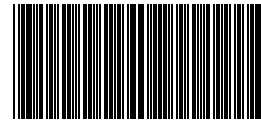




Filed: 21 September 2018 4:39 PM



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Commercial List Response

COURT DETAILS

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

TITLE OF PROCEEDINGS

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

TITLE OF THIS CROSS-CLAIM

First Cross Claimant	Wayne Leonard Chapman
Second Cross Claimant	Rodney John Loone
Number of Cross Claimants	6
First Cross Defendant	Andrew Gray
Second Cross Defendant	Donald H McKenzie
Number of Cross Defendants	13

FILING DETAILS

Filed for	Andrew Gray, Cross Defendant 1 Mathew Gary Wallace, Cross Defendant 6
Filed in relation to	Cross-Claim 3
Legal representative	ROSS JAMES DRINNAN
Legal representative reference	
Telephone	02 9230 4000
Your reference	120709959

ATTACHMENT DETAILS

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

Commercial List Response (KPMG - Commercial List Cross-Claim Response to Third Cross-Claim.pdf)

[attach.]

THIRD CROSS-CLAIM

COMMERCIAL LIST CROSS-CLAIM RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/00076580

TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd
Second Plaintiff	Geoffry Underwood
First Defendant	Gunns Plantations Limited (in Liquidation)
Number of defendants	11

TITLE OF THIS THIRD CROSS-CLAIM

First Cross-Claimant	Wayne Leonard Chapman (Third Defendant)
Number of Cross-Claimants	6
First Cross-Defendant	Andrew Gray (Tenth Defendant)
Number of Cross-Defendants	13

FILING DETAILS

Filed for	Andrew Gray , First Cross-Defendant Matthew Wallace , Second Cross-Defendant Michael T Hine , Third Cross-Defendant Martin M Rees , Fourth Cross-Defendant Kenneth Deane , Fifth Cross-Defendant Leigh C Franklin , Sixth Cross-Defendant Nigel J Briggs , Seventh Cross-Defendant Paul J Green , Eighth Cross-Defendant David Howie , Ninth Cross-Defendant Donald H McKenzie , Tenth Cross-Defendant John Lord , Eleventh Cross-Defendant Brent Murphy , Twelfth Cross-Defendant Michael H Cooke , Thirteenth Cross-Defendant
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Legal representative	Ross Drinnan Allens
Legal representative reference	18917
Contact name and telephone	Ross Drinnan (02) 9230 4931
Contact email	Ross.Drinnan@allens.com.au

PRELIMINARIES

- A Headings are used in this document (**Cross-Claim Response**) for convenience only. They do not form part of the First to Thirteenth Cross-Defendants' (**Cross-Defendants**) response to the (amended) Third Cross-Claim Commercial List Cross-Claim Statement filed by the First to Sixth Cross-Claimants (**Cross-Claimants**) on 5 September 2018 (the **Cross-Claim Statement**).
- B The terms in the Amended Commercial List Statement filed by the Plaintiffs on 6 August 2018 (**ACLS**) and in the Amended Commercial List Response (**KPMG ACLR**) filed by the First and Second Cross-Defendants (as Defendants) on 27 August 2018 have the same meaning in this Cross-Claim Response, unless otherwise defined or stated. The Cross-Defendants do not admit any factual assertions contained in, or in any way implied by, any defined term used in the ACLS and repeated in this document.

A NATURE OF DISPUTE

- 1 The Plaintiffs in this representative proceeding have brought claims against 11 Defendants, including the Cross-Claimants and the First and Second Cross-Defendants, on behalf of themselves and Group Members, in relation to their investments in the Gunns Woodlot Schemes.
- 2 In each of their Amended Commercial List Responses filed on 24 August 2018, each of the Cross-Claimants deny that the Plaintiffs or Group Members are entitled to the relief claimed by them against the Cross-Claimants.
- 3 However, the Cross-Claimants allege that if they are liable to the Plaintiffs then the Cross-Defendants are also liable on the basis set out in the Cross-Claim Statement.
- 4 The Cross-Defendants deny that they are liable to the Plaintiffs or to the Cross-Claimants for the reasons set out herein.

B ISSUES LIKELY TO ARISE

The Cross-Defendants agree with the statement of “Issues Likely to Arise” in this Third Cross-Claim set out in Part B of the Cross-Claim Statement.

C RESPONSES TO CROSS-CLAIMANTS’ CONTENTIONS

C1 GPL

1. In answer to paragraph 1, the Cross-Defendants:
 - (a) say the Plaintiffs have confirmed that they do not pursue any claims in relation to the 2004 Gunns Woodlot Scheme;
 - (b) say further that, accordingly, the Cross-Defendants in this Cross-Claim Response do not address any allegations in relation to the 2004 Gunns Woodlot Scheme, and when the term “**Gunns Woodlot Schemes**” is used in this Cross-Claim Response, it refers only to the 2002-2003, 2005-2006 and 2008-2009 Gunns Woodlot Schemes; and
 - (c) otherwise admit the allegations in paragraph 1.

C2 The Cross-Claimants

2. The Cross-Defendants admit the allegations in paragraph 2.
3. The Cross-Defendants admit the allegations in paragraph 3.
4. The Cross-Defendants admit the allegations in paragraph 4.
5. The Cross-Defendants admit the allegations in paragraph 5.
6. The Cross-Defendants admit the allegations in paragraph 6.
7. The Cross-Defendants admit the allegations in paragraph 7.

C3 The Cross-Defendants

8. In answer to paragraph 8, the Cross-Defendants:
 - (a) admit that:
 - (i) the First Cross-Defendant, from 1 July 2004 to 30 September 2011;
 - (ii) the Second Cross-Defendant, from at least 2 October 2002 to 30 September 2011;
 - (iii) the Third Cross-Defendant, from at least 2 October 2002 to 30 September 2011;

- (iv) the Fourth Cross-Defendant, from at least 2 October 2002 to 1 July 2015;
- (v) the Fifth Cross-Defendant, from at least 2 October 2002 to 31 October 2002;
- (vi) the Sixth Cross-Defendant, from 1 July 2003 to 30 September 2011;
- (vii) the Seventh Cross-Defendant, from 1 September 2005 to 30 September 2011;
- (viii) the Eighth Cross-Defendant, from at least 2 October 2002 to 30 September 2011;
- (ix) the Ninth Cross-Defendant, from 1 January 2007 to 30 September 2011;
- (x) the Tenth Cross-Defendant, from at least 2 October 2002 to 1 July 2011;
- (xi) the Eleventh Cross-Defendant, from at least 2 October 2002 to 30 June 2005;
- (xii) the Twelfth Cross-Defendant, from 1 July 2007 to 8 November 2010;
- (xiii) the Thirteenth Cross-Defendant, from at least 2 October 2002 to 31 December 2004,

were each partners of a partnership, as constituted from time to time, operating under the name KPMG (hereafter referred to as **KPMG (A Firm)**);

- (b) as to sub-paragraph 8.1, admit that KPMG (A Firm) operated from (amongst others) offices in Hobart and Launceston, Tasmania;
- (c) as to sub-paragraph 8.2, admit that KPMG (A Firm) carried on business (amongst other things) as auditors and accountants;
- (d) as to sub-paragraph 8.3:
 - (i) say the Plaintiffs have confirmed that they do not pursue any claims in relation to the compliance plan audit of the 2002 Gunns Woodlot Scheme for the 2002 financial year;
 - (ii) admit that KPMG (A Firm) was the auditor of the compliance plans in respect of the Gunns Woodlot Schemes for each of the 2002-2011 financial years;

- (iii) say further that, while KPMG (A Firm) commenced work on compliance plan audits for the 2012 financial year, those audits were never completed;
- (e) as to sub-paragraph 8.4:
 - (i) admit that KPMG (A Firm) was the auditor of the annual financial reports of GPL for each of the 2002-2011 financial years;
 - (ii) say that, while KPMG (A Firm) commenced work on the audit of GPL's annual financial report for the 2012 financial year, this audit was never completed;
- (f) say that, in the context of the Cross-Claim Statement, it appears that the reference to the "Audit Period" in paragraph 8.3 is intended to be a reference to the "Compliance Audit Period" in paragraph 8.4, and vice versa, and the Cross-Defendants respond to the allegations in the Cross-Claim Statement on that basis in this Cross-Claim Response;
- (g) otherwise deny the allegations in paragraph 8.

C4. Primary action

- 9. In answer to paragraph 9, the Cross-Defendants:
 - (a) say that the Commercial List Statement referred to in paragraph 9 has been amended by the ACLS and, accordingly, the Cross-Defendants read the reference to the Commercial List Statement as a reference to the ACLS;
 - (b) repeat the responses in paragraphs 1 to 103 (inclusive) of the "Responses to Plaintiffs' Contentions" in the KPMG ACLR (noting that some of those paragraphs of the ACLS do not contain any allegations against the Tenth and Eleventh Defendants or the Cross-Defendants and are therefore not pleaded to, but the Cross-Defendants do not thereby admit those allegations).
- 10. The Cross-Defendants do not plead to paragraph 10, which does not allege any matters against them.
- 11. The Cross-Defendants do not plead to paragraph 11, which does not allege any matters against them.

C5. Basis for Cross-Claim**Cross-Defendants' Alleged Duties**KPMG (A Firm)

12. In answer to paragraph 12, the Cross-Defendants:
- (a) repeat the responses in paragraphs 70 to 72 of the "Responses to Plaintiffs' Contentions" in the KPMG ACLR;
 - (b) otherwise deny the allegations in paragraph 12.
13. In answer to paragraph 13, the Cross-Defendants:
- (a) admit that an audit company conducting an audit of a compliance plan contravenes s 601HG(4A) of the Act if the lead auditor is aware of circumstances that:
 - (i) the lead auditor has reasonable grounds to suspect amount to a significant contravention of the Act; or
 - (ii) amount to a contravention of the Act that is not a significant one but the lead auditor believes has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors,and the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances;
 - (b) deny that s 601HG(4A) of the Act imposed any duties on the Cross-Defendants or KPMG (A Firm), as KPMG (A Firm) is not an audit company within the meaning of that section;
 - (c) otherwise deny the allegations in paragraph 13.

14. In answer to paragraph 14, the Cross-Defendants:
- (a) as to paragraphs 14.1 and 14.2:
 - (i) admit that, pursuant to s 307 of the Act, KPMG (A Firm) was required to form an opinion about (amongst other things):
 - (A) whether the financial reports of GPL:
 - (I) complied with accounting standards in accordance with s 296 of the Act;
 - (II) gave a true and fair view of the financial position and performance of GPL in accordance with s 297 of the Act;
 - (B) whether it had been given all information, explanation and assistance necessary for the conduct of the audit;
 - (C) whether GPL kept financial records sufficient to enable a financial report to be prepared and audited; and
 - (D) whether GPL kept other records and registers as required by the Act;
 - (ii) admit that, pursuant to s 308 of the Act:
 - (A) KPMG (A Firm) was required to report to members on (amongst other things) whether it was of the opinion that the financial reports of GPL:
 - (I) complied with accounting standards in accordance with s 296 of the Act;
 - (II) gave a true and fair view of the financial position and performance of GPL in accordance with s 297 of the Act,and, if not of that opinion, say why;
 - (B) if KPMG (A Firm) was of the opinion that a financial report of GPL did not comply with an accounting standard, its report was required, to the extent it was practicable to do so, to quantify the effect that non-compliance had on the financial report and, if it was not practicable to quantify the effect fully, say why;

- (C) KPMG (A Firm) was required to describe any defect or irregularity in the financial reports of GPL in its report;
 - (b) as to paragraph 14.3, admit that pursuant to s 307A of the Act the lead auditor for each audit of GPL's annual financial reports was required to ensure that the audit was conducted in accordance with auditing standards made by the Auditing and Assurance Standards Board pursuant to s 336 of the Act;
 - (c) as to paragraph 14.4, admit that a lead auditor conducting an audit under Division 3 of Part 2M.3 of the Act contravenes s 311(3) of the Act if they are aware of circumstances that:
 - (i) the lead auditor has reasonable grounds to suspect amount to a significant contravention of the Act or amount to a contravention of the Act that is not a significant one but the lead auditor believes has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors; or
 - (ii) amount to an attempt, in relation to the audit, by any person to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit (as defined in sub-section (6) of s 311); or
 - (iii) amount to an attempt, by any person, to otherwise interfere with the proper conduct of the audit,

and the lead auditor does not notify ASIC in writing of those circumstances as soon as practicable, and in any case within 28 days, after the lead auditor becomes aware of those circumstances;
 - (d) otherwise deny the allegations in paragraph 14.
15. In answer to paragraph 15, the Cross-Defendants:
- (a) repeat their response at paragraph 8(e)(ii) above;
 - (b) admit that KPMG (A Firm) owed contractual obligations to GPL pursuant to the terms of the engagement agreed between KPMG (A Firm) and GPL from time to time in respect of the engagement of KPMG (A Firm) as auditor of GPL's financial reports for the 2003-2011 financial years;
 - (c) say they do not thereby admit the nature or scope of those contractual obligations;
 - (d) otherwise deny the allegations in paragraph 15.

16. In answer to paragraph 16, the Cross-Defendants:
- (a) repeat their responses at paragraphs 8(d)(i) and 8(d)(iii) above;
 - (b) admit that KPMG (A Firm) owed contractual obligations to GPL pursuant to the terms of the engagement agreed between KPMG (A Firm) and GPL from time to time in respect of the engagement of KPMG (A Firm) as auditor of the compliance plans in respect of the Gunns Woodlot Schemes for the 2003-2011 financial years;
 - (c) say they do not thereby admit the nature or scope of those contractual obligations;
 - (d) repeat the responses in paragraphs 72(j)-(l) of the KPMG ACLR;
 - (e) otherwise deny the allegations in paragraph 16.

Alleged Breach of KPMG's Alleged Duties

Growers' Trust Funds

17. In answer to paragraph 17, the Cross-Defendants repeat the responses in paragraphs 43-51 and 73-74 of the "Responses to Plaintiffs' Contentions" in the KPMG ACLR.
18. In answer to paragraph 18, the Cross-Defendants:
- (a) repeat the responses in paragraphs 38(a), 39, 43, 45, 47, 49, 50, 73, 74, 102 and 103 of the "Responses to Plaintiffs' Contentions" in the KPMG ACLR;
 - (b) deny that there were "Growers' Trust Funds";
 - (c) say the Plaintiffs have confirmed that they do not pursue any claims in relation to the 2004 Gunns Woodlot Scheme or the compliance plan audit of the 2002 Gunns Woodlot Scheme for the 2002 financial year;
 - (d) as to sub-paragraph 18.4, admit that the audit report provided in respect of the annual financial report of GPL expressed the opinion of KPMG (A Firm) which was to the effect of those statements set out at sub-paragraphs 18.4(a)-(c) but say that:
 - (i) that opinion was subject to the inherent limitations and qualifications set out in the relevant audit reports, including (without limitation) that:
 - (A) in respect of the annual financial report of GPL for the 2003 to 2005 financial years (inclusive), GPL's directors were

responsible for the financial report and KPMG (A Firm) had conducted an independent audit in order to express an opinion on it to the members of GPL;

- (B) in respect of the annual financial report of GPL for the 2006 to 2011 financial years (inclusive), GPL's directors were responsible for the preparation and fair presentation of the financial report in accordance with the Act, and KPMG (A Firm) had conducted an independent audit in order to express an opinion on the financial report to the members of GPL;
 - (C) the audit by KPMG (A Firm) was undertaken to form an opinion whether, in all material respects, the financial report was presented fairly in accordance with Australian Accounting Standards, statutory requirements, and (where relevant) other mandatory professional reporting requirements in Australia and International Financial Reporting Standards, so as to present a view which is consistent with the understanding of KPMG (A Firm) of GPL's financial position and performance;
- (ii) in performing the audits of the annual financial reports of GPL, KPMG (A Firm) relied upon:
- (A) the provision of accurate and complete information and documentation by, or on behalf of, GPL and its directors and officers; and
 - (B) representations and certifications given by, or on behalf of, GPL and its directors and officers;

Particulars

The representations and certifications include the representation letters given by GPL in connection with the audits as follows:

<i>Financial Year</i>	<i>Date of letter</i>	<i>Issued by</i>
2003	17 September 2003	<i>First Cross-Claimant and the Fourth Defendant</i>
2004	15 September 2004	<i>First Cross-Claimant and the Fourth Defendant</i>
2005	23 September 2005	<i>First Cross-Claimant and the Fourth Defendant</i>
2006	19 September 2006	<i>First Cross-Claimant and the Fourth Defendant</i>

2007	27 September 2007	<i>The Fourth Defendant and Mr John Ewing (Administration and Compliance Manager)</i>
2008	30 September 2008	<i>First Cross-Claimant and the Fourth Defendant</i>
2009	30 September 2009	<i>First Cross-Claimant and the Fourth Defendant</i>
2010	30 September 2010	<i>Sixth Cross-Claimant and Mr Robert Wood (Company Secretary)</i>

Further particulars may be provided after discovery and evidence.

- (e) as to sub-paragraph 18.5:
 - (i) repeat their responses in sub-paragraphs 18(d)(i)-(ii) above;
 - (ii) otherwise deny the allegations in sub-paragraph 18.5 in relation to the audits of the annual financial report of GPL for the 2003-2011 financial years;
 - (f) do not admit the allegations in sub-paragraphs 18.6 and 18.7;
 - (g) otherwise deny the allegations in paragraph 18.
19. In answer to paragraph 19, the Cross-Defendants:
- (a) repeat their responses in sub-paragraphs 18(a)-(c) above;
 - (b) deny that the compliance plan audit reports for the Gunns Woodlot Schemes for the 2003 financial year (in respect of the 2002 and 2003 Gunns Woodlot Schemes) and the 2011 financial year (in respect of the 2003 and 2005 Gunns Woodlot Schemes) were unqualified;
 - (c) as to sub-paragraph 19.4:
 - (i) admit that in the compliance plan audit reports for each of the 2002-2003, 2005-2006 and 2008-2009 Gunns Woodlot Schemes for each of the 2003-2011 financial years, KPMG (A Firm) expressed its opinion that GPL had complied with the applicable compliance plans, subject to the qualifications and inherent limitations set out in the relevant compliance plan audit report, including:
 - (A) those listed in paragraphs 72(k) and (l) of the “Responses to Plaintiffs’ Contentions” in the KPMG ACLR;
 - (B) for the 2003 financial year (in respect of the 2002 and 2003 Gunns Woodlot Schemes) and the 2011 financial year (in

respect of the 2003 and 2005 Gunns Woodlot Schemes), the matters set out in the "Qualification" and "Basis for Qualified Auditor's Opinion" sections, respectively;

- (C) the undertaking of procedures was done in order to enable KPMG (A Firm) to express its opinion regarding compliance by GPL with the applicable compliance plan in all material respects and/or to provide reasonable, but not absolute, assurance regarding compliance by GPL with the applicable compliance plan;
 - (ii) repeat paragraph 72(j) of the "Responses to Plaintiffs' Contentions" in the KPMG ACLR;
 - (d) as to sub-paragraph 19.5, admit that in the compliance plan audit reports for each of the 2002-2003, 2005-2006 and 2008-2009 Gunns Woodlot Schemes for each of the 2003-2011 financial years, KPMG (A Firm) expressed its opinion that the relevant compliance plans met the requirements of Part 5C.4 of the Act as at 30 June of the relevant year (subject to the qualifications and limitations set out in the relevant compliance plan audit report, including those identified in sub-paragraph 19(c)(i) above);
 - (e) otherwise deny the allegations in paragraph 19.
20. In answer to paragraph 20, the Cross-Defendants:
- (a) repeat their responses in paragraphs 8(d), 13(a)-(b), 18 and 19 above;
 - (b) say that paragraph 20 is embarrassing because it does not identify the circumstances of which the lead auditor is alleged to have been aware, and is thus liable to be struck out;
 - (c) deny the allegations in paragraph 20 to the extent it is asserted that any contravention under s 601HG of the Act occurred in relation to any financial year between 2003 and 2011 (inclusive);
 - (d) otherwise deny the allegations in paragraph 20.

Alleged Failure to Pay Forestry Right Fees

21. In answer to paragraph 21, the Cross-Defendants:
- (a) repeat the responses in paragraphs 21, 22, 24 and 75 of the “Responses to Plaintiffs’ Contentions” in the KPMG ACLR;
 - (b) do not admit the allegations in sub-paragraph 65.4(a) of the “Plaintiffs’ Contentions” in the ACLS (which in the KPMG ACLR is not pleaded to as that sub-paragraph does not make any allegations against the Tenth and Eleventh Defendants).
22. In answer to paragraph 22, the Cross-Defendants:
- (a) repeat their responses at paragraphs 19 (as though the references to sub-paragraphs 19.4 and 19.5 were to sub-paragraphs 22.1 and 22.2 respectively) and 21 above;
 - (b) otherwise deny the allegations in paragraph 22.
23. In answer to paragraph 23, the Cross-Defendants:
- (a) repeat their responses in paragraphs 8(d), 13(a)-(b) and 19 above;
 - (b) say that paragraph 23 is embarrassing because it does not identify the circumstances of which the lead auditor is alleged to have been aware, and is thus liable to be struck out;
 - (c) deny the allegations in paragraph 23 to the extent it is asserted that any contravention under s 601HG of the Act occurred in relation to any financial year between 2003 and 2011 (inclusive);
 - (d) otherwise deny the allegations in paragraph 23.

Alleged Failure to Maintain Public Liability Insurance

24. In answer to paragraph 24, the Cross-Defendants:
- (a) do not admit the allegations in sub-paragraphs 65.2(b) and 65.4(b) of the “Plaintiffs’ Contentions” in the ACLS (which in the KPMG ACLR are not pleaded to as those sub-paragraphs do not make any allegations against the Tenth and Eleventh Defendants);
 - (b) repeat the response in paragraph 76 of the “Responses to Plaintiffs’ Contentions” in the KPMG ACLR.

25. In answer to paragraph 25, the Cross-Defendants:
- (a) repeat their responses at paragraphs 19 (as though the references to sub-paragraphs 19.4 and 19.5 were to sub-paragraphs 25.1 and 25.2 respectively) and 24(b) above;
 - (b) otherwise deny the allegations in paragraph 25.
26. In answer to paragraph 26, the Cross-Defendants:
- (a) repeat their responses in paragraphs 8(d), 13(a)-(b) and 19 above;
 - (b) say that paragraph 26 is embarrassing because it does not identify the circumstances of which the lead auditor is alleged to have been aware, and is thus liable to be struck out;
 - (c) deny the allegations in paragraph 26 to the extent it is asserted that any contravention under s 601HG of the Act occurred in relation to any financial year between 2003 and 2011 (inclusive);
 - (d) otherwise deny the allegations in paragraph 26.

Alleged Breaches of Duty

27. In answer to paragraph 27, the Cross-Defendants:
- (a) do not admit the allegations in paragraph 79 of the "Plaintiffs' Contentions" in the ACLS (which in the KPMG ACLR is not pleaded to as that paragraph does not make any allegations against the Tenth and Eleventh Defendants);
 - (b) as to paragraph 80 of the "Plaintiffs' Contentions" in the ACLS:
 - (i) do not admit the allegations in sub-paragraphs 80.1-80.9 of the "Plaintiffs' Contentions" (which in the KPMG ACLR are not pleaded to as those sub-paragraphs do not make any allegations against the Tenth and Eleventh Defendants);
 - (ii) deny the allegations in sub-paragraphs 80.10-80.11 of the "Plaintiffs' Contentions".
28. In answer to paragraph 28, the Cross-Defendants do not admit the allegations in paragraphs 82 and 83 of the "Plaintiffs' Contentions" in the ACLS (which in the KPMG ACLR are not pleaded to as those paragraphs do not make any allegations against the Tenth and Eleventh Defendants).

29. In answer to paragraph 29, the Cross-Defendants repeat the response in paragraph 86 of the “Responses to Plaintiffs’ Contentions” in the KPMG ACLR (with references to the Tenth and/or Eleventh Defendants being read as references to all Cross-Defendants).
30. In answer to paragraph 30, the Cross-Defendants:
- (a) repeat their responses at paragraphs 14 to 20 above;
 - (b) otherwise deny the allegations in paragraph 30.

Alleged Causation and Loss

31. In answer to paragraph 31, the Cross-Defendants:
- (a) do not admit the allegations in paragraphs 87-94 of the “Plaintiffs’ Contentions” in the ACLS (which in the KPMG ACLR are not pleaded to as those paragraphs do not make any allegations against the Tenth and Eleventh Defendants);
 - (b) repeat the responses in paragraphs 97-103 of the “Responses to Plaintiffs’ Contentions” in the KPMG ACLR (with references to the Tenth and/or Eleventh Defendants being read as references to all Cross-Defendants).

C5A. KPMG’s Defences

- 31A. In addition to the facts and matters pleaded above, the Cross-Defendants also repeat the defences raised in paragraphs 107-109 of the “Responses to Plaintiffs’ Contentions” in the KPMG ACLR.

C5. Claim for Contribution

Contribution Pursuant to Tasmanian Legislation

32. The Cross-Defendants do not admit the allegations in paragraph 32.
33. In answer to paragraph 33, the Cross-Defendants:
- (a) deny the allegations in paragraph 33;
 - (b) further, if (which is denied) they are liable for the same damage as pleaded in paragraph 33, then they:
 - (i) repeat the facts and matters raised in:
 - (A) paragraphs 104-106 of the KPMG ACLR; and

(B) for the purposes of this Cross-Claim Response only, paragraphs 1, 2(a), 2(b) and 3 of section C of the First Cross-Claim Commercial List Cross-Claim Statement filed by the First and Second Cross-Defendants (as Cross-Claimants) on 20 July 2018,

concerning the responsibility of others for the same loss or damage;

(ii) say that the Cross-Claimants and other parties referred to in the paragraphs pleaded in sub-paragraph (i) above have primary responsibility for any loss and damage of the kind pleaded in paragraph 103 of the ACLS.

34. In response to paragraph 34, the Cross-Defendants:

- (a) deny that the Cross-Claimants are entitled to the relief claimed against the Cross-Defendants;
- (b) otherwise deny the allegations in paragraph 34;
- (c) further, if (which is denied) they are liable to make contribution as pleaded in paragraph 34, then they repeat sub-paragraphs 33(b)(i) and (ii) above.

Contribution Pursuant to New South Wales Legislation

35. In answer to paragraph 35, the Cross-Defendants:

- (a) deny the allegations in paragraph 35;
- (b) further, if (which is denied) they are liable in respect of the same damage as pleaded in paragraph 35, then they repeat sub-paragraphs 33(b)(i) and (ii) above.

36. In response to paragraph 36, the Cross-Defendants:

- (a) deny that the Cross-Claimants are entitled to the relief claimed against the Cross-Defendants;
- (b) otherwise deny the allegations in paragraph 36;
- (c) further, if (which is denied) they are liable to make contribution as pleaded in paragraph 36, then they repeat sub-paragraphs 33(b)(i) and (ii) above.

Contribution Pursuant to Other Legislation

37. In response to paragraph 37, the Cross-Defendants:
- (a) deny that the Cross-Claimants are entitled to the relief claimed against the Cross-Defendants;
 - (b) otherwise deny the allegations in paragraph 37;
 - (c) further, if (which is denied) they are liable to make contribution as pleaded in paragraph 37, then they repeat sub-paragraphs 33(b)(i) and (ii) above.

Contribution in Equity

38. In response to paragraph 38, the Cross-Defendants:
- (a) deny that the Cross-Claimants are entitled to the relief claimed against the Cross-Defendants;
 - (b) further, if (which is denied) they are liable to make contribution in equity as pleaded in paragraph 38, then they:
 - (i) repeat the facts and matters raised in:
 - (A) paragraphs 104-106 of the KPMG ACLR; and
 - (B) for the purposes of this Cross-Claim Response only, paragraphs 1, 2(c) and 3 of section C of the First Cross-Claim Commercial List Cross-Claim Statement filed by the First and Second Cross-Defendants (as Cross-Claimants) on 20 July 2018, concerning the responsibility of others for the same loss or damage;
 - (ii) say that the Cross-Claimants and other parties referred to in the paragraphs pleaded in sub-paragraph (i) above have primary responsibility for any loss and damage of the kind pleaded in paragraph 103 of the ACLS.

Denial of Relief

39. The Cross-Defendants deny that the Cross-Claimants are entitled to the relief claimed against the Cross-Defendants in the amended Third Cross-Claim Cross-Summons filed on 5 September 2018.

D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFERREE

None.

E MEDIATION STATEMENT

A mediation has not yet taken place in the proceedings. The Cross-Defendants are willing to proceed to mediation at an appropriate time. They consider that the Third Cross-Claim should be mediated at the same time as the principal claim.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature



Capacity

Solicitor for the Cross-Defendants

Date of signature

21 September 2018