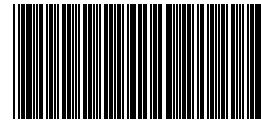




Filed: 13 March 2019 10:39 AM



D00013WPY5

Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00371447

TITLE OF PROCEEDINGS

First Plaintiff	Richmond Valley Council ABN 54145907009
First Defendant	JARDINE LLOYD THOMPSON PTY LTD ABN 69009098864

FILING DETAILS

Filed for	JARDINE LLOYD THOMPSON PTY LTD, Defendant 1
Legal representative	DAVID NEIL GERBER
Legal representative reference	
Telephone	02 9353 4000
Your reference	17334/17940/80195908

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 (Commercial List Reponse (final - signed).PDF)

[attach.]

Practice Note SC Eq 3

COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/00371447

TITLE OF PROCEEDINGS

Plaintiff	Richmond Valley Council
Defendant	Jardine Lloyd Thompson Pty Ltd

FILING DETAILS

Filed for	Jardine Lloyd Thompson Pty Ltd, Defendant
Legal representative	David Gerber, Clayton Utz
Legal representative's reference	17334/17940/80195908
Contact's name and telephone	Mark Wiese, (02) 9353 5157
Contact email	mwiese@claytonutz.com

COMMERCIAL LIST RESPONSE

A. NATURE OF DISPUTE

1. On 22 March 1994, the Defendant (**JLT**) and a number of local councils in New South Wales (**Members**) entered into a deed pursuant to which a mutual liability scheme was established for the joint purchase by Members of certain lines of insurance, and the provision of a discretionary indemnity for Members in respect of liability not covered by such insurance (**Statewide Scheme**).
2. Under the terms of the Statewide Scheme, a Board of Management determined, among other things, certain insurance arrangements to be put in place by JLT for the Members.
3. The effect of the Statewide Scheme was, among other things, to enable the collective sourcing of insurance (**Primary Insurance**) by the Members.
4. The terms of the Statewide Scheme also allowed, among other things, for the return of surplus funds to Members in certain circumstances, the provision of a discretionary indemnity out of the Members' collective funds for loss or liability not covered under the Primary Insurance, and the provision of advice to Members in relation to loss prevention and risk minimisation.
5. Under the Statewide Scheme, JLT was obliged to obtain Primary Insurance at the instruction of the Board of Management and each of the Members (including the Plaintiff) appointed it to do so. JLT carried out this obligation.
6. Under the terms of the Statewide Scheme, JLT was entitled to be paid fees and/or commission in respect of the services it provided to Members via the Statewide Scheme. The fact and/or the quantum of those fees and commission was disclosed to the Plaintiff. The Plaintiff elected to continue JLT's appointment under the Statewide Scheme to obtain Primary Insurance on its behalf.
7. The Plaintiff alleges breaches of general law and contractual duties because it alleges that alternative insurance arrangements in respect of certain of the risks covered by the Statewide Scheme could have been obtained for payment of a premium lower than the cost of the Plaintiff's contributions to the Statewide Scheme that related to those risks. JLT denies such allegations and contends that:
 - (a) the alleged duties did not exist;
 - (b) even if they did exist there was no breach of the alleged duties;
 - (c) the comparison of direct insurance premiums from an insurance company with contributions to the Statewide Scheme is not valid:
 - (i) without taking into account the differences in principle between commercial insurance products and the Statewide Scheme;

- (ii) without taking into account the differences in specific features of insurance products actually purchased or available for purchase and the cover provided by the Statewide Scheme (both as to Primary Insurance and the discretionary indemnity for Members in respect of liability not covered by the Primary Insurance); and
 - (iii) to the extent that the insurance premiums are considered net of taxes, statutory charges, broking fees or any other service fees, and contributions to the Statewide Scheme are considered gross of all taxes, statutory charges and fees;
- (d) it is not possible to compare insurance premiums with contributions to the Statewide Scheme charged in respect of different policy years without taking into account differences in commercial conditions over time;
- (e) the Plaintiff and Group Members have suffered no loss; and
- (f) the Plaintiff's and Group Members' claims are statute barred either in part or, for some Group Members, in whole.
8. The Plaintiff further alleges breaches of certain fiduciary duties owed by JLT as an insurance broker to the Plaintiff, arising from the payment of fees and/or commission to JLT. JLT denies the existence of the duties alleged by the Plaintiff and says that, to the extent that it owed fiduciary duties to the Plaintiff as its insurance broker, JLT's conduct was at all times consistent with the discharge of those duties and those duties were not breached. This is including on the basis that at all times JLT had informed consent.
9. Further, JLT denies that there was a conflict between its entitlement to be paid fees and/or commission in respect of the services it provided to Members via the Statewide Scheme and the interests of the Plaintiff and Group Members, as alleged by the Plaintiff or at all.
10. Finally, JLT contends that the Plaintiff's and Group Members' claims in respect of alleged breaches of fiduciary duties are statute barred either in part or, for some Group Members, in whole.

B. ISSUES LIKELY TO ARISE

1. The Defendant (**JLT**) does not admit that the questions set out in Part B of the Plaintiff's Commercial List Statement (**CLS**) and framed as common issues of law or fact:
- (a) involve common issues of law or fact; or
 - (b) insofar as they do, that those questions are common with respect to all Group Members.
2. Insofar as the questions identified in Part B of the CLS are treated as issues arising in the proceeding only, JLT agrees that the questions identified in paragraphs 1 to 5 and 7 to 9 of Part B of the CLS arise for determination.

3. JLT does not admit that the question in paragraph 6 of Part B of the CLS arises for determination in the proceeding at all.
4. In addition, JLT considers that the following additional issues may arise:
 - (a) The nature and scope of JLT's duties as an insurance broker to the Plaintiff and other Members of the Statewide Scheme, having regard to the terms of the contract entered into between JLT and Members (the 'Deed Establishing the NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme'; **Statewide Deed**) which, among other things, was a contract for the provision of broking services to the Members in respect of the Primary Insurance.
 - (b) The nature and scope of any duties pleaded in paragraph 19 of Part C of the CLS, having regard to the general law and the terms of the Statewide Deed.
 - (c) Whether the Plaintiff or any Group Member provided their informed consent in respect of any alleged breach of fiduciary duty.
 - (d) Whether any of the Plaintiff's or Group Members' claims are statute barred.

C. DEFENDANT'S RESPONSES TO CONTENTIONS

In answer to the Plaintiff's allegations set out in Part C of the Commercial List Statement (**CLS**), the Defendant (**JLT**) says as follows:

1. JLT admits the allegations in paragraph 1 of the CLS.
2. In answer to the allegations in paragraph 2 of the CLS, JLT:
 - (a) admits that the Plaintiff has purported to commence this proceeding as a representative proceeding under Part 10 of the *Civil Procedure Act 2005* (NSW);
 - (b) admits that from time to time during the Relevant Period (as defined in the CLS) some councils obtained Property and/or Public Liability and Professional Indemnity Insurance through the 'NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme' (**Statewide Scheme**);
 - (c) says that group members in this proceeding are limited to those persons who had provided their consent to becoming a group member as at 3 December 2018; and
 - (d) otherwise does not admit the allegations in paragraph 2 of the CLS.
3. In answer to the allegations in paragraph 3 of the CLS, JLT:

- (a) says that a "Deed Establishing the NSW Local Government (Jardine Lloyd Thompson) Mutual Liability Scheme" was made on or about 22 March 1994 between JLT and the Councils whose names are set out in Schedule 1 to the deed (collectively "**Members**" and each a "**Member**") (**Statewide Deed**);
 - (b) says that the Statewide Deed established the Statewide Scheme;
 - (c) says that the Statewide Scheme is not a separate legal entity and is instead a contractual arrangement; and
 - (d) otherwise does not admit the allegations in paragraph 3 of the CLS.
4. JLT denies the allegations in paragraph 4 of the CLS.
5. JLT admits the allegations in paragraph 5 of the CLS.
6. In answer to the allegations in paragraph 6 of the CLS, JLT:
- (a) says that from time to time during the Relevant Period it provided insurance broking services to some clients; and
 - (b) otherwise does not admit the allegations in paragraph 6 of the CLS.
7. JLT does not admit the allegations in paragraph 7 of the CLS.
8. In answer to the allegations in paragraph 8 of the CLS, JLT:
- (a) admits that during the Relevant Period it subscribed to the Code of Practice of the National Insurance Brokers Association (**NIBA Code**);
 - (b) admits that it held itself out to the Plaintiff as a subscriber to the NIBA Code; and

Particulars

JLT Financial Services Guide dated March 2014, pg 7

JLT Financial Services Guide dated December 2015, pg 8

JLT Financial Services Guide dated December 2017, pg 11

- (c) otherwise does not admit the allegations in paragraph 8 of the CLS.
9. In answer to the allegations in paragraph 9 of the CLS, JLT:
- (a) repeats paragraph 3 above;

- (b) says that the Plaintiff and each Group Member was a Member under the Statewide Deed at certain times during the Relevant Period;
- (c) says that the Plaintiff and each Group Member was a Member under the Statewide Deed until such time as it elected to retire from the Statewide Scheme and gave notice in accordance with clause 10.3 of the Statewide Deed;

Particulars

Prior to 1 July 2013, the required period of notice for retirement was at least 3 months

From 1 July 2013, the required period of notice for retirement was at least 12 months

- (d) says that the Statewide Deed recorded, and it was the fact that, each Member entered into the Statewide Scheme for the purpose of:
 - (i) purchasing insurance in respect of public liability (including personal injury, damage to property and products liability), professional indemnity, property and fidelity guarantee;
 - (ii) their indemnity in respect of Liability (as that term is defined in the Statewide Deed) not covered by such public liability, professional indemnity, property and fidelity guarantee insurance;
 - (iii) having their Claims Liability (as that term is defined in the Statewide Deed) managed and resolved; and
 - (iv) promoting good risk management practices to minimise the occurrence and effect of Claims;

Particulars

Statewide Deed, clause 2.1.1

- (e) says that under the Statewide Deed, a Board of Management was constituted for the Statewide Scheme (**Board of Management**), which had responsibility for governing the Scheme;

Particulars

Statewide Deed, clause 2.4.1

- (f) says that the majority of the Board of Management was appointed by Eligible Members under the Statewide Scheme, which were local council Members of the Scheme that were members of the Public Liability Fund and the Fidelity Guarantee Fund and/or the Property Fund (as defined in the Statewide Deed);

Particulars

Statewide Deed, clauses 3.1.1, 1.1 ("Eligible Member", "Public Liability Fund", "Fidelity Guarantee Fund" and "Property Fund")

- (g) says that the Board of Management was responsible for managing the Statewide Scheme;

Particulars

Statewide Deed, clause 3.3.1

- (h) says that the functions of the Board of Management included:
- (i) determining the amount and terms of the Primary Insurance to be purchased by the Members jointly for the relevant class of risk contemplated by the Statewide Deed from time to time;
 - (ii) determining the initial and further Contributions to be made by a Member to an Annual Fund for a Fund Year (as those terms are defined in the Statewide Deed);
 - (iii) determining the amount to be paid from an Annual Fund to a Claiming Member in respect of a Liability (as those terms are defined in the Statewide Deed);
 - (iv) determining the amount of any surplus in an Annual Fund available for distribution to Members; and
 - (v) such other functions as were contemplated by the Statewide Deed or which were reasonably necessary to manage and administer the Statewide Scheme;

Particulars

Statewide Deed, clauses 3.3.1, 6, 7, 8, 1 ("Annual Fund", "Claiming Member", "Fund Year", "Liability", "Primary Insurance")

- (i) says that each Member of the Statewide Scheme (including the Plaintiff) appointed JLT to advise on and effect insurance for the relevant classes of risk contemplated by the Statewide Deed from time to time on instructions of the Board of Management;

Particulars

Statewide Deed, clauses 3.3.1(a), 5.1(e) and 6.1

- (j) says that in the premises, the Statewide Scheme was not an insurer;
- (k) by reason of the matters pleaded in paragraph (j) above, denies that it was the case, or that it was possible, for insurance to be placed or arranged with the Statewide Scheme;

- (l) admits that, from time to time during the Relevant Period, it provided insurance broking services to the Plaintiff directly and individually, outside of the Statewide Scheme, in relation to certain lines of insurance that did not include public liability, professional indemnity, property or fidelity guarantee insurance; and
 - (m) otherwise denies the allegations in paragraph 9 of the CLS.
10. In answer to the allegations in paragraph 10 of the CLS, JLT:
- (a) repeats paragraph 9 above;
 - (b) says that, pursuant to the Statewide Deed, the Plaintiff and other Members appointed the Board of Management to receive advice and issue instructions to JLT for the purchase of Primary Insurance, being the insurance purchased by Members or any of them for the relevant class of risk as contemplated by the Statewide Deed from time to time;

Particulars

Statewide Deed, clauses 1.1 ("Primary Insurance"), 3.3.1(a), 5.1(e) and 6.1

- (c) says that, pursuant to the Statewide Deed, any advice given during the Relevant Period by JLT in respect of obtaining or renewing Primary Insurance covering the Members of the Statewide Scheme was given to the Board of Management, as required by the Statewide Deed;
 - (d) says that JLT was not appointed, whether under the Statewide Deed or otherwise, to give advice or recommendations to the Plaintiff or any Group Member as to whether to exercise the right to retire from the Statewide Scheme; and
 - (e) otherwise denies the allegations in paragraph 10 of the CLS.
11. In answer to the allegations in paragraph 11 of the CLS, JLT:
- (a) repeats paragraphs 9 and 10 above;
 - (b) says that in accordance with the appointment provided by the Plaintiff under the Statewide Deed, it effected certain Primary Insurance for the Plaintiff and Group Members on the instructions of the Board of Management; and
 - (c) otherwise denies the allegations in paragraph 11 of the CLS.
12. In answer to the allegations in paragraph 12 of the CLS, JLT:
- (a) repeats paragraphs 9 to 11 above;

- (b) admits that it had knowledge of the market for Property and/or Public Liability and Professional Indemnity insurance;
 - (c) does not admit that the Plaintiff or Group Members lacked knowledge of the market for Property and/or Public Liability and Professional Indemnity insurance;
 - (d) says that, in any event, the Members of the Statewide Scheme appointed the Board of Management to receive advice and issue instructions for the purchase of Primary Insurance; and
 - (e) otherwise denies the allegations in paragraph 12 of the CLS.
13. In answer to the allegations in paragraph 13 of the CLS, JLT:
- (a) repeats paragraphs 9 to 12 above; and
 - (b) otherwise denies the allegations in paragraph 13 of the CLS.
14. In answer to the allegations in paragraph 14 of the CLS, JLT:
- (a) repeats paragraphs 9 to 11 above;
 - (b) says that JLT's contractual relationship with the Plaintiff and Group Members in respect of the provision of insurance broking services relating to 'Property and/or Public Liability and Professional Indemnity insurance' (as referred to in the CLS) was governed by the Statewide Deed;
 - (c) says further that in the premises there was no scope for any separate contract to be implied from conduct; and
 - (d) otherwise denies the allegations in paragraph 14 of the CLS.
15. In answer to the allegations in paragraph 15 of the CLS, JLT:
- (a) repeats paragraphs 9 to 11 and 14 above; and
 - (b) otherwise denies the allegations in paragraph 15 above.
16. In answer to the allegations in paragraph 16 of the CLS, JLT:
- (a) says that it is not possible to compare insurance premiums from insurers with contributions to the Statewide Scheme, without taking into account the differences in principle between commercial insurance products and the Statewide Scheme;

Particulars

- (1) The Statewide Scheme is not an insurance product.
 - (2) The Statewide Scheme is an agreement, among other things, for the establishment of certain Funds (as defined in clause 1.1 of the Statewide Deed) to meet claims incurred by Members, for the purchase jointly by Members of Primary Insurance, for a discretionary indemnity in respect of Liability (as defined in clause 1.1 of the Statewide Deed) not covered by the Primary Insurance, for the management and resolution of Claims (as defined in clause 1.1 of the Statewide Deed), and for the promotion of good risk management practices to minimise the occurrence and effect of Claims.
 - (3) The Statewide Scheme operated as a mutual scheme over a long period of time and was not limited to a single insurance year.
 - (4) The Members of the Statewide Scheme have rights under the Statewide Deed in relation to the funds held by the Scheme.
- (b) says that it is not possible to compare insurance premiums with contributions to the Statewide Scheme, without taking into account differences in the specific features of both the Statewide Scheme and relevant insurance products (whether actually purchased or available to a particular person for purchase), including the terms and conditions of the cover, the amount of cover provided, the risks and other matters covered by the policy, the level of deductibles, any right to receive a partial reimbursement of premium or another distribution after the end of the claim year, additional services offered in connection with the products, the manner in which any premiums or contributions that were not paid out in respect of claims were treated, and the availability of discretionary cover;
- (c) says that it is not possible to compare insurance premiums with contributions to the Statewide Scheme, without equal treatment of all taxes, statutory charges and fees that are relevant to the comparison;

Particulars

Taxes, statutory charges and fees may include, for example, goods and services tax, fire or emergency services levies, broking fees, and professional fees for other risk management-related services

- (d) says that it is not possible to compare insurance premiums with contributions to the Statewide Scheme charged in respect of different policy years without taking into account differences in commercial conditions over time; and
- (e) otherwise denies the allegations in paragraph 16 of the CLS.

17. In answer to the allegations in paragraph 17 of the CLS, JLT:
- (a) repeats paragraphs 9 to 16 above; and
 - (b) denies the allegations in paragraph 17 of the CLS.
18. In answer to the allegations in paragraph 18 of the CLS, JLT:
- (a) repeats paragraphs 9 to 17 above;
 - (b) denies that the Plaintiff or Group Members have suffered loss or damage as alleged;
 - (c) says further that if JLT breached any duty as alleged (which is denied) and the Plaintiff or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the Plaintiff or a Group Member became liable to pay contributions to Statewide in respect of Property and/or Public Liability and Professional Indemnity insurance;
 - (d) says further that if JLT breached any contractual term as alleged (which is denied) and the Plaintiff or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred;
 - (e) says further that, by their nature, the breaches of contract alleged in paragraph 17 of the CLS must, if they occurred (which is denied), have occurred prior to the beginning of each renewal of cover under the Statewide Scheme, which in every year for each Group Member took effect on 30 June;
 - (f) says further that any claims by the Plaintiff or Group Members relating to causes of action arising prior to 3 December 2012 are statute-barred by operation of s 14 of the *Limitation Act 1969* (NSW);
 - (g) says further that by reason of the matters pleaded in sub-paragraphs (c), (d), (e) and (f), where a Group Member:
 - (i) last became liable to pay contributions to Statewide before 3 December 2012; and
 - (ii) last renewed cover under the Statewide Scheme with effect before 3 December 2012,the claims of that Group Member are wholly statute-barred; and
 - (h) says further that by reason of the matters pleaded in sub-paragraph (g), the claims of the following Group Members are wholly statute-barred:
 - (i) Shellharbour City Council;

Particulars

Shellharbour City Council last became liable to pay contributions to Statewide on 2 July 2010 and last renewed cover under the Statewide Scheme with effect from 30 June 2010

- (ii) Kiama Municipal Council; and

Particulars

Kiama Municipal Council last became liable to pay contributions to Statewide on 11 July 2011 and last renewed cover under the Statewide Scheme with effect from 30 June 2011

- (iii) Burwood Council.

Particulars

Burwood Council last became liable to pay contributions to Statewide on 29 June 2012 and last renewed cover under the Statewide Scheme with effect from 30 June 2012

19. In answer to the allegations in paragraph 19 of the CLS, JLT:

- (a) repeats paragraphs 9 to 11 above;
- (b) says that the relationship between JLT, the Plaintiff and Group Members was governed and regulated by the terms of the Statewide Deed;
- (c) says further that the Statewide Deed contained terms including that:
 - (i) the Members (including the Plaintiff) appointed JLT to effect Primary Insurance for the relevant class of risk contemplated by the Statewide Deed from time to time on instructions of the Board of Management;
 - (ii) JLT was required to arrange Primary Insurance for the relevant class of risk contemplated by the Statewide Deed from time to time for a particular Fund Year (as defined in the Statewide Deed) following notification by the Board of Management;
 - (iii) the Members (including the Plaintiff) agreed to pay JLT such fees as agreed with the Board of Management in consideration of the services it provided under the Statewide Scheme;
 - (iv) JLT was entitled to be indemnified out of the Annual Fund against all claims, costs and expenses which it paid or incurred in connection with the performance of its functions

under the Statewide Deed or any action taken by it which in its opinion was necessary or desirable in connection with the Annual Fund;

- (v) JLT was not liable for any loss to the Annual Fund except where the loss arose because of fraud, intentional breach of the Statewide Deed, other wilful misconduct or negligence;
- (vi) each Member (including the Plaintiff) indemnified JLT against any loss, liability, cost or expense incurred in connection with JLT's obligations under the Statewide Deed; and
- (vii) JLT had all powers which were reasonably necessary to perform its functions expressed in or implied by the Statewide Deed.

Particulars

Statewide Deed, clauses 5.1(e), 6.2, 11.1.1, 11.2.1, 11.3.1, 11.4, 11.6

- (d) says that in the premises there was no fiduciary duty of the kind pleaded in paragraph 19 of the CLS;
 - (e) further or in the alternative denies that it owed the Plaintiff and Group Members the duties alleged in paragraphs 19(c) and (d) of the CLS; and
 - (f) otherwise does not admit the allegations in paragraph 19 of the CLS.
20. In answer to the allegations in paragraph 20 of the CLS, JLT:
- (a) says that it had contractual obligations pursuant to the Statewide Deed to provide services to the Members of the Statewide Scheme;
 - (b) will rely on the terms of the Statewide Deed for their full force and effect;
 - (c) says that Statewide is not a legal person; and
 - (d) otherwise denies the allegations in paragraph 20 of the CLS.
21. In answer to the allegations in paragraph 21 of the CLS, JLT:
- (a) says that it had contractual obligations pursuant to the Statewide Deed;
 - (b) says that pursuant to the Statewide Deed, the Members (including the Plaintiff) agreed to pay JLT such fees as agreed with the Board of Management in consideration of the services it provided under the Statewide Scheme;
 - (c) admits that from time to time it received fees and commissions in consideration for performing its obligations under the Statewide Deed;

- (d) says that the Annual Reports for the Statewide Scheme disclosed the fees paid to JLT from time to time;
- (e) says that at all times during the Relevant Period, JLT disclosed to the Plaintiff the fact it was entitled to receive fees or commissions and/or the quantum of those fees and commissions; and

Particulars

The disclosure was contained in documents issued to the Plaintiff and/or Group Members including:

- (1) Renewal reports;
- (2) Financial Services Guides;
- (3) Insurance declarations;
- (4) Insurance invoices; and
- (5) Annual Reports in respect of the Statewide Scheme.

- (f) otherwise denies the allegations in paragraph 21 of the CLS.

22. In answer to the allegations in paragraph 22 of the CLS, JLT:

- (a) repeats paragraphs 19 and 21 above; and
- (b) otherwise denies the allegations in paragraph 22 of the CLS.

23. In answer to the allegations in paragraph 23 of the CLS, JLT:

- (a) repeats paragraphs 9, 10, 11, 19, and 21 above;
- (b) says that, subject to receiving the required notice from the Plaintiff and/or a Group Member of retirement from the Statewide Scheme with effect from the end of a Fund Year, JLT was contractually obliged under the Statewide Deed to arrange Primary Insurance to be purchased jointly by the Plaintiff, Group Members and other Members for each Fund Year; and
- (c) otherwise denies the allegations in paragraph 23 of the CLS.

24. In answer to the allegations in paragraph 24 of the CLS, JLT:

- (a) repeats paragraphs 19, 21, 22 and 23 above;

- (b) otherwise denies the allegations in paragraph 24 of the CLS;
- (c) says further that if it owed the alleged fiduciary duty (which is denied), the Plaintiff provided its informed consent in respect of any alleged breach of duty;

Particulars

JLT repeats paragraphs 21(b) and 21(e) above and the particulars subjoined thereto. In the face of that disclosure, the Plaintiff elected to continue to instruct JLT to place insurance.

- (d) says further that to the extent that JLT disclosed to any Group Member the fact and/or quantum of any fees received by it and that Group Member elected to continue to instruct JLT, then if JLT owed the alleged fiduciary duty (which is denied), that Group Member has provided its informed consent in respect of any alleged breach.
25. In answer to the allegations in paragraph 25 of the CLS, JLT:
- (a) denies the allegations in paragraph 25 of the CLS;
 - (b) says further that if JLT breached any duty as alleged (which is denied) and the Plaintiff or Group Members suffered any loss or damage (which is denied), any cause of action arose no later than the point in time at which the relevant breach occurred or, alternatively, the point in time at which the Plaintiff or a Group Member became liable to pay premiums in respect of Property and/or Public Liability and Professional Indemnity insurance;
 - (c) says further that any claims by the Plaintiff or Group Members relating to causes of action arising prior to 3 December 2012 are statute-barred by operation of s 23 of the *Limitation Act 1969* (NSW); and
 - (d) repeats paragraphs 18(c), (d), (e), (f), (g) and (h) above.
26. In answer to the allegations in paragraph 26 of the CLS, JLT:
- (a) denies the allegations in paragraph 26 of the CLS; and
 - (b) further repeats paragraphs 25(b) and (c) above.
27. In answer to the allegations in paragraph 27 of the CLS, JLT denies that the Plaintiff or the Group Members are entitled to the relief set out in the accompanying Summons, or any relief at all.
28. As to the whole of the Plaintiff's claim, JLT says that, by reason of the matters pleaded in paragraph 18(h) and repeated in paragraph 25(d), each of Shellharbour City Council, Kiama Municipal Council and Burwood Council have no claims against JLT arising out of the same, similar

or related circumstances as those pleaded in the CLS and are therefore not represented by the Plaintiff in this proceeding.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

29. The Defendant does not consider that any questions are appropriate for referral to a referee.

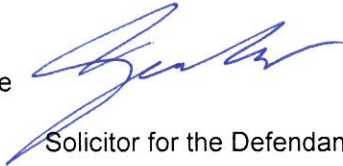
E. MEDIATION STATEMENT

30. The parties have not attempted mediation. The Defendant is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the response in these proceedings has reasonable prospects of success.

Signature of legal representative



Capacity

Solicitor for the Defendant

Date of signature

13/03/2019