any such alleged breach caused DSH to pay the 2015 Final Dividend and, but for such breach, the 2015 Final Dividend would not have been paid at all or in the amount that it was paid; and
- (g) by reason of the matters set out above, Potts is liable to pay compensation to DSH for the loss suffered by reason of his having done so in breach of his duties as a result of the 2015 Final Dividend having been paid by DSH,

then Potts will have suffered loss or damage by the misleading conduct of Deloitte in making the Deloitte 2014 Audit Representations, the Deloitte Half-Year Representations and the Deloitte Full-Year Representations in making the Deloitte Rebate Representations, the Deloitte Inventory Representations, the Deloitte Capitalised Costs Representations, the Unqualified Audit Statements and/or the FY2015 Audit Report Representation.

Particulars

Potts repeats paragraphs 42-42C, 42H-42J, 42O-42Q and 43B-44A above and the particulars thereto.

If Deloitte had taken the steps in respect of the accounting treatment of rebates which Deloitte ought to have taken in order to comply with Auditing Standards and which Deloitte failed to take (pleaded in paragraphs 42B and 42C above), then, on the basis that DSH establishes (which is denied) that the recording of rebates in the FY2015 Report did not in fact comply with Australian Accounting Standards (see paragraphs 42A and 42AC above), Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH such non-compliance.

If Deloitte had taken the steps in respect of the provisioning for inventory which Deloitte ought to have taken in order to comply with Auditing Standards and which Deloitte failed to take (pleaded in paragraph 42J above), then, on the basis that DSH establishes (which is denied) that the FY2015 Report failed to account for inventory at its net realisable value, contrary to AASB 102 (see paragraph 42I above), Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH such non-compliance.

If Deloitte had taken the steps in respect of the capitalisation of overhead costs in inventory which Deloitte ought to have taken in order to comply with Auditing Standards and which it failed to take (pleaded in paragraph 42Q above), then, on the basis that DSH establishes (which is denied) that the capitalisation of certain overhead costs in the value of inventory in the FY2015 Report did not comply with AASB 102 (see paragraph 42Q above), Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH such non-compliance.

If Deloitte had ascertained and reported any or all of the matters set out above, then Deloitte would have ascertained and reported to the management of DSH that, by reason of one or more of those matters, the FY2015 Report did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSH and the DSE Group as at 28 June 2015.

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

Had Deloitte informed Potts and the other directors of DSH of those matters, then:

- (1) Potts and the other directors would not have passed the resolution referred to in paragraph 47B(a) above, and would not have approved the issue of the FY2015 Report in the form in which it was in fact issued;
- (2) Potts and the other directors of DSH would have ensured that:
 - the accounting treatment of rebates in the FY2015 Report
 - the provisioning for inventory in the FY2015 Report, and

- the capitalisation of overhead costs in the value of inventory in the FY2015 Report

complied with Australian Accounting Standards, by addressing such deficiencies as were identified by Deloitte;

- (3) the FY2015 Report would not have reported NPAT of \$37.905m (and, if the matters in paragraph 203 of the Basford Report are established, would have reported a loss);
- (4) Potts and the other directors of DSH would not have passed the resolution in respect of the 2015 Final Dividend referred to in paragraph 47B(b) above;
- (5) the 2015 Final Dividend would not have been paid.

The consequence of (1) to (5) above is that, but for Deloitte's misleading conduct, Potts would not have any liability (which is denied) to DSH in respect of the payment of the 2015 Final Dividend.

Accordingly, if Potts is found liable to DSH for any loss allegedly suffered by reason of Potts' alleged breach of duty (which is denied) in passing the resolutions referred to in paragraph 47B above and in giving the Section 295A Declaration, and the subsequent payment of the 2015 Final Dividend, then Potts will have suffered loss and damage as a result of the misleading conduct of Deloitte, in the amount of any order made against Potts in the main proceeding for damages, compensation, interest and/or costs in respect of payment of the 2015 Final Dividend, together with the amount of his own legal costs.

~~If DSH establishes (which is denied) that the matters in paragraph 43(a)-(f) and 44(a)-(f) are correct, then Deloitte engaged in the misleading and deceptive conduct alleged in paragraphs 43, 43A, 44 and 44A above by making the Deloitte 2014 Audit Representations the Deloitte Half-Year Representations and the Deloitte Full-Year Representations (**Deloitte's Misleading Conduct**). Had Deloitte not engaged in Deloitte's Misleading Conduct, it would have informed Potts and the other directors of DSH that the matters alleged by DSH, recorded in paragraphs 43(a)-(f) and 44(a)-(f) above, were correct. Had Potts and the other directors of DSH been so informed, then Potts and the directors would have:~~

~~(a) ensured that the accounting treatment in respect of rebates adopted by DSH in its financial report as at 28 December 2014 and 28 June 2015 complied with accounting standards;~~

~~(b) ensured that the provision adopted in respect of inventory in the financial reports of DSH as at 28 December 2014 and as at 28 June 2015 were adequate and that the assumptions or methodology used to determine those provisions, were adequate;~~

~~(c) ensured that as at 28 December 2014 or as at 28 June 2015 appropriate and effective inventory management practices were implemented which ensured that inventory which was obsolete, or near end-of-life, was written off in whole, or in part;~~

~~(d) ensured that the financial reports of DSH as at 28 December 2014 and 28 June 2015 were prepared so as to:~~

~~(i) give a true and fair view of the financial position and performance of DSH and the DSE Group as at the reporting date, and~~

~~(ii) comply with the Corporations Act; and~~

~~(iii) comply with Australian Accounting Standards;~~

~~(e) ensured that neither the 2015 Interim and Final Dividends were not paid;~~

~~The consequence of (a) to (e) would have been that Potts would not have breached his duties as a director of DSH as alleged.~~

~~Potts will have suffered loss and damage in the amount of any order made against him in the main proceeding for damages, compensation, interest and/or costs, together with the amount of his own legal costs.~~

Claim by Potts in relation to alleged liability for "Bad Stock"

49A For the purposes only of this cross claim, and without admission, Potts repeats paragraphs 35-36, 41, 43, 61, 83, 95(f), 114(b) and 115-116 of the Third Amended Commercial List Statement.

49B If DSH establishes (which is denied) that:

- (a) the DSE Group acquired and accumulated substantial quantities of Bad Stock from at least May 2014 onwards (as alleged in the Third Amended Commercial List Statement, paragraphs 35-36 and 83);

- (b) at all material times DSH and the DSE Group had "Inadequate Inventory Management" (as defined in the Third Amended Commercial List Statement, paragraph 41);
- (c) by no later than 28 December 2014, DSH should have made, but failed to make, provisions and write-offs with respect to Bad Stock (as alleged in the Third Amended Commercial List Statement, paragraph 43);
- (d) by no later than 28 June 2015, DSH should have made, but failed to make, provisions and write-offs with respect to Bad Stock (as alleged in the Third Amended Commercial List Statement, paragraph 61);
- (e) Potts breached the duties that he owed DSH by failing to implement systems to address the alleged Inadequate Inventory Management, and this breach caused the acquisition and accumulation of significant quantities of alleged "Bad Stock" (Third Amended Commercial List Statement, paragraphs 95(f) and 114(b));
- (f) by reason of the alleged Bad Stock having been acquired and accumulated, DSH has suffered loss or damage, and Potts is liable to compensation DSH for such loss (Third Amended Commercial List Statement, 115-116),

then Potts will have suffered loss or damage by the misleading conduct of Deloitte in making the Deloitte Inventory Representations.

Particulars

Potts repeats paragraphs 42I-42L above and the particulars thereto.

DSH alleges (which is denied) that, having regard to the requirements of AASB 102, DSH had Inadequate Inventory Management, that DSH needed to adopt a different method for valuing inventory that resulted in a carrying value for inventory that complied with AASB 102, and DSH was required to, and failed to, analyse the number of weeks' cover which it held for each product line and to make an assessment of whether that amount of stock was likely to be saleable given the nature of the product (BASFORD Report, paragraphs 128-130, 136, 149-151 and 157-161).

If Deloitte had taken the steps in respect of inventory which Deloitte ought to have taken and which Deloitte failed to take (pleaded in paragraphs 42I and 42J above), then, on the basis that DSH establishes the matters outlined above, Deloitte would have ascertained that DSH had Inadequate Inventory Management, that the assumptions and methodology applied to determine provisioning in respect of inventory did not result in a carrying value for

inventory that complied with AASB 102, that DSH needed to adopt a method for valuing inventory that resulted in a carrying value for inventory that complied with Australian Accounting Standards, and that DSH needed to analyse the number of weeks' cover which it held for each product line to make an assessment of whether the amount of stock for each product line was saleable. Having ascertained those matters, Deloitte would have reported those matters to the directors of DSH (including Potts).

If Deloitte had informed the directors of those matters, then (assuming the matters in paragraph 49B(a)-(d) above are established):

- (1) the directors would have become aware that DSH had the alleged Inadequate Inventory Management;
- (2) the directors would have caused DSH to adopt the provisioning methodology referred to in the Basford Report (or some other provisioning methodology that complied with AASB 102);
- (3) the directors would have become aware that the quality and ageing of inventory had not improved and that the DSE Group was acquiring and accumulating Bad Stock from at least May 2014 onwards;
- (4) the directors would have taken steps to ensure that after FY2014 DSH and the DSE Group did not acquire and accumulate Bad Stock; and
- (5) the directors would have thereby prevented DSH and the DSE Group from acquiring and accumulating Bad Stock, and further or alternatively, as the result of DSH having adopted a provisioning methodology which complied with Australian Accounting Standards, DSH would not have had Inadequate Inventory Management and would not have acquired and accumulated significant quantities of Bad Stock.

Potts repeats and relies on paragraphs 390, 773 and 1155 of the particulars to the First, Fourth and Fifth Cross-Claim.

By reason of (1)-(5) above, but for Deloitte's misleading conduct in making the Inventory Representations, the alleged "Bad Stock" would not have been acquired and Potts would not have any liability to DSH (which is denied) in respect of such alleged "Bad Stock" as was in fact acquired from May 2014 onwards.

By reason of the above matters, if Potts is found liable to DSH for any loss allegedly suffered by reason of Bad Stock having been acquired by the DSE Group as a result of Potts' alleged breach of duty (which is denied), then Potts will have suffered loss and damage as a result of the misleading conduct of Deloitte in making the Deloitte Inventory Representations, in the amount of any order made against Potts in the main proceeding for damages, compensation, interest and/or costs in respect of the alleged "Bad Stock", together with the amount of his own legal costs.

Claims by Potts for Equitable Contribution and under the Law Reform (Miscellaneous Provisions) Act 1946 ("LRMPA")

50 Potts repeats paragraphs 42 - 44A above.

Claim in respect of the 2015 Interim Dividend– Contribution under LRMPA

50A Deloitte owed DSH a duty of care to exercise reasonable skill, care and diligence in performing its services as auditor pursuant to the FY2014 Retainer, including in auditing the FY2014 Report.

50B Deloitte owed DSH a duty of care to exercise reasonable skill, care and diligence in performing its services as auditor pursuant to the FY2015 Retainer, including in reviewing the HY2015 Report.

50C 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 FY2014 Report and the review of the HY2015 Report.

50D Further, as auditor of DSH and the DSE Group, Deloitte was required to comply with:

- (a) sections 307A and 309 of the Corporations Act in respect of the HY2015 Review; and
- (b) sections 307, 307A and 308 of the Corporations Act in respect of the FY2014 Audit.

50E Deloitte:

- (a) by voluntarily accepting the engagement under the FY2014 Retainer, accepted a general professional responsibility to ensure that the engagement in respect of the FY2014 Audit was carried out with the degree of care, skill and diligence expected of a professional providing services of the same kind; and
- (b) by voluntarily accepting the engagement under the FY2015 Retainer, accepted a general professional responsibility to ensure that the engagement in respect of the

HY2015 Review was carried out with the degree of care, skill and diligence expected of a professional providing services of the same kind.

50F Deloitte was paid by DSH for its professional services in carrying out each of the FY2014 Audit and the HY2015 Review.

50G Deloitte had exclusive control over the carrying out of each of the FY2014 Audit and the HY2015 Review.

50H At all material times, Deloitte was afforded access to persons within DSH from whom Deloitte determined it necessary to obtain evidence, and documentation requested by Deloitte, in respect of the preparation of each of the FY2014 Report and the HY2015 Report.

50I Deloitte, as auditor, was in a situation of particular advantage to know or ascertain whether each of the FY2014 Report and the HY2015 Report complied with Australian Accounting Standards.

50J 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 services of the same kind in conducting each of the FY2014 Audit and the HY2015 Review; and
- (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 each of the FY2014 Audit and the HY2015 Review.

50K In the premises, at all material times, Deloitte knew, or ought to have known:

- (a) of the matters pleaded in paragraph 50J above;
- (b) that DSH would rely upon Deloitte to exercise the degree of skill, care and diligence expected of a professional providing services of the same kind in:
 - (i) conducting the FY2014 Audit, and making statements or forming opinions in respect of the FY2014 Report; and
 - (ii) conducting the HY2015 Review, and making statements or forming opinions in respect of the HY2015 Report;
- (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.

50L By reason of the matters pleaded in paragraphs 50B-50K 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 services of the same kind in:

- (a) conducting the FY2014 Audit and making statements or forming opinions in respect of the FY2014 Report; and
- (b) conducting the HY2015 Review and making statements or forming opinions in respect of the HY2015 Review.

50M If the matters in paragraphs 42-43A above are established, then Deloitte breached the duty of care referred to in paragraph 50A above and/or paragraph 50L above, by failing to exercise the degree of skill, care and diligence expected of a professional providing services of the same kind when:

- (a) conducting the FY2014 Audit and making statements or forming opinions in respect of the FY2014 Report; and

Particulars

Potts repeats paragraphs 42B and 42J(a)-(b) above, and the particulars thereto.

- (b) conducting the HY2015 Review and making statements or forming opinions in respect of the HY2015 Report.

Particulars

Potts repeats paragraphs 42B, 42C(a)-(b), 42J(a)-(c), 42Q(a)-(b) and 43AA above, and the particulars thereto.

50N The breaches pleaded in paragraph 50M above caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Interim Dividend.

Particulars

The particulars to paragraph 47 are repeated.

50O By reason of the matters pleaded in paragraphs 50A-50N above, if the plaintiff establishes (which is denied) that Potts breached the duty of care which he owed DSH at general law, and that such breach caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Interim Dividend, then Deloitte is a tortfeasor which, had it been sued by DSH, would have been liable in respect of the same damage in respect of the payment of the Interim Dividend for which Potts is sued in tort by DSH in the main proceedings.

50P In the premises, if the plaintiff succeeds in its claim in negligence against Potts in respect of the loss allegedly suffered by DSH in respect of the payment of the Interim Dividend, then Potts is 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 to the extent of Deloitte's responsibility for that damage.

Claim in respect of the 2015 Interim Dividend – Contribution in Equity

51 If the matters in paragraphs 42 - 43A above are established, then Deloitte:

(a) Deloitte breached the contractual term referred to terms of the FY2014 Retainer:

(i) pleaded in paragraph 8 above, or alternatively the duty of care referred to in paragraph 9 above, by failing to exercise reasonable skill, care and diligence in the performance of services in relation to the June 2014 FY2014 Audit; and

(ii) pleaded in paragraph 6(b) above by failing to conduct the FY2014 Audit in accordance with the requirements of the Auditing Standards and the December 2014 Review;

Particulars

~~If the matters pleaded in paragraphs 43(a)-(f) are established, then an auditor exercising reasonable skill and care would have advised the directors of DSH of those matters, and/or would not have made the Deloitte 2014 Audit Representations or the Deloitte Half-Year Representations.~~

Particulars

Potts repeats paragraphs 42B and 42J(a)-(b) above, and the particulars thereto.

(b) Deloitte breached the terms of the FY2015 Retainer:

(i) pleaded in paragraph 8 above, by failing to exercise reasonable skill, care and diligence in the performance of services in relation to the HY2015 Review; and

(ii) pleaded in paragraph 7(a) above by failing to conduct the HY2015 Review and the in accordance with the requirements of ASRE 2410.

Particulars

Potts repeats paragraphs 42B, 42C(a)-(b), 42J(a)-(c), 42Q(a)-(b) and 43AA above, and the particulars thereto.

51A The breaches of contract pleaded in paragraph 51 above caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Interim Dividend.

Particulars

The particulars to paragraph 47 are repeated.

51B Further or in the alternative, Deloitte made to DSH each of the FY2014 Rebate Representations, the FY2014 Inventory Representations, the HY2015 Rebate Representations, the HY2015 Inventory Representations, the HY2015 Capitalised Costs Representations, the Unqualified Review Statement and/or the HY2015 Review Report Representation.

51C By making the FY2014 Rebate Representations, the FY2014 Inventory Representations, the HY2015 Rebate Representations, the HY2015 Inventory Representations, the HY2015 Capitalised Costs Representations, the Unqualified Review Statement and/or the HY2015 Review Report Representation to DSH, Deloitte:

~~(b) further or in the alternative, by making the Deloitte 2014 Audit Representations and the Deloitte Half Year Representations to DSH:~~

(a) engaged in misleading or deceptive conduct in contravention of section 18 of the ACL or alternatively section 1041H of the Corporations Act or alternatively section 12DA of the ASIC Act; and/or

Particulars

Potts repeats paragraphs 42D, 42K, 42R and 43AA above, and the particulars thereto.

(b) further or alternatively, made a false or misleading representation:

~~(A)(i)~~ in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning in contravention of section 29(1)(b) of the ACL; and/or

~~(B)(ii)~~ in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning in contravention of section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats paragraphs 42E, 42L, 42S and 43A above, and the particulars thereto to paragraph 43 above.

51D The contraventions by Deloitte of the ACL, the Corporations Act and/or the ASIC Act pleaded in paragraph 51C above caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Interim Dividend.

Particulars

The particulars to paragraph 47 are repeated.

51E By reason of the matters pleaded in paragraphs 51-51A above, and further or alternatively paragraphs 51B-51D above, if the plaintiff establishes (which is denied) that Potts breached his general law or statutory duty of care to DSH, and that such breach caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Interim Dividend, then Deloitte's conduct:

- (a) in breach of the FY2014 Retainer and/or the FY2015 Retainer, pleaded in paragraph 51 above; and/or
- (b) in contravention of the ACL, Corporations Act and/or ASIC Act, pleaded in paragraph 51C above;

caused the same loss or damage to DSH in respect of the payment of the 2015 Interim Dividend as was allegedly caused by Potts' conduct in breach of his general law or statutory duty of care to DSH.

51F In the premises, Deloitte and Potts are co-ordinately liable to DSH in respect of any such loss or damage in respect of the payment of the 2015 Interim Dividend.

51G By reason of the matters pleaded in paragraphs 51-51F above, if it is established (which is denied) that Potts is liable to compensate DSH for the loss and damage which DSH claims to have suffered in respect of the payment of the 2015 Interim Dividend, then Potts is entitled to recover, in equity, contribution to any such liability from Deloitte.

Claim in respect of the 2015 Final Dividend – Contribution under LRMPA

51H Deloitte owed DSH a duty of care to exercise reasonable skill, care and diligence in performing its services as auditor pursuant to the FY2015 Retainer, including in auditing the FY2015 Report.

51I 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 FY2015 Report.

51J Further, as auditors of DSH and the DSE Group, Deloitte was required to comply with sections 307, 307A and 308 of the Corporations Act in respect of the FY2015 Audit.

51K Deloitte, by voluntarily accepting the engagement under the FY2015 Retainer, accepted a general professional responsibility to ensure that the engagement in respect of the FY2015 Audit was carried out with the degree of care, skill and diligence expected of a professional providing services of the same kind.

51L Deloitte was paid by DSH for its professional services in carrying out the FY2015 Audit.

51M Deloitte had exclusive control over the carrying out of the FY2015 Audit.

51N At all material times, Deloitte was afforded access to persons within DSH from whom Deloitte determined it necessary to obtain evidence, and documentation requested by Deloitte, in respect of the preparation of the FY2015 Report.

51O Deloitte, as auditor, was in a situation of particular advantage to know or ascertain whether the FY2015 Report complied with Australian Accounting Standards.

51P 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 services of the same kind in conducting the FY2015 Audit; and
- (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 the FY2015 Audit.

51Q In the premises, at all material times, Deloitte knew, or ought to have known:

- (a) of the matters pleaded in paragraph 51P above;
- (b) that DSH would rely upon Deloitte to exercise the degree of skill, care and diligence expected of a professional providing services of the same kind in conducting the FY2015 Audit, and making statements or forming opinions in respect of the FY2015 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 paragraph (b) above.

51R By reason of the matters pleaded in paragraphs 51I-51Q 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 services of the same kind in conducting the FY2015 Audit and making statements or forming opinions in respect of the FY2015 Report.

51S If the matters in paragraphs 42-43A above are established, then Deloitte breached the duty of care referred to in paragraph 51H above and/or paragraph 51R above, by failing to exercise the degree of skill, care and diligence expected of a professional providing services of the same kind when conducting the FY2015 Audit and making statements or forming opinions in respect of the FY2015 Report.

Particulars

Potts repeats paragraphs 42B, 42C(a) and (c), 42J(a)-(b) and (d), 42Q(a) and (c), and 44AA above, and the particulars thereto.

51T The breaches pleaded in paragraphs 50M and/or 51S above caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Final Dividend.

Particulars

The particulars to paragraph 49 are repeated.

51U By reason of the matters pleaded in paragraphs 51-51A and 51H-51T above, if the plaintiff establishes (which is denied) that Potts breached the duty of care which he owed DSH at general law, and that such breach caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Final Dividend, then Deloitte is a tortfeasor which, had it been sued by DSH, would have been liable in respect of the same damage in respect of the payment of the Final Dividend for which Potts is sued in tort by DSH in the main proceedings.

51V In the premises, if the plaintiff succeeds in its claim in negligence against Potts in respect of the loss allegedly suffered by DSH by payment of the Final Dividend, then Potts is 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 to the extent of Deloitte's responsibility for that damage.

Claim in respect of the 2015 Final Dividend – Contribution in Equity

52 If the matters in paragraphs 42-42U, 44 and 43B-44A above are established, then Deloitte breached the terms of the FY2015 Retainer:

(a) pleaded in paragraph 8 above, by failing to exercise reasonable skill, care and diligence in the performance of services in relation to the FY2015 Audit; and

(b) pleaded in paragraph 7(b) above by failing to conduct the FY2015 Audit in accordance with the requirements of the Auditing Standards, breached the contractual term referred to in paragraph 8 above, or alternatively the duty of care referred to in paragraph 9 above, by failing to exercise reasonable skill, care and diligence in the performance of services in relation to the June 2015 Audit;

Particulars

Potts repeats paragraphs 42B, 42C(a) and (c), 42J(a)-(b) and (d), 42Q(a) and (c), and 44AA above, and the particulars thereto.

If the matters pleaded in paragraphs 44(a)-(f) are established, then an auditor exercising reasonable skill and care would have advised the directors of DSH of those matters, and/or would not have made the Deloitte Full-Year Representations.

52A The breaches of contract pleaded in paragraphs 51 and/or 52 above caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Final Dividend.

Particulars

The particulars to paragraph 49 are repeated.

52B Further or in the alternative, Deloitte made to DSH each of the Deloitte Rebate Representations, the Deloitte Inventory Representations, the Deloitte Capitalised Costs Representations, the Unqualified Audit Statements and/or the FY2015 Audit Report Representation to DSH.

52C By making the Deloitte Rebate Representations, the Deloitte Inventory Representations, the Deloitte Capitalised Costs Representations, the Unqualified Audit Statements and/or the FY2015 Audit Report Representation to DSH, Deloitte:

(a) engaged in misleading or deceptive conduct in contravention of section 18 of the ACL or alternatively section 1041H of the Corporations Act or alternatively section 12DA of the ASIC Act; and

Particulars

Potts repeats paragraphs 42D, 42K, 42R and 44AA above, and the particulars thereto.

(b) further or alternatively, made a false or misleading representation:

- (i) in connection with the supply of services, that services were of a particular standard, quality, value or grade, in contravention of section 29(1)(b) of the ACL; and/or
- (ii) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, in contravention of section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats paragraphs 42E, 42L, 42S and 44A above, and the particulars thereto.

- (c) ~~further or in the alternative, by making the Deloitte Full-Year Representations to DSH:~~

- ~~(i) engaged in misleading or deceptive conduct in contravention of section 18 of the ACL or alternatively section 1041H of the Corporations Act or alternatively section 12DA of the ASIC Act; and/or~~

- ~~(ii) made a false or misleading representation:~~

- ~~(A) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of section 29(1)(b) of the ACL; and/or~~

- ~~(B) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of section 12DB(1)(a) of the ASIC Act.~~

Particulars

~~Potts repeats the particulars to paragraph 44 above.~~

- 53 ~~Any~~The breach of contract and/or negligence and/or Deloitte's Misleading Conduct contraventions by Deloitte of the ACL, the Corporations Act and/or the ASIC Act pleaded in paragraph 52C above was a cause of~~caused~~ the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Final Dividend.

Particulars

~~The particulars to paragraph 49 are repeated.~~

- 53A By reason of the matters pleaded in paragraphs 52-52A above, and further or alternatively paragraphs 52B-53 above, if the plaintiff establishes (which is denied) that Potts breached his general law or statutory duty of care to DSH, and that such

breach caused the loss or damage claimed by DSH in these proceedings in respect of the payment of the 2015 Final Dividend, then Deloitte's conduct:

- (a) in breach of the FY2014 Retainer and/or the FY2015 Retainer, pleaded in paragraphs 51 and 52 above; and/or
- (b) in contravention of the ACL, Corporations Act and/or ASIC Act, pleaded in paragraph 52C above;

caused the same loss or damage to DSH in respect of the payment of the 2015 Final Dividend as was allegedly caused by Potts' conduct in breach of his general law or statutory duty of care to DSH.

53B In the premises, Deloitte and Potts are co-ordinately liable to DSH in respect of any such loss or damage in respect of the payment of the 2015 Final Dividend.

54 By reason of the matters pleaded in paragraphs ~~51-53~~52-53C above, if it is established (which is denied) that Potts is liable to compensate DSH for the loss and damage which DSH claims against him to have suffered in respect of the payment of the 2015 Final Dividend, then Potts is entitled to recover, in equity, contribution to any such liability from Deloitte ~~pursuant to s.5(1)(c) of the Law Reform (Miscellaneous Provisions) Act 1946~~ and, further or in the alternative, in equity.

Claim in respect of alleged Bad Stock– Contribution under LRMPA

55 Further or alternatively, in carrying out work in respect of inventory provisioning in each of the FY2014 Audit, the HY2015 Review and the FY2015 Audit, Deloitte breached the duties of care pleaded in paragraphs 50A, 50L, 51H and 51R above.

Particulars

Potts repeats paragraph 42J above and the particulars thereto.

56 ~~The breaches of contract and/or negligence and/or misleading conduct by Deloitte by Deloitte of the duty of care which it owed DSH, pleaded in paragraph 55 above, 51 and/or paragraph 52 above were a cause of~~caused the loss or damage claimed by DSH in these proceedings in respect of the acquisition and accumulation of the alleged Bad Stock.

Particulars

The particulars to paragraph 49B are repeated.

57 By reason of the matters pleaded in paragraph 55-56 above, if the plaintiff establishes (which is denied) that Potts breached the duty of care which he owed DSH at general law, and that such breach caused the loss or damage claimed by DSH in these

proceedings in respect of the acquisition and accumulation of the alleged Bad Stock, then Deloitte is a tortfeasor which, had it been sued by DSH, would have been liable in respect of the same damage in respect of the alleged Bad Stock for which Potts is sued in tort by DSH in the main proceedings.

- 58 In the premises, if the plaintiff succeeds in its claim in negligence against Potts in respect of the loss allegedly suffered by DSH in respect of the acquisition and accumulation of the alleged Bad Stock, then Potts is 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 to the extent of Deloitte's responsibility for that damage.

Claim in respect of alleged Bad Stock – Contribution in equity

- 59 Further or alternatively, if the matters in paragraph 42J above are established, then Deloitte, in carrying out its work in respect of inventory in the FY2014 Audit, the HY2015 Review and the FY2015 Audit, breached:
- (a) the term of the FY2014 Retainer pleaded in paragraph 6(b) above, by failing to conduct the FY2014 Audit in accordance with the requirements of the Auditing Standards;
 - (b) the term of the FY2015 Retainer pleaded in paragraph 7(a)(ii) above, by failing to conduct the HY2015 Review in accordance with the requirements of ASRE 2410;
 - (c) the term of the FY2015 Retainer pleaded in paragraph 7(b)(i)-(ii) above, by failing to conduct the FY2015 Audit in accordance with the requirements of the Auditing Standards and thereby failing to conduct the FY2015 Audit in accordance with the requirements of the Corporations Act;
 - (d) the term of the FY2014 Retainer pleaded in paragraph 8 above, by failing to exercise reasonable skill, care and diligence in performing the FY2014 Audit; and/or
 - (e) the term of the FY2015 Retainer pleaded in paragraph 8 above, by failing to exercise reasonable skill, care and diligence in performing the HY2015 Review and the FY2015 Audit.

Particulars

Potts repeats paragraph 42J above and the particulars thereto.

60 The breaches of contract pleaded in paragraph 59 above caused the loss or damage claimed by DSH in these proceedings in respect of the acquisition and accumulation of the alleged Bad Stock.

Particulars

The particulars to paragraph 49B are repeated.

61 Further or in the alternative, Deloitte made the Deloitte Inventory Representations to DSH.

62 By making the Deloitte Inventory Representations to DSH, Deloitte:

- (a) engaged in misleading or deceptive conduct in contravention of section 18 of the ACL or alternatively section 1041H of the Corporations Act or alternatively section 12DA of the ASIC Act; and

Particulars

Potts repeats paragraphs 42K above, and the particulars thereto.

(b) further or alternatively, made a false or misleading representation:

- (i) in connection with the supply of services, that services were of a particular standard, quality, value or grade, in contravention of section 29(1)(b) of the ACL; and/or
- (ii) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, in contravention of section 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats paragraph 42L above, and the particulars thereto.

63 The contraventions by Deloitte of the ACL, the Corporations Act and/or the ASIC Act pleaded in paragraph 62 above caused the loss or damage claimed by DSH in these proceedings in respect of the acquisition and accumulation of the alleged Bad Stock.

Particulars

The particulars to paragraph 49B are repeated.

64 By reason of the matters pleaded in paragraphs 59-60 above, and further or alternatively paragraphs 61-63 above, if the plaintiff establishes (which is denied) that Potts breached his general law or statutory duty of care to DSH, and that such breach caused the loss or damage claimed by DSH in these proceedings in respect of the acquisition and accumulation of the alleged Bad Stock, then Deloitte's conduct:

- (a) in breach of the FY2014 Retainer and/or the FY2015 Retainer, pleaded in paragraph 59 above; and/or
- (b) in contravention of the ACL, Corporations Act and/or ASIC Act, pleaded in paragraph 62 above;

caused the same loss or damage to DSH in respect of the acquisition and accumulation of the alleged Bad Stock as was allegedly caused by Potts' conduct in breach of his general law or statutory duty of care to DSH.

65 In the premises, Deloitte and Potts are co-ordinately liable to DSH in respect of any such loss or damage in respect of the acquisition and accumulation of the alleged Bad Stock.

66 By reason of the matters pleaded in paragraphs 59-65 above, if it is established (which is denied) that Potts is liable to compensate DSH for the loss and damage which DSH claims to have suffered in respect of the payment of the acquisition and accumulation of the alleged Bad Stock, then Potts is entitled to recover contribution to any such liability from Deloitte in equity.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

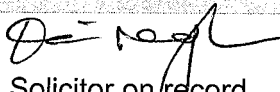
None.

E. MEDIATION STATEMENT

The parties have not attempted mediation. The Cross-claimant is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature



Capacity

Solicitor on record

Date of signature

27 August 2018

SCHEDULE 1 - SECOND TO 454TH CROSS-DEFENDANTS

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 Juliette Spanjaard
51. Christopher 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 Harding
152. Simon Cook
153. Stephen Carl Tarling
154. Leslie Coleman
155. Samuel James Vorvverg
156. Helen Hamilton-James
157. Coert Grobbelaar Du Plessis
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 Marie 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 Pagonis
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 McCloskey
241. Philip Walter Teale
242. Jan Hein Alexander Alpert
243. Katherine Anne Milesi
244. Kevin Kiazim 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 Zilva
278. Neil McLeod
279. Gerard Lucien Belleville
280. Michael Kaplan
281. Mark David Irving
282. Alison Lorna White
283. Haiderali Hussein 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 Walton 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 Amis 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 Nakamura
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 Willington
416. Stephen Mark Holdstock

417. Dean John Grandy
418. Harold Scott Payne
419. Jean-Marie Abi-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