

# OUTCOME DETAILS

**Supreme Court - Civil  
at Supreme Court Sydney  
on 21 August 2020**

**2018/00371447-001 / Summons: Richmond Valley Council v JLT Risk Solutions Pty Ltd  
VERDICT ORDER OR DIRECTION**

Make the orders in the document entitled Short Minutes of Order dated today's date and placed with the papers.

## SHORT MINUTES OF ORDER

1. Pursuant to rule 42.21(1) of the Uniform Civil Procedure Rules 2005 (NSW), the Plaintiff provide security for the Defendant's costs of the entirety of the proceedings in the amount of \$4,000,000 as follows:
  - (i) the amount of \$1.5 million in the form of the Deed of Indemnity located at Annexure A to be provided within 2 weeks of these orders being entered;
  - (ii) the amount of \$1 million in the form of the Deed of Indemnity located at Annexure B to be provided within 2 weeks of the finalisation of lay and expert evidence in the proceeding;
  - (iii) the amount of \$1.5 million in the form of the Deed of Indemnity located at Annexure C to be provided on the first day of the initial trial.
2. The Plaintiff provide security in the amount of \$30,000 for the Defendant's costs of enforcing, in an overseas jurisdiction, any and all Deeds of Indemnity that are entered into in respect of security for the defendant's costs in this proceeding.
3. The security referred to in order 2 be provided by payment of money into the Sydney Registry of the Supreme Court of New South Wales within 15 business days of the date of this order.
4. Orders 1 is made without prejudice to the Defendant's right to seek an order from the Court for further security for its costs.
5. Liberty to restore on 3 days' notice.

Justice D Hammerschlag

Signed

Date



**“Certified Costs Determination Certificate”** means either,

- (A) a certified copy of the relevant certificate as to determination of costs to parties under the LPULA Act, which has not been appealed or been the subject of an application for review of the determination within 30 days from the date of the certificate, or any extended review period, together with a notice from the **Respondent’s Solicitors** that, as at the date of their notice, no application for review of assessment has been made under section 83 of the LPULA Act within the 30 day period or any extended period; or
- (B) if a review of an assessment has been made under section 83 of the LPULA Act, a certified copy of the certificate given by the review panel following that review,

**“Claim”** means the **Claimant’s** legal claim against the **Respondent** in the Supreme Court of New South Wales with action number 2018/371447. For the avoidance of doubt, the **Claim** relates to the initial hearing of the Claimant’s claim, and does not extend to any appeal or any subsequent group member claim.

**“Claim Event”** means a sum due from the **Claimant** to the **Respondent** in relation to the costs of the **Claim**, pursuant to either:

- i. an order of the court (other than a consent order) including a summary assessment of costs, or
- ii. an order of the court following a detailed assessment or a **Certified Costs Determination Certificate**; or
- iii. an **Approved Agreement**.

**“Claimant”** means Richmond Valley Council (ABN 54 145 907 009).

**“Deed”** means this deed.

**“Designated Entity”** means any person or entity being the subject of any sanction, prohibition or restriction under any United Nations Resolution or of any trade and economic sanction, law or regulation of the European Union, United Kingdom, United States of America or Australia.

**“Respondent’s Solicitors”** means Herbet Smith Freehills of ANZ Tower, 161 Castlereagh Street, Sydney, NSW 2000, Australia.

**“Indemnity Demand”** means a written demand in accordance with 13. below from the **Respondent to AmTrust** which,

- 1) is expressed to be made under this **Deed** referencing the **Deed** number
- 2) is for a sum being the balance, subject to the **Maximum Limit**, of any sum due from the **Claimant** to the **Respondent** following a **Claim Event**
- 3) where that sum or any part of it has not been paid by the **Claimant** or any other person,
- 4) which is accompanied by a certified copy of the relevant court order and / or **Certified Costs Determination Certificate** and / or **AmTrust Approval and Approved Agreement**, and which
- 5) specifies any sums that have been paid to the **Respondent** to the date of the demand in relation to costs of the action under this **Deed** or otherwise.

**“LPULA Act”** means the Legal Profession Uniform Law Application Act 2014 (NSW).

**"Maximum Limit"** means [insert amount per court orders] [insert amount per court orders] in the aggregate or such lesser sum as is provided for herein in respect of all demands made by the **Respondent** under this **Deed**.

**"Notice"** means a notice in writing, including an **Indemnity Demand** given pursuant to this **Deed**.

## **Indemnity**

2. Subject to this provision and to 3., 4., 5., 6., 12., 13. and 15. below, **AmTrust** hereby unconditionally and irrevocably undertakes to pay to the **Respondent** any sum or sums which the **Claimant** is legally liable to pay to the **Respondent** in respect of the **Respondent's** costs in the **Claim** which relate to the cost incurred up to and including the costs of the first instance determination only of the **Claim**.
3. It is a condition precedent to **AmTrust's** liability under this **Deed** that the **Respondent** must first have made a valid **Indemnity Demand**.
4. Following a **Claim Event**, **AmTrust** may, at its sole option, make payment to the **Respondent** for any sum or sums which the **Claimant** is legally liable to pay to the **Respondent** in respect of the **Respondent's** costs in the **Claim** without the requirement for an **Indemnity Demand**.
5. **AmTrust's** total liability hereunder shall not exceed the **Maximum Limit** plus any sum which may be due (if any) solely in respect of simple interest at the judgment rate from the date 7 **Business Days** following receipt by **AmTrust** of the **Indemnity Demand** until payment by **AmTrust**.
6. The **Respondent** may make more than one demand under this **Deed** provided that the **Maximum Limit** will be reduced by the amount of any sum paid under this **Deed**. The **Maximum Limit** will also be reduced by an amount corresponding to any amount otherwise paid to the **Respondent** in respect of the **Respondent's** costs in the **Claim**.
7. The following shall be conclusive evidence of the liability of the **Claimant** to pay the **Respondent's** costs and binding upon **AmTrust** without further enquiry by **AmTrust**:
  - a) a sealed copy of the relevant court order, or
  - b) a certified copy of the relevant **Certified Costs Determination Certificate**; or
  - c) a copy of the **AmTrust Approval** together with a copy of the **Approved Agreement**
8. The payment or payment(s) will be made by **AmTrust** within seven (7) **Business Days** of receipt by **AmTrust** of a valid **Indemnity Demand**, to the **Respondent** or the **Respondent's Solicitors**. **AmTrust** shall be entitled to rely on an **Indemnity Demand** from the **Respondent** or the **Respondent's Solicitors** as being conclusive evidence of the **Respondent's** entitlement to be paid the sum set out in in the **Indemnity Demand**.
9. Payment to the **Respondent** or the **Respondent's Solicitors** in accordance with 8. above shall be a valid discharge of **AmTrust's** obligations to make payment in accordance with 2. **AmTrust** shall not be concerned with how the **Respondent** or the **Respondent's Solicitors** distribute the monies paid.

10. **AmTrust** shall be deemed to be a principal debtor and not merely a surety and, accordingly, **AmTrust** shall not be discharged nor shall its liability be affected by any act or thing or means whatsoever (including, without limitation, any defences to payment asserted by, insolvency of, or unenforceability as against the **Claimant**) other than an actual payment made by or on behalf of the **Claimant** in respect of any sum included in an **Indemnity Demand**.
11. For the avoidance of doubt and without prejudice to the foregoing, **AmTrust's** liability under this **Deed** shall not be subject to avoidance on the grounds of fraud or misrepresentation by the **Claimant**, nor shall it be affected by any lack of substance in the **Claim** which has been brought by the **Claimant**.

### Repayment

12. If **AmTrust** pays any sums to the **Respondent** under this **Deed** and:
  - a) either
    - i. the court subsequently sets aside, amends or cancels the costs order in respect of which **AmTrust** has paid the **Respondent**; or
    - ii. a review for assessment of the relevant certificate as to determination of costs is made under section 83 of the **LPULA Act**, and a certificate is given by the review panel following that review;
  - and
  - b) as a result, the **Respondent** has been paid sums to which it is no longer entitled,

then the **Respondent** shall, within seven (7) **Business Days** of receiving notice of either of the matters set out at sub-paragraph a) i or ii, or each of them repay to **AmTrust** any amount that it has received from **AmTrust** to which it is no longer entitled.

### Notices

13. **Notices** under this **Deed** shall be served at the addresses set out below (or to such address as is notified in writing by one **Party** to the others from time to time) by hand or by pre-paid first class recorded delivery post.

Addresses for service

#### **AmTrust**

Claims Manager  
Care of Case Manager  
AmTrust Law  
AmTrust Europe Ltd  
Exchequer Court  
33 St Mary Axe  
London  
EC3A 8AA

#### **The Respondent**

JLT Risk Solutions Pty Ltd  
c/o Jason Betts, Herbert Smith Freehills  
Level 33, 161 Castlereagh Street  
Sydney NSW 2000, Australia

14. Notices shall be deemed served:
- 14.1 if delivered by hand, at the time of delivery to the **Party**; or
  - 14.2 if sent by pre-paid recorded delivery post, at the expiration of 6 Business Days from despatch.
  - 14.3 A **Notice** to **AmTrust** should be copied to the following email address for notification only, but for the avoidance of doubt, an email copy will not constitute service of a **Notice**.  
[case.management@amtrustgroup.com](mailto:case.management@amtrustgroup.com),
- 15 **AmTrust** will not be deemed to provide any undertaking to pay the **Respondent** and will not be liable to make any payment to the **Respondent** under this **Deed** (or at all) in the event the **Respondent** is or at any time in the future becomes a **Designated Entity**.

#### **Deed to be Executed by the Respondent**

16. The **Respondent** shall have no rights under this **Deed** and **AmTrust** shall have no liability or obligations to the **Respondent** under this **Deed** unless and until the **Respondent** has executed and delivered to **AmTrust** a duplicate or counterpart of this **Deed**.

#### **Enforcement and registration**

17. If **AmTrust** fails to pay any amount in accordance with clause 2 of this **Deed**, **AmTrust** hereby unconditionally and irrevocably undertakes to:
- (a) consent to judgment being entered against it in favour of the **Respondent** in an Australian Court of competent jurisdiction for such amount subject to the total liability not exceeding the **Maximum Limit** ("the **Australian judgment**");
  - (b) consent to the **Australian judgment** being registered in the High Court of Justice of England and Wales under Foreign Judgments (Reciprocal Enforcement) Act 1933 (UK), s.2;
  - (c) not seek to set aside the registration of the **Australian judgment** in the High Court;
  - (d) not seek security for costs against the **Respondent** for proceedings for the registration or enforcement of the **Australian judgment** in the United Kingdom.

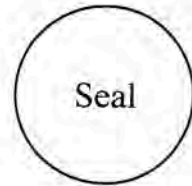
#### **General**

18. This **Deed** shall be in addition to and not in substitution for (and shall not be prejudiced by) any rights which the **Respondent** may have against the **Claimant** or any other person in respect of the sums indemnified under this **Deed**.
19. Neither **AmTrust** nor the **Respondent** may assign or transfer any of their rights or obligations under this **Deed**.

20. Save where the **Respondent** is or becomes a **Designated Entity** (in which case this clause will not apply), every provision contained in this **Deed** is severable and distinct from every other provision, and if at any time any one or more of such provisions is, or becomes, invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining such provisions will not be affected in any way.
21. No delay or omission of any party in exercising any right under this **Deed** will impair that right, or be construed as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right, or the exercise of any other rights. The rights and remedies provided in this **Deed** are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other agreement or document.
22. No provision of this **Deed** may be amended, waived, discharged or terminated, and no breach of the provisions of this **Deed** may be waived or discharged except (in each case) by an instrument in writing signed by or on behalf of the party against which enforcement of the amendment, waiver, discharge or termination is sought.
23. This **Deed** may be executed in any number of counterparts and by the parties on separate counterparts. This **Deed** shall not be effective until each party has executed at least one counterpart and each counterpart, when executed, shall be an original of this **Deed** when the fully executed and dated version is delivered by **AmTrust**. All counterparts shall together constitute one and the same instrument. Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement.
24. Except to the extent of any fraudulent conduct by the **Respondent**, this **Deed** shall constitute the entire agreement of the parties with respect to such subject matter. The terms of this **Deed** supersede any conflicting terms found in any letter of intent, or other oral or written communication. The parties warrant that they have not entered into this **Deed** in reliance wholly or partly on any statement or representations made to them by or on behalf of the other party, except as contained or referred to herein.
25. A person who is not a party to this **Deed** has no right to enforce any term of this **Deed**.
26. This **Deed** shall be governed by and construed in accordance with New South Wales Law and shall be subject to the exclusive jurisdiction of the courts of New South Wales.

**IN WITNESS WHEREOF** this **Deed** has been executed as a **Deed** on the date set out above.

Signed and delivered by **AMTRUST EUROPE LIMITED**  
acting by an authorised signatory



Signature .....

Name .....

Position **Director**

in the presence of

Signature of witness .....

Name .....

Address .....

Occupation .....

*AmTrust Europe Limited does not have a company seal and is not required to have one pursuant to section 45 of the Companies Act 2006 (UK).*

Signed by **JLT RISK SOLUTIONS PTY LTD**

Signature .....

Name .....

Position **Director**

in the presence of

Signature of witness .....

Name .....

Address .....

Occupation .....



