

## **AMENDED COMMERCIAL LIST SIXTH CROSS-CLAIM STATEMENT**

### **COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2019/00232749

### **TITLE OF PROCEEDINGS**

First Plaintiff	<b>TERRY WALTER WILLIAMSON</b>
Second Plaintiff	<b>HELEN THERESE WILLIAMSON</b>
First Defendant	<b>SYDNEY OLYMPIC PARK AUTHORITY (ABN 68 010 941 405)</b>

### **TITLE OF CROSS- PROCEEDINGS**

Cross-Claimant	<b>EVOLUTION PRECAST SYSTEMS PTY LTD (ABN 17 608 136 518)</b>
First Cross-Defendant	<b>WSP STRUCTURES PTY LTD (ABN 78 006 769 339)</b>

### **FILING DETAILS**

Filed for	<b>Evolution Precast Systems Pty Ltd, Cross-Claimant</b>
Filed in relation to	Sixth Cross Claim
Legal representative	Patrick Kaluski (PCN: 30370), Moray & Agnew
Legal representative reference	PZK/MZP:424921
Contact name and telephone	Megan Palmer, +61 2 4911 5400
Contact email	mpalmer@moray.com.au

## A. NATURE OF DISPUTE

1. Without making any admissions, Evolution Precast Systems Pty Ltd (**Evolution**), accepts<sub>1</sub> for the purposes of this Commercial List Sixth Cross-Claim Statement (**Sixth Cross-Claim**) only<sub>1</sub> that the Nature of the Dispute is generally as described in the Amended Commercial List Fourth Cross-Claim Statement filed by Icon Co (NSW) Pty Ltd against Evolution on 9 July 2021 ~~Precast Systems Pty Ltd (**Evolution**) on 20 March 2020~~ (**Fourth Cross-Claim**), but does not accept the description of Evolution's obligations.

## B. ISSUES LIKELY TO ARISE

1. The issues set out in the List Response to the Third Cross-Claim filed on 30 March 2020.
2. Is Evolution entitled to an indemnity or contribution from WSP?
3. Is Evolution entitled to damages from WSP?
4. Did WSP breach the Consultancy Agreement causing Icon loss and damage?
5. Did WSP breach its duty of care to Icon causing Icon loss and damage?
6. Did WSP engage in misleading or deceptive conduct in contravention of:
  - (a) section 18 and/or 29 of the *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth); and/or
  - (b) section 18 and/or 29 of the *Australian Consumer Law* (NSW) as applied by section 28 of the *Fair Trading Act 1987* (NSW),
 (together referred to as the **ACL**) causing Icon/~~and~~ and/or Evolution loss or damage?

## C. CROSS-CLAIMANT'S CONTENTIONS

Defined terms in these contentions have the meaning given to them in the Fourth Cross-Claim ~~Statement~~ unless otherwise indicated.

## Parties

1. Evolution ~~Precast Systems Pty Ltd~~ (**Evolution**) is the cross-claimant and is a corporation capable of suing and being sued in its corporate name.
2. Icon Co (NSW) Pty Ltd (**Icon**) is a corporation capable of suing and being sued in its corporate name.
3. The cross-defendant, WSP Structures Pty Ltd (**WSP**):
  - (a) is a corporation capable of suing and being sued in its corporate name;
  - (b) carries on business as a firm of consulting engineers;
  - (c) is the cross-defendant to the Second Cross-Claim brought against it by Icon;
  - (d) is the cross-claimant in respect of the Third Cross-Claim brought against Icon and Evolution.

## Evolution's Cross-Claim against WSP

4. If Evolution is liable to Icon as alleged in the Fourth Cross-Claim ~~Statement~~ (which is denied), then for the purposes of this Cross-Claim only, Evolution pleads the following matters, without admissions.

4A. Evolution repeats paragraphs 5 to 10 and 23 to 25 inclusive and paragraphs 65 and 66 of the Amended Commercial List Second Cross-Claim Statement filed by Icon on 9 July 2021 (**Second Cross-Claim**).

### Contribution between tortfeasors

- 4B. Evolution repeats subparagraphs 11(a) and 11(d) of the Second Cross-Claim.
5. The WSP Consultancy Agreement was a contract for the provision of skilled professional services.
  6. In the premises, WSP owed Icon a duty to carry out ~~is its~~ obligations under the WSP Consultancy Agreement and to provide any services in connection with that Agreement with due care and skill (**Common Law Duty**), in circumstances where:
    - (a) it would be reasonable of Icon to rely upon WSP to exercise reasonable skill and care in and about the provision of those services;

- (b) WSP knew or ought to have known that Icon would so rely;
  - (c) it was reasonably foreseeable that Icon might suffer economic loss if WSP failed to exercise reasonable skill and care in and about the provision of those services; and
  - (d) Icon was vulnerable to any failure by WSP to exercise reasonable skill and care in that regard.
7. By reason of Icon's legal responsibilities in connection with the construction of the Building, if WSP did not perform its obligations under the WSP Consultancy Agreement with due care and skill or otherwise discharge the Common Law Duty:
- (a) there was a risk of ~~harm~~ that the "Building" might suffer structural damage;
  - (b) there was a risk of economic harm to Icon ~~that the owners of units in the Building might suffer property damage and/or property loss;~~ and
  - (c) that risk of harm was foreseeable.
8. In the event that Evolution:
- (a) is liable for conduct in breach of any duty of care owed by it to Icon, or that otherwise constitutes a common law or statutory tort, in respect of the matters alleged by Icon in the Fourth Cross-Claim ~~Statement~~ (which is denied); and
  - (b) is thereby liable to Icon in respect of the loss or damage claimed by Icon in the Fourth Cross-Claim ~~Statement~~ (which is also denied),
- Evolution:
- (c) repeats paragraphs 112, 113 and subparagraphs 114(a)(i) and 114(a)(iv) of the Second Cross-Claim;
  - (d) further says that:
    - (i) in those premises, WSP breached the Common Law Duty and negligently failed to take precautions against the risk of harm referred to in the previous paragraph ~~its duty to Icon for the reasons set out in the Commercial List Second Cross-Claim Statement filed by Icon on 3 December 2019~~ (**Second Cross-Claim Statement**);

- (ii) WSP is another tortfeasor liable to Icon in respect of the same damage for the reasons set out in the ~~Second Cross-Claim Statement~~;
- ~~(iii) WSP and Evolution are joint tortfeasors;~~
- (iv) it is entitled to indemnity or contribution from WSP in accordance with section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW).

Misleading or deceptive conduct

9. Evolution:

- (a) repeats the matters set out in paragraph 25(d) of its List Response to the Third Cross-Claim Statement filed on 30 March 2020;
- (a1) Evolution repeats paragraphs 39 and 39A of the Second Cross-Claim;
- (b) says that on or about 19 September 2016, WSP placed a stamp on drawing DE01 RevP1 in the following terms:

<b>WSP STRUCTURES PTY LTD</b>	
<small>ABN: 78 006 769 339</small>	
<input checked="" type="checkbox"/>	REVIEWED, NO COMMENTS.
<input type="checkbox"/>	REVIEWED, AMEND AS NOTED.
<input type="checkbox"/>	REVISE AND RESUBMIT.
<small>THIS DRAWING HAS BEEN CHECKED FOR STRUCTURAL ADEQUACY ONLY IN THE FINAL CONDITION, AND COMPLIANCE WITH THE DESIGN INTENT. OMISSIONS, DIMENSIONS, FIT AND TEMPORARY WORKS ARE SPECIFICALLY EXCLUDED FROM THIS REVIEW. THIS REVIEW DOES NOT RELIEVE THE BUILDER OF RESPONSIBILITY UNDER THE CONTRACT. COMPLIANCE WITH SPECIFIED REQUIREMENTS AND STATUTORY REGULATIONS REMAIN THE RESPONSIBILITY OF THE BUILDER</small>	
Initial: <b>JH</b>	Date: 19/09/2016

- (c) says on or about 19 September 2016, WSP sent the stamped drawing DE01 RevP1 to Icon and Evolution;

**Particulars**

Aconex from WSP to Evolution and others dated 19 September 2016 at 3.29pm (mail no. WSP(SA)-CADV-000562);

- (d) says by reason of the matters referred to in sub-paragraphs (a)-(c) above, WSP represented that:
  - (i) it had reviewed the detail depicted in drawing DE01 RevP1;

- (ii) it had checked the detail depicted in drawing DE01 RevP1:
  - (A) for structural adequacy; and/or
  - (B) compliance with the general design intent;
- (iii) it approved the detail set out in drawing DE01 RevP1, including that it:
  - (A) was structurally adequate; and/or
  - (B) complied with the design intent;
- (iv) the detail depicted in drawing DE01 RevP1 was:
  - (A) structurally adequate; and/or
  - (B) complied with the design intent;
- (iva) the installation of the precast panels in accordance with what was specified in Detail 1 and Detail 1A of drawing DE01 RevP1 would result in the wall that is formed by the hob and precast panel connection being structurally sound;
- (ivb) the approved detail in drawing DE01 RevP1, including Detail 1 and Detail 1A, was consistent with WSP's design of the hob to precast panel connection for the Building;
- (ivc) the approved detail in drawing DE01 RevP1, including Detail 1 and Detail 1A, was approved for each elevation of the Building where that construction detail was nominated on other Evolution drawings;
- (ivd) the representations set out in subparagraphs (d)(i) to (d)(ivc) inclusive were the product of the exercise of reasonable skill and care; and
- (v) in reviewing, checking and/or approving the detail set out in drawing DE01 RevP1, WSP had exercised and applied due care and skill.

**(WSP's First 19 September 2016 Representations)**.

10. WSP's First The 19 September 2016 Representations was/were made in trade or commerce.

11. ~~WSP's First~~ The 19 September 2016 Representation ~~s was/were~~ not thereafter corrected or modified by WSP.
12. In reliance on ~~WSP's First~~ the 19 September 2016 Representations, Evolution's shop detailer prepared further iterations of the drawing DE01 that included the same detail as had been depicted in drawing DE01 RevP1, including as to the connection between the hob and the precast panel.

12A. Evolution repeats paragraph 123 of the Second Cross-Claim.

13. Evolution:

- (a) repeats the matters set out in paragraph 25(d) of its List Response to the Third Cross-Claim Statement filed on 30 March 2020;
- (b) says that on or about 22 September 2016, WSP placed a stamp on drawing DE01 P2 in the following terms:

<b>WSP STRUCTURES PTY LTD</b>	
ABN: 78 006 769 339	
<input checked="" type="checkbox"/>	REVIEWED, NO COMMENTS.
<input type="checkbox"/>	REVIEWED, AMEND AS NOTED.
<input type="checkbox"/>	REVISE AND RESUBMIT.
THIS DRAWING HAS BEEN CHECKED FOR STRUCTURAL ADEQUACY ONLY IN THE FINAL CONDITION, AND COMPLIANCE WITH THE DESIGN INTENT. OMISSIONS, DIMENSIONS, FIT AND TEMPORARY WORKS ARE SPECIFICALLY EXCLUDED FROM THIS REVIEW. THIS REVIEW DOES NOT RELIEVE THE BUILDER OF RESPONSIBILITY UNDER THE CONTRACT. COMPLIANCE WITH SPECIFIED REQUIREMENTS AND STATUTORY REGULATIONS REMAIN THE RESPONSIBILITY OF THE BUILDER	
Initial: <b>JH</b>	Date: 22/09/2016

- (c) says on or about 22 September 2016, WSP sent the stamped drawing DE01 P2 to Icon and Evolution;

**Particulars**

Aconex from WSP to Evolution and others dated 22 September 2016 at 2.42pm (mail no. WSP(SA)-CADV-000581).

- (d) says by reason of the matters referred to in sub-paragraphs (a)-(c) above, WSP represented that:
- (i) it had reviewed the detail depicted in drawing DE01 P2;
- (ii) it had checked the detail depicted in drawing DE01 P2:

- (A) for structural adequacy; and/or
  - (B) compliance with the general design intent;
- (iii) it approved the detail set out in drawing DE01 P2, including that it:
- (A) was structurally adequate; and/or
  - (B) complied with the design intent;
- (iv) the detail depicted in drawing DE01 P2 was:
- (A) structurally adequate; and/or
  - (B) complied with the design intent;
- (iva) the installation of the precast panels in accordance with what was specified in Detail 1 and Detail 1A of drawing DE01 P2 would result in the wall that is formed by the hob and precast panel connection being structurally sound;
- (ivb) the approved detail in drawing DE01 P2, including Detail 1 and Detail 1A, was consistent with WSP's design of the hob to precast panel connection for the Building;
- (ivc) the approved detail in drawing DE01 P2, including Detail 1 and Detail 1A, was approved for each elevation of the Building where that construction detail was nominated on other Evolution drawings;
- (ivd) the representations set out in subparagraphs (d)(i) to (d)(ivc) inclusive were the product of the exercise of reasonable skill and care; and
- (v) in reviewing, checking and/or approving the detail set out in drawing DE01 P2, WSP had exercised and applied due care and skill.

**(WSP's Second 22 September 2016 Representations).**

14. ~~WSP's Second The 22 September 2016 Representations~~ was/were made in trade or commerce.
15. ~~WSP's Second The 22 September 2016 Representations~~ was/were not thereafter corrected or modified by WSP.



16. In reliance on ~~WSP's Second~~ the 22 September 2016 Representations, Evolution's shop detailer prepared further iterations of the drawing DE01 that included the same detail as had been depicted in drawing DE01 P2, including as to the connection between the hob and the precast panel.
17. Evolution:
- (a) repeats the matters set out in paragraph 28 of its List Response to the Third Cross-Claim Statement filed on 30 March 2020;
  - (b) says that on about 3 November 2016, WSP placed a stamp on drawing DE01 P5 in the following terms:

<b>WSP STRUCTURES PTY LTD</b>	
ABN: 78 006 769 339	
<input checked="" type="checkbox"/>	REVIEWED, NO COMMENTS.
<input type="checkbox"/>	REVIEWED, AMEND AS NOTED.
<input type="checkbox"/>	REVISE AND RESUBMIT.
THIS DRAWING HAS BEEN CHECKED FOR STRUCTURAL ADEQUACY ONLY IN THE FINAL CONDITION, AND COMPLIANCE WITH THE DESIGN INTENT. OMISSIONS, DIMENSIONS, FIT AND TEMPORARY WORKS ARE SPECIFICALLY EXCLUDED FROM THIS REVIEW. THIS REVIEW DOES NOT RELIEVE THE BUILDER OF RESPONSIBILITY UNDER THE CONTRACT. COMPLIANCE WITH SPECIFIED REQUIREMENTS AND STATUTORY REGULATIONS REMAIN THE RESPONSIBILITY OF THE BUILDER	
Initial:	JH
Date:	03/11/2016

- (c) says on or about 3 November 2016 WSP sent the stamped drawing DE01 P5 to Icon. Icon then forwarded the stamped drawing to Evolution;

### Particulars

- (i) Aconex from WSP to Icon and Bates Smart dated 3 November 2016 at 5.21pm (mail no. WSP(SA)-CADV-00684).
  - (ii) Aconex from Icon to Evolution dated 3 November 2016 at 5.30pm (mail no. NSWIcon-RFI-000411).
- (d) says by reason of the matters referred to in sub-paragraphs (a)-(c) above, WSP represented that:
- (i) it had reviewed the detail depicted in drawing DE01 P5;
  - (ii) it had checked the detail depicted in drawing DE01 P5:

- (A) for structural adequacy; and/or
- (B) compliance with the general design intent;
- (iii) it approved the detail set out in drawing DE01 P5, including that it:
  - (A) was structurally adequate; and/or
  - (B) complied with the design intent;
- (iv) the detail depicted in drawing DE01 P5 was:
  - (A) structurally adequate; and/or
  - (B) complied with the design intent;
- (iva) the installation of the precast panels in accordance with what was specified in Detail 1 and Detail 1A of drawing DE01 P5 would result in the wall that is formed by the hob and precast panel connection being structurally sound;
- (ivb) the approved detail in drawing DE01 P5, including Detail 1 and Detail 1A, was consistent with WSP's design of the hob to precast panel connection for the Building;
- (ivc) the approved detail in drawing DE01 P5, including Detail 1 and Detail 1A, was approved for each elevation of the Building where that construction detail was nominated on other Evolution drawings;
- (ivd) the representations set out in subparagraphs (d)(i) to (d)(ivc) inclusive were the product of the exercise of reasonable skill and care; and
- (v) in reviewing, checking and/or approving the detail set out in drawing DE01 P5, WSP had exercised and applied due care and skill.

**(WSP's 3 November 2016 Representations).**

18. WSP's The 3 November 2016 Representations ~~was~~ were made in trade or commerce.
19. WSP's The 3 November 2016 Representations ~~was~~ were not thereafter corrected or modified by WSP.

- 19A. Evolution repeats paragraphs 130 to 132 inclusive of the Second Cross-Claim, save that '26 September 2016 Representations' is to be read as '22 September 2016 Representations'.
- 19B. By the 19 September 2016 Representations, 22 September 2016 Representations and 3 November 2016 Representations, WSP represented that its services were of a particular standard, quality, value or grade in connection with the supply of those services.
- 19C. The representations set out in subparagraphs 9(d)(iva), 13(d)(iva) and 17(d)(iva) above were representations as to future matters.
- 19D. If the Court finds that:
- (a) the Observed Damage (as defined in paragraphs 65 and 66 of the Second Cross-Claim) was caused or contributed to by the joints between the hobs and precast panels on level 4, 10 and 16 and/or elevations 1, 4, 5, 8, 9 and 12 of the Building not being grouted to full width (**Partial Grouting**); and
  - (b) Evolution is liable to Icon in connection with the detail depicted in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5 and the Partial Grouting,
- then contrary to the 19 September 2016 Representations, 22 September 2016 Representations and 3 November 2016 Representations:
- (c) the detail depicted in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5, including as to the connection between the hob and the precast panel, was not structurally sound and/or consistent with the design intent;
  - (d) WSP had not reviewed, checked, and/or approved the detail depicted in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5, including that the connection between the hob and the precast panel was structurally sound and/or consistent with the design intent;
  - (e) the installation of the precast panels in accordance with what was specified in Detail 1 and Detail 1A of drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5 did not result in the walls formed by the hob and precast panel connection being structurally sound;

- (f) the representations had not been the product of the exercise of reasonable skill and care; and/or
- (g) WSP had not exercised or applied due care and skill in reviewing, checking, and/or approving that the detail depicted in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5, including that the connection between the hob and the precast panel was structurally sound and/or consistent with the design intent.

19E. Further to paragraph 19D, upon those premises WSP did not have reasonable grounds for representing that the installation of the precast panels in accordance with what was specified in Detail 1 and Detail 1A of drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5 would result in the wall formed by the hob and precast panel connection being structurally sound.

19F. In the premises of the matters set out in paragraphs 19D and 19E, the making of the 19 September 2016 Representations, 22 September 2016 Representations and 3 November 2016 Representations:

- (a) was misleading or deceptive conduct, or conduct that was likely to mislead or deceive, by WSP in contravention of section 18 of the ACL; and
- (b) contravened section 29(1)(b) of the ACL to the extent that they were false or misleading representations by WSP in connection with the supply of services and represented that those services were of a particular standard or quality.

19G. If the Court finds that the approved details in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5, including Detail 1 and Detail 1A, were not:

- (a) consistent with WSP's design of the hob to precast panel connection for the Building; or
- (b) approved for each elevation of the Building where that construction detail was nominated on other Evolution drawings,

then such of the 19 September 2016 Representations, 22 September 2016 Representations and 3 November 2016 Representations as related to those subject matters were misleading or deceptive conduct, or conduct that was likely to mislead or deceive, by WSP in contravention of section 18 of the ACL.

20. In reliance on and/or by reason of:

- (a) ~~WSP's First the 19 September 2016 Representations;~~
- (b) ~~WSP's Second the 22 September 2016 Representations;~~
- (c) ~~WSP's the 3 November 2016 Representations,~~

(individually or in combination);

- (d) Icon and Evolution were led into error in believing that WSP considered that the detail in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5 was approved for each elevation of the Building where that construction detail was nominated or called up on other Evolution drawings; and
- (e) Evolution manufactured and installed the precast panels for various levels, including levels 4, 10 and 16 of the Building, and installed them with Partial Grouting.

20A. In circumstances where WSP was or ought to have been aware that Icon and Evolution were relying or acting upon the 19 September 2016 Representations, 22 September 2016 Representations and 3 November 2016 Representations in the manner contended above, by failing to correct or modify those representations WSP engaged in misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in contravention of section 18 of the ACL.

21. Had WSP not made or had it corrected or modified any or all of:

- (a) ~~WSP's First the 19 September 2016 Representations;~~
- (b) ~~WSP's Second the 22 September 2016 Representations;~~
- (c) ~~WSP's the 3 November 2016 Representations,~~

the precast panels, including those on levels 4, 10 and 16 of the Building, would not have been installed with "Partial Grouting" as alleged by Icon in the Fourth Cross-Claim Statement.

21A. Evolution repeats paragraphs 135 to 139 inclusive of the Second Cross-Claim, save that:

- (a) references to the '26 September 2016 Representations and 3 November 2016 Representations' are to be read as the '19 September 2016 Representations,

22 September 2016 Representations and 3 November 2016 Representations';  
and

(b) references to 'Drawing DE01 P2 and Drawing DE01 P5' are to be read as  
'drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5'.

22. If the Court finds that Evolution is liable to Icon in connection with the detail depicted in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5 and the Partial Grouting, as alleged in the Fourth Cross-Claim Statement-(which is denied), Evolution says that: then Evolution has suffered and will suffer loss or damage because of WSP's conduct contravening sections 18 and 29(1)(b) of the ACL.

(a) ~~WSP's conduct in making WSP's First September 2016 Representation, WSP's Second September 2016 Representation and/or WSP's November 2016 Representation (whether individually or in combination) was misleading or deceptive, or likely to mislead or deceive, in that:~~

(i) ~~the detail depicted in drawing DE01 P1, drawing DE01 P2 and/or drawing DE01 P5, including as to the connection between the hob and the precast panel, was not structurally sound and/or consistent with the design intent;~~

(ii) ~~WSP had not reviewed, checked, and/or approved the detail depicted in drawing DE01 P1, drawing DE01 P2 and/or drawing DE01 P5, including that the connection between the hob and the precast panel was structurally sound and/or consistent with the design intent; and/or~~

(iii) ~~WSP had not applied due care and skill in reviewing, checking, and/or approving that the detail depicted in drawing DE01 P1, drawing DE01 P2 and/or drawing DE01 P5, including that the connection between the hob and the precast panel was structurally sound and/or consistent with the design intent,~~

(b) ~~by reason of that conduct, WSP contravened section 18 and/or 29 of the ACL;~~

(c) ~~in the premises, it will have suffered loss or damage because of WSP's contravening conduct.~~

**Particulars of loss or damage**

- (i) Any liability Evolution is found to have to Icon in these proceedings in connection with the detail depicted in drawing DE01 RevP1, drawing DE01 P2 and/or drawing DE01 P5 and the Partial Grouting, including for legal costs.
  - (ii) Evolution's legal costs of these proceedings.
23. Further, and in the alternative, if the Court finds that Evolution is liable to Icon as alleged in the Fourth Cross-Claim ~~Statement~~ (which is denied), Evolution will have suffered loss or damage because of WSP's misleading or deceptive conduct as alleged by Icon against WSP in the Second Cross-Claim ~~Statement~~.

**Particulars of loss or damage**

~~Any liability Evolution is found to have to Icon.~~ The particulars subjoined to paragraph 22 are repeated.

24. In the premises, Evolution is entitled to damages pursuant to section 236 of the ACL.

**Particulars of loss or damage**

~~Any liability Evolution is found to have to Icon.~~ The particulars subjoined to paragraph 22 are repeated.

25. Further, and in the alternative, Evolution is entitled to an indemnity pursuant to sections 237 and 243 of the ACL, such that Evolution is entitled to be indemnified by WSP for loss or damage suffered because of WSP's conduct contravening sections 18 and 29(1)(b) of the ACL, ~~in respect of any amount which Evolution is found to be liable to Icon.~~

**Particulars**

The particulars subjoined to paragraph 22 are repeated.

**Co-ordinate liability**

26. To the extent that Evolution is found to be liable to Icon as alleged by Icon in the Fourth Cross-Claim ~~Statement~~ (which is denied), Evolution says that WSP is liable to Icon for the reasons set out in the Second Cross-Claim ~~Statement~~.

- 27. In the premises, if Evolution is found to be liable to Icon as alleged in the Fourth-Cross Claim ~~Statement~~ (which is denied) to the extent of any such liability, Evolution and WSP are under a co-ordinate liability and Evolution is entitled to contribution from WSP.
- 28. Further, for the purposes of this Cross-Claim only (and without admissions), Evolution repeats paragraphs 20 and 21 of the Second Cross-Claim ~~Statement~~.
- 29. If, which is denied, Evolution is liable to ~~indemnify~~ Icon as alleged in the Fourth Cross-Claim ~~Statement~~, then:
  - (a) Evolution and WSP are under a co-ordinate liability to Icon in respect of that same amount; and
  - (b) Evolution is entitled to contribution from WSP.

**D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE**

- 1 At this stage Evolution does not consider that it is appropriate to refer any issue or question to a referee.

**E. STATEMENT AS TO MEDIATION**

- 1 The parties have not participated in mediation. Evolution is willing to mediate at an appropriate time.

**SIGNATURE**

Signature of legal representative



Capacity

Solicitor for the Cross-Claimant

Date of signature

6 May 2020

PATRICK KALUSKI