

# **THIRD SECOND FURTHER AMENDED COMMERCIAL LIST STATEMENT**

## **COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2018//371447

## **TITLE OF PROCEEDINGS**

Plaintiff	<b>Richmond Valley Council</b>
Defendant	<b><u>JLT Risk Solutions Jardine Lloyd Thompson Pty Ltd</u> ABN 69 009 098 864</b>

## **FILING DETAILS**

Filed for	<b>Richmond Valley Council, Plaintiff</b>
Legal representative	Michelle Fox Quinn Emanuel Urquhart & Sullivan
Legal representative reference	06975-00004
Contact name and telephone	Michelle Fox, 02 9146 3500
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## **TYPE OF CLAIM**

Commercially misleading conduct

Insurance

## **A. NATURE OF DISPUTE**

- 1 This is a representative proceeding brought by the Plaintiff on behalf of itself and Group Members (as defined in Part C below), each of whom are local councils constituted in the State of New South Wales to whom the Defendant provided insurance broking services during the Relevant Period (as defined in Part C below).
- 2 The Plaintiff alleges that:
  - (a) the Defendant advised or recommended that the Plaintiff and Group Members obtain Property and/or Public Liability and Professional Indemnity insurance through a scheme known as "Statewide Mutual" (as defined in Part C below);

- (b) it and the Group Members did obtain such insurance as a result of the Defendant's advice or recommendations;
  - (c) the amounts payable by it and Group Members to obtain such insurance through Statewide Mutual exceeded the rates that were reasonably available from alternative underwriters or providers in the market;
  - (d) the Defendant (amongst other things) failed to make any, or (if any) reasonable, efforts to obtain on behalf of the Plaintiff and each of the Group Members suitable Property and/or Public Liability and Professional Indemnity insurance at the best premium rates that were reasonably available to each of them in the market; and
  - (e) the Defendant therefore breached the general law and contractual duties which it owed to the Plaintiff and each Group Member to exercise reasonable care and skill in the performance of its broking services and in the provision of recommendations and advice.
- 3 Further, the Plaintiff alleges that the Defendant breached fiduciary duties owed to the Plaintiff and each Group Member in making recommendations or in placing or renewing insurance through Statewide Mutual in circumstances where there was a conflict between:
- (a) the Defendant's financial interest in earning fees and commissions for services it provided to Statewide Mutual; and
  - (b) the interests of the Plaintiff and Group Members in obtaining insurance at the best premium rates that were reasonably available to each of them in the market.
- 4 The Plaintiff says that it and Group Members suffered loss or damage as a result of the breaches of duty described above, and/or that the Defendant is liable to account for profits made from the breaches of fiduciary duty.

## **B. ISSUES LIKELY TO ARISE**

The questions of law or fact common to the claims of the Group Members are as follows (in respect of the Relevant Period, as defined in paragraph 2(a) below):

1. During the Relevant Period, did JLT hold itself out in the Renewal Reports that it issued to Richmond and group members as:
  - (a) being one of the largest insurance brokers in Australia and the world;
  - (b) possessed of the expertise to deliver the most comprehensive

- range of insurance and risk solution products and services available to local government authorities across Australia; and/or
- (c) capable of ensuring that local councils receive a well-designed insurance programme at a competitive premium cost?
2. Did JLT hold itself out in the Renewal Reports and Financial Services Guides that it issued to Richmond and each group member as being a subscriber to the Code of Practice of the National Insurance Brokers Association at all material times during the Relevant Period?
3. During the Relevant Period, did JLT's conduct by:
- (a) issuing insurance declarations, renewal reports, summaries of insurances, financial services guides and invoices for Property and/or Public Liability and Professional Indemnity insurance to Richmond and each group member; and
- (b) accepting authorisation forms and payment of those invoices from Richmond and each Group Member;
- give rise in each case to a contract between JLT on the one hand, and the relevant local council on the other, an implied term of which was that JLT would exercise reasonable care and skill in:
- (c) designing and providing advice with respect to its annual insurance programme and placing or arranging its property and/or public liability and professional indemnity insurance through Statewide; and
- (d) advising or recommending that it obtain or renew their property and/or public liability and professional indemnity insurance through Statewide?
4. During the Relevant Period, did JLT by reason of the course of conduct in doing one or more or all of:
- (a) issuing insurance declarations, renewal reports, summaries of insurances, financial services guides and invoices for Property and/or Public Liability and Professional Indemnity insurance to Richmond and each group member;
- (b) accepting authorisation forms and payment of those invoices from Richmond and each group member;
- (c) providing such assistance as it did, to Richmond and each group member to obtain protection for their property and/or public liability and professional indemnity exposure,
- owe Richmond and each group member a fiduciary duty:
- (d) to refrain from pursuing or advancing its own interests in circumstances where there existed a conflict, or significant possibility of conflict, between its own interests and those of Richmond or each group member;
- (e) to refrain from using its position or knowledge resulting from its position as an insurance broker so as to obtain a benefit for itself or a third

party or to cause detriment to Richmond or a group member (as the case may be)?

5. Did a conflict exist between JLT's own financial interests in earning and continuing to earn fees and commissions, for or in connection with, services it provided to Statewide Mutual and the interests of Richmond and each group member in obtaining suitable property cover and/or liability and professional indemnity cover at the best premium rates that were reasonably available to each of them in the market?
6. In doing one or more or all of:
  - (a) issuing insurance declarations, renewal reports, summaries of insurances, financial services guides and invoices for property and/or public liability and professional indemnity cover to Richmond and each group member;
  - (b) accepting authorisation forms and payment of those invoices from Richmond and each group member;
  - (c) providing such assistance as it did, to Richmond and each group member to obtain protection for their property and/or public liability and professional indemnity exposure,

did JLT breach any fiduciary duties by:

- (d) pursuing or advancing its own interests in earning or continuing to earn fees or commissions; or
  - (e) using its position or knowledge resulting from its position for its own financial benefit and to the detriment of Richmond and each group member?
- 1 ~~whether the Defendant owed the Plaintiff and each Group Member the general law duty pleaded in paragraph 13 below;~~
  - 2 ~~whether the broking services contracts pursuant to which the Defendant provided services to the Plaintiff and each Group Member contained the implied term pleaded in paragraph 15 below;~~
  - 3 ~~whether the amounts that the Plaintiff and each Group Member paid in order to obtain or renew insurance through Statewide Mutual exceeded the premium rates that were reasonably available from alternate underwriters or providers in the market;~~
  - 4 ~~whether the breaches of the general law duty and implied term pleaded at paragraph 17 below occurred;~~
  - 5 ~~whether the Defendant owed the Plaintiff and each Group Member the fiduciary duties pleaded in paragraph 19 below;~~

- 6 ~~what fees and commissions were received by the Defendant in consideration for, and in connection with, the performance of services for Statewide Mutual;~~
- 7 ~~whether the breaches of fiduciary duty alleged at paragraph 24 below occurred;~~
- 8 ~~quantification of damages and/or equitable compensation;~~
- 9 ~~further or alternatively, is an account of profits available and, if so, what is the appropriate measure for that remedy.~~

## C. PLAINTIFF'S CONTENTIONS

### Parties and Group Members

- 1 The Plaintiff (**Richmond Valley**) is and has at all material times been:
- (a) a council constituted by the *Local Government Act* 1993 (NSW) (**LGA**);
  - (b) a body politic of the State with perpetual succession and the legal capacity and powers of an individual; and
  - (c) able to commence proceedings on its own behalf against the Defendant for the purposes of section 158(1) of the *Civil Procedure Act* 2005 (NSW) (**CPA**).

#### Particulars

- (i) LGA, ss 218A, 219, 220.
  - (ii) Minute for the Executive Council: Local Government Act 1993 Amalgamation of Areas of Casino and Richmond River, signed and sealed by the NSW Minister for Local Government on 9 February 2000.
- 2 Richmond Valley brings this proceeding as a representative proceeding pursuant to ss 157 and 158 of the *CPA*, on its own behalf and on behalf of each council constituted by the LGA:
- (a) to which the Defendant (**JLT**) provided insurance broking services at any time during the period from 1 January 2009 to 3 December 2018 (**Relevant Period**);
  - (b) which, at any time during the Relevant Period, obtained Property and/or Public Liability and Professional Indemnity insurance through the "NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme" (**Statewide Mutual**); and
  - (c) which has, as at the date of filing the Third ~~Second~~ Further Amended Commercial List Statement, consented in writing to being a group member in this proceeding,

(collectively, **Group Members**).

3 Statewide Mutual was established pursuant to a “Deed Establishing the NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme” made by JLT and certain Members, dated 22 March 1994 (as amended from time to time) (**Establishment Deed**).

4 As at the date of the commencement of this proceeding, seven or more NSW Local Councils have claims against JLT arising out of the circumstances pleaded herein.

5 JLT is and was at all material times a company, duly incorporated and able to be sued in its corporate name and style.

#### **JLT as insurance broker**

6 At all material times during the Relevant Period, JLT carried on business as an insurance broker.

7 At all material times during the Relevant Period, JLT was and held itself out to:

(a) Richmond Valley; and

(b) each of the Group Members,

as:

(c) one of the largest insurance brokers in Australia and the world;

(d) possessed of the expertise to deliver the most comprehensive range of insurance and risk solution products and services available to local government authorities across Australia; and

(e) capable of ensuring that councils receive a well designed insurance programme at a competitive premium cost.

#### **Particulars**

(i) See, for example, in relation to Richmond Valley:

(A) Renewal Report – Richmond Valley Council, 26 June 2009, prepared by JLT, pp. 1-2.

(B) Renewal Report – Richmond Valley Council, 22 June 2010, prepared by JLT, pp. (i), 1-2.

(C) Renewal Report – Richmond Valley Council, 29 June 2011, prepared by JLT, pp. (i), 2.

(D) Renewal Report – Richmond Valley Council, 27 June 2012, prepared by JLT, pp. 1, 3-4.

(E) Renewal Report – Richmond Valley Council, 25 June 2013, prepared by JLT, pp. 1, 3-6.

- (F) Renewal Report – Richmond Valley Council, 27 June 2014, prepared by JLT, pp. 1, 3, 6.
- (G) Renewal Report - Richmond Valley Council, 26 June 2015, prepared by JLT, pp. 1, 3-4, 7.
- (H) Renewal Report - Richmond Valley Council, 24 June 2016, prepared by JLT, pp. 1, 3, 5, 9.
- (ii) See also the Renewal Reports issued by JLT to other group members in the Relevant Period.
- (iii) The practice of issuing annual Renewal Reports to group members described at paragraph 211(c) of the Affidavit of Leo Demer dated 18 June 2020.
- ~~(iv) Further particulars to be provided prior to trial.~~

8 At all material times during the Relevant Period, JLT subscribed to and held itself out to:

- (a) Richmond Valley; and
- (b) each of the Group Members,

as being a subscriber to the Code of Practice of the National Insurance Brokers Association (**NIBA Code**) (previously called the General Insurance Broker's Code of Practice).

#### Particulars

- (i) The NIBA Code is and was in writing, being the NIBA Insurance Brokers Code of Practice, 2007 (**2007 NIBA Code**) and the NIBA Insurance Brokers Code of Practice, 1 January 2014 (**2014 NIBA Code**).
- (ii) The terms of the 2007 and 2014 NIBA Code will be relied upon at trial as if they were fully set forth herein.
- (iii) JLT – Our Commitment to You And Financial Services Guide, March 2014, p. 7.
- (iv) JLT – Our Commitment to You And Financial Services Guide, December 2015, p. 7.
- (v) JLT – Our Commitment to You And Financial Services Guide, December 2017, p. 11.
- (vi) See further, in relation to Richmond Valley, for example:
  - (A) Renewal Report – Richmond Valley Council, 26 June 2009, prepared by JLT, p. 31.
  - (B) Renewal Report – Richmond Valley Council, 22 June 2010, prepared by JLT, p. 33.
  - (C) Renewal Report – Richmond Valley Council, 29 June 2011, prepared by JLT, p. 37.

- (D) Renewal Report – Richmond Valley Council, 27 June 2012, prepared by JLT, p. 42.
  - (E) Renewal Report – Richmond Valley Council, 25 June 2013, prepared by JLT, p. 48.
  - (F) Renewal Report – Richmond Valley Council, 27 June 2014, prepared by JLT, p. 68.
  - (G) Renewal Report - Richmond Valley Council, 26 June 2015, prepared by JLT, p. 53.
  - (H) Renewal Report - Richmond Valley Council, 24 June 2016, prepared by JLT, p. 69.
- (vii) See also the Renewal Reports and Financial Services Guides issued by JLT to other group members annually in the Relevant Period.
  - (viii) The practice of issuing annual Renewal Reports and Financial Services Guides to group members described at paragraph 211(c) and 212 of the Affidavit of Leo Demer dated 18 June 2020. Further particulars to be provided prior to trial.

9 During the Relevant Period, JLT provided insurance broking services to:

- (a) Richmond Valley; and
- (b) each Group Member,

including by designing and providing advice with respect to its annual insurance programme and placing or arranging its Property and/or Public Liability and Professional Indemnity insurance with Statewide Mutual (**Broking Services**).

#### Particulars

- (i) JLT provided the Broking Services to the plaintiff and Group Members by carrying out the practice described at paragraph 211 of the Affidavit of Leo Demer dated 18 June 2020, including by providing the plaintiff and Group Members with documents described in subparagraphs (b), (c) and (e) of that paragraph and receiving the document described in subparagraph (d).
- (ii) Specifically, JLT provided Broking Services to Richmond Valley in respect of its Property and Public Liability and Professional Indemnity insurance for each of the insurance years ending in June 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017.
- (iii) The insurance broking services provided by JLT to Richmond Valley are described in and evidenced by:
  - (A) Richmond Valley Council Insurance Declarations prepared by JLT and provided to Richmond Valley in 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.
  - (B) Richmond Valley Council Renewal Reports prepared by JLT and provided to Richmond Valley in about June



2009, June 2010, June 2011, June 2012, June 2013, June 2014, June 2015 and June 2016.

- (C) The Renewal Reports of 2015 and 2016 confirm, inter alia, “that Richmond Valley Council (Council) [had] been receiving proactive insurance brokerage services from Jardine Lloyd Thompson Pty Ltd (JLT) for close to 20 years” and “was Richmond Valley Council’s current insurance broking partner”.
- (D) Richmond Valley Council Summary of Insurances prepared by JLT and provided to Richmond Valley in about July 2009, July 2010, July 2011, July 2012, July 2013, July 2014 and July 2015.
- (E) Invoices issued to Richmond Valley Council for insurances placed with Statewide Mutual (including Property and Public Liability and Professional Indemnity insurance) and for insurances placed outside Statewide Mutual (in which case the payments were to be made to an account in the name of JLT) provided to Richmond Valley in about June or July 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.
- (F) JLT Financial Services Guides prepared by JLT and provided to Richmond Valley March 2014 and December 2015.
- (G) Letter from Leo Demer, CEO Australia & New Zealand of JLT to Richmond Valley dated 19 June 2017 with subject line: “Re: 2017-2018 Insurance Renewal” confirming JLT’s role “[a]s Richmond Valley Council’s current insurance broker...”.

~~(iv) Further particulars to be provided prior to trial.~~

10 In the course of providing the Broking Services during the Relevant Period, JLT advised or recommended that:

- (a) Richmond Valley; and
- (b) each Group Member,

obtain or renew its Property and/or Public Liability and Professional Indemnity insurance through Statewide Mutual (**Recommendations**).

#### **Particulars**

- (i) ~~In the case of Richmond Valley,~~ JLT made the Recommendations to the plaintiff and Group Members by:
  - (A) preparing and providing to the plaintiff and Group Members the documents described at subparagraphs 211(b) and 211(c) of the Affidavit of Leo Demer dated 18 June 2020

a. ~~in the case of the plaintiff, the relevant documents included by preparing and providing to Richmond Valley:~~

1. Richmond Valley Council Insurance Declarations prepared by JLT and provided to Richmond Valley in 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016;
2. Richmond Valley Council Renewal Reports prepared by JLT and provided to Richmond Valley in about June 2009, June 2010, June 2011, June 2012, June 2013, June 2014, June 2015 and June 2016;

b. ~~renewal terms for recommended providers of insurance, including Property and Public Liability and Professional Indemnity insurance in documents other than the Insurance Declarations and Renewal Reports including in the Letter from Leo Demer, CEO Australia & New Zealand of JLT to Richmond Valley dated 19 June 2017 with subject line: "Re: 2017-2018 Insurance Renewal";~~

~~(B) orally, in meetings that occurred at least annually with representatives of Richmond Valley; and~~

~~(B) by omitting to offer, recommend or identify any alternative Property and/or Public Liability and Professional Indemnity insurance policy, arrangement or underwriter besides Statewide Mutual.~~

~~(ii) Further particulars to be provided prior to trial.~~

11 During the Relevant Period and as a result of the Recommendations:

- (a) Richmond Valley; and
- (b) each of the Group Members,

instructed or authorised JLT to place or arrange its Property and/or Public Liability and Professional Indemnity insurance with Statewide Mutual.

### Particulars

(i) In the case of Richmond Valley, these instructions or authorisations were provided by Richmond Valley:

(A) signing and returning an authorisation form for the relevant year; and/or

(B) Richmond Valley acceding to JLT placing Property and/or Public Liability and Professional Indemnity insurance on its behalf and paying invoices sent to Richmond Valley by JLT for those lines of insurance.

~~(ii) In the case of Group Members, these instructions or authorisations were provided by the Group Members to JLT pursuant to the process described at paragraph 211(d) of the~~

affidavit of Leo Demer dated 18 June 2020. Further particulars to be provided prior to trial.

### **JLT's breach of duty and/or contract**

- 12 At all material times during the Relevant Period:
- (a) JLT had knowledge of the market for Property and/or Public Liability and Professional Indemnity insurance which Richmond Valley and the Group Members lacked, including knowledge as to the terms and premium rates that were reasonably available from underwriters or insurance providers in that market; and
  - (b) JLT knew and intended that:
    - (i) Richmond Valley; and
    - (ii) each of the Group Members,
 would or were likely to act upon the Recommendations by authorising JLT to place or arrange their Property and/or Public Liability and Professional Indemnity insurance with Statewide Mutual.
- 13 In the premises, JLT owed:
- (a) Richmond Valley; and
  - (b) each Group Member,
- a duty under the general law to exercise reasonable care and skill in providing the Broking Services and making the Recommendations.
- 14 Further or in the alternative to paragraph 13 above, JLT provided the Broking Services and made the Recommendations to:
- (a) Richmond Valley; and
  - (b) each Group Member,
- pursuant to separate contracts for services (**Broking Services Contracts**).

### **Particulars**

- (i) The Broking Services Contracts were made by JLT's conduct in offering to obtain or renew contracts of insurance on behalf of Richmond Valley and each Group Member and the acceptance of those offers by Richmond Valley and each Group Member authorising or instructing JLT to do so. The practice giving rise

to the Broking Services Contract is described at paragraph 211 of the Affidavit of Leo Demer dated 18 June 2020.

- (ii) In the case of Richmond Valley:
  - (A) the offers to obtain or renew contracts of insurance were made by way of the:
    - a. Richmond Valley Council Insurance Declarations prepared by JLT and provided to Richmond Valley in 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016; and
    - b. Richmond Valley Council Renewal Reports prepared by JLT and provided to Richmond Valley in about June 2009, June 2010, June 2011, June 2012, June 2013, June 2014, June 2015 and June 2016.
  - (B) in relation to Richmond Valley's acceptance of those offers, particular (i) to paragraph 11 is repeated.

~~Further particulars to be provided prior to trial.~~

15 It was an implied term of the Broking Services Contracts that JLT would exercise reasonable care and skill in providing the Broking Services and making the Recommendations.

16 At all material times during the Relevant Period, the amounts that:

- (a) Richmond Valley; and
- (b) each Group Member,

was required to pay in order to obtain or renew its Property and/or Public Liability and Professional Indemnity insurance through Statewide Mutual either:

- (c) exceeded the premium rates that were reasonably available from alternate underwriters or providers in the market; or

#### **Particulars**

- (i) For example, in relation to Richmond Valley's Property insurance:
  - (A) the contribution paid by Richmond Valley for Property insurance (inclusive of all applicable government charges) procured through Statewide Mutual for:
    - a. the 2010 year was \$348,701.63 (less a "Claims Experience Discount" of \$9,064.41), being a total contribution of \$339,637.22;
    - b. the 2011 year was \$370,183.25 (less a "Statewide Property Mutual Rebate" of \$38,274.28), being a total contribution of \$331,908.97;

- c. the 2012 year was \$394,261.79 (less a "Property Claims Experience Discount" of \$28,750.40), being a total contribution of \$365,511.39;
  - d. the 2013 year was \$373,611.24 (less a "Claims Experience Discount" of \$11,981.71), being a total contribution of \$361,629.53;
  - e. the 2014 year was \$347,940.02;
  - f. the 2015 year was \$353,144.00;
  - g. the 2016 year was \$292,287.29 (less a "Return Contribution" of \$39,828.16, being a six month pro rata reduction in Richmond Valley's 2016 contribution to reflect that Richmond Valley's rate was high by comparison to the general market), being a total contribution of \$252,459.13; and
  - h. the 2017 year was \$216,507.39,
- (B) the premium paid for Property insurance (inclusive of all applicable government charges) procured through AON for:
- a. the 2018 year was \$143,990.15; and
  - b. the 2019 year was \$164,882.42,
- from which it can be inferred that AON would also have obtained lower premiums for Richmond Valley's Property insurance in the prior years of the Relevant Period.
- (C) the premium (inclusive of fire services levy and all fees, taxes and charges) that Richmond Valley would have paid for Property insurance with terms of coverage comparable to the Property insurance that Richmond Valley held with Statewide Mutual, if procured through Civic Risk Mutual for:
- a. the 2010 year was approximately \$135,000;
  - b. the 2011 year was approximately \$130,000;
  - c. the 2012 year was approximately \$159,000;
  - d. the 2013 year was approximately \$179,000;
  - e. the 2014 year was approximately \$148,000;
  - f. the 2015 year was approximately \$149,000;
  - g. the 2016 year was approximately \$129,000;
  - h. the 2017 year was approximately \$126,000,
- being a total of \$1,155,000, which is approximately \$1,413,737.65 less in total premiums payable to Civic Risk Mutual for Property insurance for the years ending 30 June 2010 – 30 June 2017 than the contributions that Richmond Valley paid to Statewide Mutual.
- (ii) For example, in relation to Richmond Valley's Public Liability and Professional Indemnity insurance:

- (A) the contribution paid by Richmond Valley for Public Liability and Professional Indemnity insurance (inclusive of all applicable government charges) procured through Statewide Mutual for:
- a. the 2010 year was \$350,911.00 (less a "Risk Management Incentive Bonus" of \$15,670.60), being a total contribution of \$335,240.40;
  - b. the 2011 year was \$350,911.00 (less a "Risk Management Incentive Dividend" of \$17,242.43), being a total contribution of \$333,668.57;
  - c. the 2012 year was \$350,911.00 (less a "Risk Management Incentive Dividend" of \$19,758.61), being a total contribution of \$331,152.39;
  - d. the 2013 year was \$363,192.50 (less a "Risk Management Incentive Dividend" of \$20,844.01), being a total contribution of \$342,348.49;
  - e. the 2014 year was \$375,540.00 (less a "Statewide Liability Risk Management Incentive Bonus" of \$16,565.59), being a total contribution of \$358,974.41;
  - f. the 2015 year was \$384,177.42 (less a "Statewide Risk Management Incentive" of \$18,801.05 and less an "Equity Distribution" of \$25,983.02, totalling \$44,784.07), being a total contribution of \$339,393.35;
  - g. the 2016 year was \$393,397.68;
  - h. the 2017 year was \$400,478.84,
- (B) the premium paid for Public Liability and Professional Indemnity insurance (inclusive of all applicable government charges) procured through AON for:
- a. the 2018 year was \$196,817.90; and
  - b. the 2019 year was \$170,999.02,
- from which it can be inferred that AON would also have obtained lower premiums for Richmond Valley's Public Liability and Professional Indemnity insurance in the prior years of the Relevant Period.
- (C) the premium (inclusive of all fees, taxes and charges) that Richmond Valley would have paid for Public Liability and Professional Indemnity insurance with terms of coverage comparable to the Public Liability and Professional Indemnity insurance that Richmond Valley held with Statewide Mutual, if procured through Civic Risk West for:
- a. the 2010 year was approximately \$246,000;
  - b. the 2011 year was approximately \$213,000;
  - c. the 2012 year was approximately \$181,000;
  - d. the 2013 year was approximately \$213,000;

- e. the 2014 year was approximately \$222,000;
  - f. the 2015 year was approximately \$282,000;
  - g. the 2016 year was approximately \$185,000;
  - h. the 2017 year was approximately \$163,000,
- being a total of \$1,705,000, which is approximately \$1,129,654.13 less in total premiums payable to Civic Risk West for Public Liability and Professional Indemnity insurance for the years ending 30 June 2010 – 30 June 2017 than the contributions that Richmond Valley paid to Statewide Mutual.
- (iii) The availability of more competitive rates from alternate providers in the market is further evidenced by at least the following emails:
    - (A) email from Adrian Jones of JLT to Mark Eagleson and Stephen Penfold of JLT dated 26 September 2013 noting the “[h]ighly competitive market putting pressures on premiums...” and “[t]here has also been some specific targeting of some councils by competitors such as UIP (United International Pools) which has only added to the underlying prices pressures in the market”.
    - (B) email from Adam Hellier of JLT to Naamon Eurell of JLT dated 23 October 2015 stating “I have started comparing Property Values, rates, deductibles and claims for a few of the Council’s (sic). I have added general insurance rates and premium totals in blue to give us an idea of the comparative rate in the general market. Richmond Valley may be a little high by comparison in some respects”.
  - (iv) Further particulars, including by way of expert evidence, will be provided prior to trial.
- (d) exceeded the contribution rates that were reasonably available from or could be negotiated by JLT with Statewide Mutual.

### **Particulars**

- (i) The fact that more favourable contribution rates were reasonably available from, or could be negotiated with, Statewide Mutual is to be inferred from the fact that JLT offered Richmond Valley and other NSW Local Councils improved contribution rates from JLT in respect of insurance with Statewide Mutual once NSW Local Councils raised concerns as to the competitiveness of the offering from Statewide Mutual.
- (ii) For example, in respect of Richmond Valley’s Property insurance:
  - (A) particulars (i)(A) to paragraph 16(c) above are repeated.
  - (B) JLT:
    - a. noted, in an email chain between Adam Hellier and William Park of JLT, and Naamon Eurell of

Statewide Mutual between 15 January 2016 and 3 February 2016, that “Naamon agreed to reduce the Property Contribution for RV Council” from 0.21% to 0.152% effective from 1 January 2016 to reflect that Richmond Valley’s rate was high by comparison to the general market;

- b. informed Richmond Valley, in an email from Adam Hellier of JLT to Deborah McLean of Richmond Valley on 8 February 2016, that in respect of the 2016 year, Statewide Mutual had agreed to “reduce Councils (sic) property rate contribution effective from 1 January 2016... equat[ing] to a refund of \$36,207.42 + GST” and confirmed that this reduced Richmond Valley’s Property insurance contribution with Statewide Mutual pro rata for a period of 6 months “by approximately 41.54% since the 2014 to 2015 insurance period”;
- (C) JLT submitted a response to tender EX00085 issued on 10 November 2016 for, inter alia, Richmond Valley’s ‘Insurance Brokerage Services and Insurance Coverage’ (**IPG Tender**). The tender agent, Local Government Procurement (**LGP**), recorded JLT’s response to the tender in respect of Property insurance as quoting \$79,766 (inclusive of GST) not including flood cover and net of fire services levy (of approximately \$7,000) and net of potential rebates, in respect of the 2017 year;
  - (D) JLT confirmed, by way of letter from Leo Demer, CEO Australia & New Zealand of JLT to Richmond Valley dated 19 June 2017 with subject line: “Re: 2017-2018 Insurance Renewal” that Richmond Valley’s contribution for Property insurance for the 2018 year would be \$87,742 (as per the expiring terms for Richmond Valley’s Property insurance for the 2017 year, including fire services levy but excluding flood cover).
- (iii) For example, in respect of Richmond Valley’s Public Liability and Professional Indemnity insurance:
    - (A) particulars (ii)(A) to paragraph 16(c) above are repeated:
    - (B) LGP recorded JLT’s response to the IPG Tender in respect of Public Liability and Professional Indemnity insurance as quoting:
      - a. \$180,000 (inclusive of all applicable government charges and net of potential rebates), for coverage with a \$500 million limit for each of Public Liability and Professional Indemnity in respect of the 2017, 2018 and 2019 years;
      - b. \$178,000 (inclusive of all applicable government charges and net of potential rebates) for coverage with a \$250 million limit for each of Public Liability and Professional Indemnity, in respect of the 2017, 2018 and 2019 years;



(C) JLT confirmed, by way of letter from Leo Demer, CEO Australia & New Zealand of JLT to Richmond Valley dated 19 June 2017 with subject line: "Re: 2017-2018 Insurance Renewal", that Richmond Valley's contribution for Public Liability and Professional Indemnity insurance for the 2018 year would be \$180,000 (as per the expiring terms for Richmond Valley's Public Liability and Professional Indemnity insurance for the 2017 year).

(iv) Further particulars may be provided prior to trial.

17 In breach of the duty pleaded in paragraph 13 and/or the Implied Term pleaded in paragraph 15 above, JLT:

(a) failed to make any, or (if any) reasonable, efforts to obtain on behalf of:

- (i) Richmond Valley; and
- (ii) each of the Group Members,

suitable Property and/or Public Liability and Professional Indemnity insurance at the best premium rates that were reasonably available to each of them in the market, including from Statewide Mutual;

(b) made the Recommendations to:

- (i) Richmond Valley; and
- (ii) each of the Group Members,

and placed or renewed their Property and/or Public Liability and Professional Indemnity insurance with Statewide Mutual:

- (iii) in the circumstances pleaded in paragraph 16 above; and
- (iv) in circumstances where JLT had no reasonable grounds to believe that the contributions payable to Statewide Mutual were lower than or reasonably competitive with the premium rates that were available to Richmond Valley and each of the Group Members in the market; and/or
- (v) in circumstances where JLT had no reasonable grounds to believe that the contributions paid to Statewide Mutual were lower than the contribution rates reasonably available to Richmond Valley and each of the Group Members from Statewide Mutual in respect of Property and/or Public Liability and Professional Indemnity insurance;

(c) failed to recommend or identify to:

- (i) Richmond Valley; and

- (ii) each of the Group Members,  
any alternative underwriter or provider of suitable Property and/or Public Liability and Professional Indemnity insurance besides Statewide Mutual;
- (d) did not make any, or (if any) reasonable, efforts on behalf of:
  - (i) Richmond Valley; and
  - (ii) each of the Group Members,  
to:
    - (iii) request, solicit, negotiate or obtain from any alternative underwriter or provider of suitable Property and/or Public Liability and Professional Indemnity insurance besides Statewide Mutual a quotation, offer or terms for such insurance at lower premium rates than those payable to Statewide Mutual;
    - (iv) request, negotiate or obtain a reasonably available contribution from Statewide Mutual that was lower than the contribution paid by Richmond Valley and each Group Member in respect of Property and/or Public Liability and Professional Indemnity insurance;
- (e) failed to request, solicit or procure, on behalf of:
  - (i) Richmond Valley; and
  - (ii) any of the Group Members,  
a competitive quotation for, or offer of, suitable Property and/or Public Liability and Professional Indemnity insurance from an underwriter or provider besides Statewide Mutual; and
- (f) failed to advise:
  - (i) Richmond Valley; and
  - (ii) each of the Group Members,  
of:
    - (iii) the circumstances pleaded in paragraph 16 above; and
    - (iv) the fact that JLT had not requested or solicited a quotation, offer or terms for suitable Property and/or Public Liability and Professional Indemnity insurance from any alternative underwriter or provider besides Statewide Mutual;

- (v) the fact that JLT had not requested or negotiated, on Richmond Valley and each Group Member's behalf, lower contributions from Statewide Mutual for their respective Property and/or Public Liability and Professional Indemnity insurance.

18 By reason of the breaches of duty and/or contract pleaded in paragraph 17 above:

- (a) Richmond Valley; and  
 (b) each of the Group Members,  
 has suffered loss or damage.

#### Particulars

- (i) The particulars to paragraphs 16(c) and 16(d) above are repeated.
- (ii) The loss or damage suffered is equivalent to the value of the opportunity to obtain suitable Property and/or Public Liability and Professional Indemnity insurance from alternative underwriters or providers besides Statewide Mutual, at the best premium rates that were reasonably available to Richmond Valley and each of the Group Members in the market.
- (iii) The value of that opportunity is equal to the difference between:
- (A) the amounts paid by Richmond Valley and each Group Member to Statewide Mutual during the Relevant Period, for their Property and/or Public Liability and Professional Indemnity insurance; and
- (1) the amount that would have been paid by Richmond Valley and each Group Member to alternative underwriters or providers during the Relevant Period, but for JLT's breach of duty and/or contract; or
- (2) the amount that would have been paid by Richmond Valley and each Group Member to Statewide Mutual during the Relevant Period, but for JLT's breach of duty and/or contract,

subject to any adjustment the Court finds necessary.

- (iv) Further particulars to be provided prior to trial.

**JLT's breaches of fiduciary duty**

- 19 Further or in the alternative, as an insurance broker providing the Broking Services and making the Recommendations, JLT owed:
- (a) Richmond Valley; and
  - (b) each of the Group Members,
- the following fiduciary duties:
- (c) a duty to refrain from pursuing or advancing JLT's own interests, in circumstances where there existed a conflict or a significant possibility of conflict between its own interests and those of Richmond Valley or the Group Member (as the case may be); and
  - (d) a duty to refrain from using JLT's position or knowledge resulting from its position as insurance broker, so as to obtain a benefit for itself or a third party or to cause detriment to Richmond Valley or the Group Member (as the case may be).
- 20 At all material times during the Relevant Period, JLT was appointed to perform and performed various functions and services for Statewide Mutual.

**Particulars**

Establishment Deed, esp. cl 2.4.3, 3.1.1, 4.1.1, 5.1, 6.2, 9.1.

- 21 At all material times during the Relevant Period:
- (a) in consideration for performing services for Statewide Mutual, and for placing insurance or reinsurance in respect of Statewide Mutual, JLT received fees and commissions; and
  - (b) related entities of JLT received fees and commissions for placing insurance or reinsurance in respect of Statewide Mutual.

**Particulars**

- (i) Establishment Deed, cl 11.1.
- (ii) The report of Tony Samuel dated 20 December 2019, which estimates the total fees and commissions received by JLT and its related entities in connection with the Statewide Mutual Property and Liability schemes during the Relevant Period and concludes that the total amount is between approximately \$177,288,420 and \$239,338,710.

- (iii) Annual Reports for Statewide Mutual disclose that JLT was paid at least the following fees for its services in relation to the Public Liability Fund and Property Fund:

<b>Year</b>	<b>Public Liability Fund</b>	<b>Property Fund</b>	<b>Description of fee</b>
2010	\$5,512,500	\$4,710,675	Scheme Administration, Funds Management, Claims Management and Risk Management Fees
2011	\$5,787,600	\$4,854,518	Scheme Administration, Funds Management, Claims Management and Risk Management Fees
2012	\$5,993,269	\$4,908,451	Scheme Administration, Funds Management, Claims Management and Risk Management Fees
2013	\$6,370,016	\$5,887,291	Scheme Administration, Funds Management, Claims Management and Risk Management Fees
2014	\$6,686,409	\$5,839,112	Scheme Admin, Funds Management, Claims Management and Risk Management Fees

2015	\$6,841,345	\$5,778,440	Scheme Administration Fees
2016	\$7,003,328	\$5,731,575	Scheme Administration Fees
2017	\$7,121,466	\$ 5,571,575	Scheme Administration Fees
2018	\$7,247,620	\$4,940,231	Scheme Administration Fees
<b>Total</b>	\$58,563,553	\$48,221,868	<b>Combined total (both Funds):</b> \$106,785,421

- (iv) Fees of as yet unknown amounts paid to JLT for its services in relation to the Public Liability Fund and Property Fund for the 2019 insurance year.
- (v) Other amounts as yet unknown, paid to JLT and/or its related entities, including brokerage fees and commissions, for performing services for Statewide Mutual and/or placing insurance or reinsurance in respect of Statewide Mutual.
- (vi) Further particulars will be provided after discovery.

22 By reason of the matters pleaded in paragraphs 20 and 21 above, a conflict existed between JLT's (and its related entities') own financial interests in earning and continuing to earn fees and commissions for, or in connection with, services it provided to Statewide Mutual, and the interests of:

- (a) Richmond Valley; and
- (b) each Group Member,

in obtaining suitable Property and/or Public Liability and Professional Indemnity insurance at the best premium rates that were reasonably available to each of them in the market.

23 In making the Recommendations and in placing or renewing:

- (a) Richmond Valley's; and
- (b) each Group Member's,

Property and/or Public Liability and Professional Indemnity insurance with Statewide Mutual, JLT:

- (c) pursued or advanced its own interests in earning and continuing to earn fees and commissions for itself and its related entities; and
- (d) used its position or knowledge resulting from its position as their insurance broker for its own financial benefit (or its related entities') and to the detriment of Richmond Valley and each Group Member.

24 The conduct of JLT pleaded in paragraph 23 above breached the fiduciary duties pleaded in paragraph 19 above.

25 By reason of the breaches of fiduciary duty pleaded in paragraph 24 above:

- (a) Richmond Valley; and
  - (b) each of the Group Members,
- has suffered loss or damage.

#### **Particulars**

The particulars to paragraph 18 above are repeated.

26 Further or alternatively:

- (a) JLT (and/or its related entities) haves earned profits from the breaches of fiduciary duty pleaded in paragraph 24 above; and
- (b) JLT is liable to account for those profits to:
  - (i) Richmond Valley; and
  - (ii) each of the Group Members.

#### **Particulars**

Particulars will be provided following discovery and prior to trial.

27 Richmond Valley claims the relief set out in the Third ~~Second~~ Further Amended Summons for itself and on behalf of each of the Group Members.