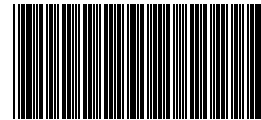




Filed: 16 November 2018 6:16 PM



D00012EG28

Commercial List Statement

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00353304

TITLE OF PROCEEDINGS

First Plaintiff	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79582038569
First Defendant	RCR TOMLINSON LTD trading as RCR Tomlinson Ltd ACN 008898486

FILING DETAILS

Filed for	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund, Plaintiff 1
Legal representative	Damian Scattini
Legal representative reference	
Telephone	(02)91463888

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 Statement (2018.11.16 RCR Tomlinson - Commercial List Statment.pdf)

[attach.]

COMMERCIAL LIST STATEMENT**COURT DETAILS**

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

TITLE OF PROCEEDINGS

Plaintiff	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund
Defendant	RCR Tomlinson Limited ACN 008 898 486

FILING DETAILS

Filed for	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund, plaintiff
Legal representative	Damian Scattini Quinn Emanuel Urquhart & Sullivan
Legal representative reference	08660-00001
Contact name and telephone	Megan Bertolatti, +61 2 9146 3500
Contact email	meaganbertolatti@quinnemanuel.com

TYPE OF CLAIM

Commercially misleading conduct

A. NATURE OF DISPUTE

1. This is a representative proceeding brought by the Plaintiff on behalf of itself and on behalf of other shareholders who acquired an interest in shares of the Defendant, RCR Tomlinson Limited (**RCR**), between 11 August 2017 and 27 July 2018.
2. The proceeding arises from the circumstances disclosed by RCR to the market in an ASX announcement on 28 August 2018. In summary, on 30 July 2018, trading in RCR shares was halted and the shares thereafter suspended from quotation for one month. On 28 August 2018, shortly before the suspension was lifted, RCR disclosed to the market that it had encountered operational issues in relation to a valuable solar farm construction project, and that those issues had led to substantial cost overruns causing RCR to incur a net loss for FY2018.
3. None of the information disclosed to the market on 28 August 2018 had been disclosed to the ASX prior to the revelation of the true position in the ASX announcement. Following the disclosure, RCR's share price declined sharply, wiping hundreds of millions from its market capitalisation.
4. In this proceeding, the Plaintiff says that RCR contravened its continuous disclosure obligations under the ASX Listing Rules. RCR was aware of the information disclosed to the market on 28 August 2018 prior to 28 August 2018, because its senior management, who were officers of RCR, had, or ought reasonably to have, come into possession of the information prior to 28 August 2018, in the course of performing their duties. Accordingly, RCR was required to disclose that information to the market prior to 28 August 2018, but failed to do so.
5. The Plaintiff also claims that RCR engaged in misleading or deceptive conduct in making statements to the market that (a) it was compliant with continuous disclosure obligations, when in fact it was not; (b) it had effective risk management systems in place to ensure compliance by RCR personnel with RCR's systems relating to procurement commitments, when in fact it did not; and (c) it was "on track" and "well placed" to deliver further revenue and earnings growth in FY18, when in fact it was not, and when RCR did not have reasonable grounds for making such statements.
6. The Plaintiff seeks damages on behalf of itself and other shareholders for loss suffered as a result of RCR's breaches of continuous disclosure obligations and misleading or deceptive conduct.

B. ISSUES LIKELY TO ARISE

1. Adopting the defined terms in Part C below, the questions of law or fact common to the claims of the Group Members are:
 - 1.1 When did RCR become aware, within the meaning of Rule 19.12 of the Listing Rules, of the Ground Conditions Information, the Project Issues Information and/or the Cost Overruns Information?
 - 1.2 Whether RCR made the Continuous Disclosure Representation, the Risk Management Representation, the First Earnings Guidance Representation and/or the Second Earnings Guidance Representation, and if so whether its conduct in making, maintaining and/or failing to correct or qualify each such representation was misleading or deceptive conduct in contravention of section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the ACL.
 - 1.3 Whether, during the Relevant Period, the Market Contraventions (or any one or combination of them) caused the market price of RCR Shares to be, or materially contributed to the market price of RCR Shares being, substantially greater than their true value and/or the market price that would otherwise have been paid at the time of acquisition but for those Market Contraventions (or any one or combination of them).
 - 1.4 Whether the decline in the price of RCR Shares pleaded in paragraph 22 of Part C was caused or materially contributed to by the information communicated to the Affected Market by RCR in respect of the Market Contraventions.
 - 1.5 What is the proper methodology for assessing the quantum of the loss or damage suffered by the Plaintiff and Group Members as a result of the impugned conduct of RCR?
2. The following additional questions will arise in respect of the Plaintiff and some Group Members individually:
 - 2.1 Whether the Plaintiff and each Group Member acquired their respective interests in RCR Shares in reliance upon one or more of the Continuous Disclosure Representation, the Risk Management Representation, the First

Earnings Guidance Information and/or the Second Earnings Guidance Representation.

- 2.2 Whether the Plaintiff and each Group Member would not have acquired their respective interests in RCR Shares had they known:
- (a) of the Ground Conditions Information, the Project Issues Information and/or the Cost Overruns Information; and/or
 - (b) that the Continuous Disclosure Representation, the Risk Management Representation and/or the Earnings Guidance Representation were false or misleading, or that RCR lacked reasonable grounds for making them.

C. PLAINTIFF'S CONTENTIONS

I. INTRODUCTION

(A) The Plaintiff and Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) (**CPA**) on behalf of the Plaintiff and all persons who or which:
 - 1.1 during the period from 11 August 2017 to 27 July 2018 inclusive (**Relevant Period**), acquired an interest in ordinary shares in the Defendant, RCR (**RCR Shares**) on the financial market operated by the Australian Securities Exchange Limited (**ASX**);
 - 1.2 suffered loss or damage by or resulting from the contraventions by RCR pleaded in this Commercial List Statement (**CLS**); and
 - 1.3 are not any of the following:
 - (a) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of RCR;
 - (b) a related body corporate (as defined by section 50 of the *Corporations Act*) of RCR;

- (c) an associated entity (as defined by section 50AAA of the Corporations Act) of RCR;
- (d) an officer or a close associate (as defined by section 9 of the Corporations Act) of RCR;
- (e) a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or
- (f) an officer or employee of, or other legal practitioner engaged by, the law firm Quinn Emanuel Urquhart & Sullivan,

(collectively, **Group Members**).

2. At the time of commencing this proceeding, seven or more persons being Group Members have claims against RCR within the meaning of section 157 of the CPA.
3. The Plaintiff has standing to commence proceedings on its own behalf against RCR, within the meaning of section 158(1) of the CPA.
4. The Plaintiff acquired an interest in RCR Shares on the ASX during the Relevant Period. As at 27 July 2018, the Plaintiff held 3000 RCR Shares. As at the commencement of this proceeding, the Plaintiff continues to hold those RCR Shares.

Particulars

The Plaintiff acquired RCR Shares as set out in the table below. The Plaintiff did not dispose of RCR Shares during the relevant period.

Date	Buy/Sell	Number of RCR Securities	Average Price per Security	Amount (\$)
27 July 2018	BUY	3,000	\$2.79	\$8,370.00

5. As to the requirements in section 161 of the CPA:
 - 5.1 the Group Members to whom the proceedings relate are identified in paragraph 1 above;
 - 5.2 the claims made on behalf of Group Members are that RCR breached its continuous disclosure obligations and made misleading statements during the

Relevant Period, causing the Group Members loss in respect of RCR Shares acquired by them, as further described in this CLS;

- 5.3 the relief claimed is set out in the Summons;
- 5.4 the questions of law or facts common to the claims of the Group Members are as set out in Part B of this CLS, as further described in Part C of this CLS.

(B) The Defendant

- 6. RCR is a diversified engineering and infrastructure company that provides engineering and other services to the infrastructure, energy and resources sectors.
- 7. RCR is, and at all times during the Relevant Period was:
 - 7.1 duly incorporated pursuant to the Corporations Act and capable of being sued;
 - 7.2 a corporation included in the official list of the financial market operated by the ASX and whose ordinary shares are ED securities (that is, enhanced disclosure securities) for the purposes of sections 111AE and 111AC of the Corporations Act;
 - 7.3 a listed disclosing entity within the meaning of section 111AL(1) and Chapter 6CA of the Corporations Act;
 - 7.4 in respect of the conduct described in this CLS in relation to financial services, a person that, in trade or commerce, engaged in conduct in relation to financial services within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - 7.5 a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
 - 7.6 in respect of the conduct described in this CLS other than in relation to financial services, a person that, in trade or commerce, engaged in conduct within the meaning of the Australian Consumer Law (**ACL**).

(C) Application of section 674(2) of the Corporations Act

- 8. At all times during the Relevant Period:

- 8.1 RCR Shares were able to be acquired and disposed of by investors and potential investors on the financial market operated by the ASX (**Affected Market**);
- 8.2 RCR was bound by the Listing Rules of the ASX (**Listing Rules**);
- 8.3 Rule 3.1 of the Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell the ASX that information, unless the exceptions in Listing Rule 3.1A apply; and
- 8.4 Rule 19.12 of the Listing Rules provided that an entity becomes aware of information if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.
- 8.5 section 674(2) of the Corporations Act applied to RCR by reason of:
- (a) the matters set out in paragraph 7.2 above and section 111AP(1) of the Corporations Act; and
 - (b) the matters set out in paragraph 8 above and section 674(1) of the Corporations Act,

(collectively, **Continuous Disclosure Obligations**).

II. DAYDREAM AND HAYMAN FARMS SOLAR PROJECT

9. At a time presently unknown to the Plaintiff, but prior to 11 August 2017, RCR submitted a tender to enter into a contractual arrangement for the engineering, procurement, construction, operation and maintenance of two 'solar farms' located in Collinsville, Queensland (the **Contracts**), known as the 'Daydream Solar Farm' and the 'Hayman Solar Farm' (together, the **Project**).
10. The Contracts required, among other things:
- 10.1 approximately 110,000 piles to be installed on the Project site by driving the piles into the ground; and
 - 10.2 approximately 2.2 million solar panels to be mounted upon the driven piles.

11. In submitting a tender for the Contracts, RCR made an estimate of total costs in relation to the Project (**Tender Estimate**) which allowed for particular, or a range of particular, sub-surface ground conditions at the Project site.

Particulars

The quantum of the Tender Estimate and the particular, or range of particular, sub-surface ground conditions at the Project site allowed for in the Tender estimate are presently unknown to the Plaintiff. Further particulars may be provided following discovery and evidence.

12. On or around 11 August 2017:
- 12.1 RCR was awarded the Contracts;
 - 12.2 RCR announced to the market that it had been awarded the Contracts; and
 - 12.3 RCR announced to the market that the value of the Contracts on award was \$315 million.

Particulars

ASX Announcement dated 11 August 2017, entitled "RCR awarded \$315m for Daydream and Hayman Solar Farm Projects"

13. In September 2017, construction of the Project commenced.
14. By August 2018, construction of the Project was substantially complete.

III. 28 AUGUST 2018 DISCLOSURES AND THEIR IMPACT

(A) Trading halt and suspension

15. On 30 July 2018, at the request of RCR, trading in RCR Shares on the ASX was halted pending an announcement by RCR to the market regarding its FY18 earnings.
16. On 1 August 2018, at the request of RCR, RCR Shares were suspended from quotation on the ASX pending an announcement by RCR to the market concerning the likely financial impact of cost overruns in relation to the Project.

17. On 7 August 2018:
- 17.1 at the Request of RCR, the suspension of RCR's shares from quotation on the ASX was continued; and
 - 17.2 RCR announced to the market that its CEO, Dr Paul Dalgleish, would step down as Managing Director and CEO of RCR and its related companies.

(B) 28 August 2018 disclosures

18. On 28 August 2018, RCR made the following public announcements:
- 18.1 a document, publicly released, entitled "RCR Announces FY18 Results and a Capital Raising to Strengthen Balance Sheet" lodged with the ASX;
 - 18.2 a document, publicly released, entitled "Project Update and Capital Investor Presentation",
- (together, **28 August 2018 Announcements**).

19. In the 28 August 2018 Announcements, RCR stated, and it was the fact, that:
- 19.1 the following issues had been encountered in relation to the Project:
 - (a) materially worse sub-surface ground conditions at the site than RCR had allowed for in its Tender Estimate, which resulted in an underestimation of site piling requirements;
 - (b) revisions to construction plans, due to the interdependence between construction and piling, which resulted in an increase in subcontractor costs and logistics costs;
 - (c) external delays, which resulted in 'extension of time submissions'; and
 - (d) adverse weather conditions,(together, **Project Issues**);
 - 19.2 the Project Issues had caused significant cost overruns in relation to the Project (**Cost Overruns**);
 - 19.3 the cost overruns resulted in cumulative write-downs of \$57 million from the tendered margin on the Project (**Write-downs**);

- 19.4 RCR had suffered a statutory net loss of \$16.1 million for FY18, which loss was largely driven by the Cost Overruns.
20. In the 28 August 2018 Announcements, RCR also stated that:
- 20.1 a large proportion of the Write-downs were only recently identified;
- 20.2 the reasons why a large proportion of the Write-downs were only recently identified was because RCR personnel circumvented RCR's standard processes and project-level systems relating to procurement commitments (**Breach of RCR Protocol**);
- 20.3 several actions and additional measures were being implemented to mitigate the risk of project level systems being circumvented and cost overruns going undetected in the future; and
- 20.4 the Board was taking immediate action to enhance the Company's systems and to reposition the Company towards a more acceptable risk profile.

(C) Share price decline

21. On 30 August 2018, the suspension of trading in RCR Shares was lifted and RCR Shares were reinstated to quotation on the ASX.
22. On 30 August 2018, following the reinstatement of RCR Shares to quotation on the ASX, the price of RCR Shares declined substantially.

Particulars

RCR's share price in the period from 27 July 2018 to 5 September 2018 was as follows:

Date	Opening price	Closing price
Friday 27 July 2018	\$2.80	\$2.80
Monday 30 July 2018 - Wednesday 29 August 2018	Trading halted and thereafter suspended	Trading halted and thereafter suspended
30 August 2018	\$1.05	\$1.05
31 August 2018	\$1.12	\$1.12

Date	Opening price	Closing price
3 September 2018	\$1.12	\$1.05
4 September 2018	\$1.07	\$1.04
5 September 2018	\$1.04	\$1.06

IV. INFORMATION OF WHICH RCR WAS AWARE

(A) Ground Conditions

23. By no later than the start of the Relevant Period:

23.1 sub-surface ground conditions at the Project site were materially worse than RCR had allowed for in its Tender Estimate (**Ground Conditions Issue**); and

23.2 there was a material risk that the profitability of the Project would be adversely affected by reason of the Ground Conditions Issue,

(**Ground Conditions Information**).

Particulars

By reason of the Ground Conditions Issue, there was a material risk that:

- (a) *RCR would incur increased costs in relation to the installation of the piles at the Project site;*
- (b) *RCR would encounter delay in the installation of the piles at the Project site;*
- (c) *RCR would encounter delay in the completion of the construction of the Project, by reason of the interdependence of the installation of the piles and other aspects of the construction of the Project;*
- (d) *RCR would be required to make revisions to its construction plans and/or execution methodologies, in order to mitigate the delays pleaded in paragraphs (b) and (c), which in turn would increase subcontractor costs and logistics costs; and/or*

- (e) *as a consequence of any one or combination of the matters set out above, RCR would encounter significant cost overruns in relation to the Project.*

Further particulars may be provided following discovery and evidence.

24. RCR was aware of the Ground Conditions Information by no later than:
- 24.1 the start of the Relevant Period; or
- 24.2 alternatively, the point in time at which the installation of the piles commenced.

Particulars

- (a) *The Ground Conditions Information was information of which officers of RCR with responsibility for RCR's construction business, infrastructure business and/or the Project came (**Relevant Officers**), or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR by no later than the start of the Relevant Period.*
- (b) *The Relevant Officers knew, or ought reasonably to have known, of the Grounds Condition Issue by reason of RCR having undertaken a reasonable assessment of the sub-surface ground conditions at the Project site prior to submitting a tender for the Project.*
- (c) *Alternatively, the Relevant Officers knew, or ought reasonably to have known, of the Grounds Condition Issue by reason of the sub-surface ground conditions being encountered in the course of installation of the piles.*
- (d) *The Relevant Officers knew, or ought reasonably to have known, that there was a material risk that the profitability of the Project would be adversely affected by reason of the Ground Conditions Issue by reason of their knowledge of and experience in construction, and in particular the construction of solar farms.*
- (e) *The knowledge and awareness of officers of RCR with responsibility for RCR's construction business and/or the Project referred to above was and is, the knowledge and awareness of RCR.*

- (f) *The identity of the Relevant Officers, and the point in time at which the installation of the piles commenced, are not matters presently known to the Plaintiff.*

Further particulars may be provided following discovery and evidence.

(B) Project Issues

25. At a time presently unknown to the Plaintiff, but materially prior to 28 August 2018, RCR was aware of the Project Issues (**Project Issues Information**).

Particulars

- (a) *Each of the Project Issues had, or had substantially, arisen or occurred materially prior to 28 August 2018.*
- (b) *The Project Issues Information was information of which the Relevant Officers came, or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR materially prior to 28 August 2018, including by reason of RCR's standard processes and project-level systems relating to procurement commitments.*
- (c) *Further, in order for RCR to comply with its Continuous Disclosure Obligations, the board of RCR was obliged to maintain a reasonable level of familiarity with the state of RCR's business including the progress of its major infrastructure projects (including the Project) and the adherence of those projects to their respective cost estimates and timetables, and to make reasonable enquiries into such matters.*
- (d) *The Plaintiff repeats the matters alleged above at paragraph 20.*
- (e) *If the Relevant Officers or the board of RCR did not come into possession of the Project Issues Information, or any part thereof, until 28 August 2018, and if the reason why they did not come into possession of such information was because of the Breach of RCR Protocol, it may be inferred that they ought reasonably to have come into possession of the Project Issues Information, or any part thereof, materially prior to 28 August 2018, because the Breach of Protocol ought reasonably not to have occurred, and RCR's standard processes*

and project-level systems relating to procurement commitments ought reasonably to have been followed.

- (f) *The knowledge and awareness of the Relevant Officers and the board referred to above was and is, the knowledge and awareness of RCR.*

Further particulars may be provided following discovery and evidence.

(C) Cost Overruns

26. At a time presently unknown to the Plaintiff, but materially prior to 28 August 2018, RCR was aware that RCR would incur, and/or had incurred, substantial cost overruns by reason of the Project Issues (**Cost Overruns Information**).

Particulars

- (a) *The cost overruns arose as a consequence of the Project Issues.*
- (b) *The Cost Overruns Information was information of which the Relevant Officers came, or ought reasonably to have come, into possession in the course of the performance of their duties as officers of RCR materially prior to 28 August 2018, including by reason of RCR's standard processes and project-level systems relating to procurement commitments.*
- (c) *The Plaintiff repeats the matters alleged above at paragraph 20.*
- (d) *Further, in order for RCR to comply with its Continuous Disclosure Obligations, the board of RCR was obliged to maintain a reasonable level of familiarity with the state of RCR's business (including the progress, and adherence to cost estimates and timetables, of its major infrastructure projects, including the Project, and to make reasonable enquiries into such matters.*
- (e) *If the Relevant Officers or the board of RCR did not come into possession of the Cost Overruns Information until 28 August 2018, and if the reason why they did not come into possession of such information was because of the Breach of RCR Protocol, it may be inferred that they ought reasonably to have come into possession of the Cost Overruns Information materially prior to 28 August 2018, because the Breach of*

Protocol ought reasonably not to have occurred, and RCR's standard processes and project-level systems relating to procurement commitments ought reasonably to have been followed.

- (f) *The knowledge and awareness of the Relevant Officers and the board referred to above was and is, the knowledge and awareness of RCR.*

Further particulars may be provided following discovery and evidence.

V. BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS

(A) Ground Conditions Information Contravention

27. As at, and from, the commencement of the Relevant Period, the Ground Conditions Information was information concerning RCR that:

27.1 was not generally available, within the meaning of sections 647(2)(c) and 676(2) of the Corporations Act;

27.2 a reasonable person would expect, if it were generally available, to have a material effect on the price or value of RCR Shares, within the meaning of section 674(c) of the Corporations Act;

27.3 would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of RCR Shares, within the meaning of section 677 of the Corporations Act; and

27.4 a reasonable person would expect to have a material effect on the price or value of RCR Shares, within the meaning of Listing Rule 3.1,

(such information is hereafter referred to as **Material Non-public Information**).

28. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 24 and 27 above, RCR became obliged immediately to inform the ASX of the Ground Conditions Information:

28.1 by no later than the start of the Relevant Period;

28.2 alternatively, by no later than the point in time at which the installation of the piles commenced.

29. RCR did not inform the ASX of the Ground Conditions Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the Ground Conditions Information until no earlier than 28 August 2018.
30. By reason of the matters pleaded in paragraphs 27 to 29 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Ground Conditions Information Contravention**).

(B) Project Issues Information Contravention

31. As at, and from, a time presently unknown to the Plaintiff, but materially prior to 28 August 2018, the Project Issues Information was information concerning RCR that was Material Non-public Information.
32. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 25 and 31 above, RCR became obliged immediately to inform the ASX of the Project Issues Information by no later than on or about a time presently unknown to the Plaintiff, but materially prior to 28 August 2018.
33. RCR did not inform the ASX of the Project Issues Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the Project Issues Information until no earlier than 28 August 2018.
34. By reason of the matters pleaded in paragraphs 31 to 33 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Project Issues Information Contravention**).

(C) Cost Overruns Information Contravention

35. As at, and from a time presently unknown to the Plaintiff, but materially prior to 28 August 2018, the Cost Overruns Information was information concerning RCR that was Material Non-public Information.
36. By reason of RCR's Continuous Disclosure Obligations and the matters pleaded in paragraphs 26 and 35 above, RCR became obliged immediately to tell the ASX of the Cost Overruns Information by no later than a time presently unknown to the Plaintiff, but materially prior to 28 August 2018.

37. RCR did not tell the ASX of the Cost Overruns Information at any time prior to 28 August 2018, and the Affected Market did not become aware of the Cost Overruns Information until no earlier than 28 August 2018.
38. By reason of the matters pleaded in paragraphs 35 to 37 above, RCR contravened Listing Rule 3.1 and section 674(2) of the Corporations Act (**Cost Overruns Information Contravention**).

(D) The Disclosure Contraventions were continuing

39. Each of:

- 39.1 the Ground Conditions Information Contravention;
- 39.2 the Project Issues Information Contravention;
- 39.3 the Cost Overruns Information Contravention; and

(collectively, the **Disclosure Contraventions**)

was a continuing contravention, which of its nature continued from and after the time of the first contravention (when first known to RCR) throughout the Relevant Period (or the remainder thereof) and until such time as the Ground Conditions Information, the Project Issues Information, and/or the Cost Overruns Information, relevantly, was disclosed to the Affected Market on or after 28 August 2018.

VI. MISLEADING AND DECEPTIVE CONDUCT

(A) RCR's public statements

40. Prior to and during the Relevant Period:

- 40.1 RCR made the statements set out in Schedule 1 to this CLS; and
- 40.2 the statements set out in Schedule 1 were made in a manner that was likely to result in their publication to the Affected Market.

(B) Continuous Disclosure Representation

41. Throughout the Relevant Period, RCR represented to the Affected Market that RCR was in compliance with its Continuous Disclosure Obligations (**Continuous Disclosure Representation**).

Particulars

The Continuous Disclosure Representation is to be implied from:

- (a) *the statements at Schedule 1 paragraphs 1 to 6; and*
- (b) *taken together, RCR's Continuous Disclosure Obligations and the absence of any statement by RCR during the Relevant Period to the effect that RCR had not complied with those obligations.*

- 42. RCR failed to correct or qualify the Continuous Disclosure Representation at any time during the Relevant Period.
- 43. The Continuous Disclosure Representation was a continuing representation in the Relevant Period.
- 44. Throughout the Relevant Period, RCR was not in fact in compliance with its Continuous Disclosure Obligations.

Particulars

The Plaintiff repeats the matters pleaded in paragraphs 27 to 39 above.

- 45. The conduct pleaded in paragraphs 40 to 42 was conduct engaged in by RCR:
 - 45.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - 45.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
 - 45.3 in trade or commerce, within the meaning of section 18 of the ACL.
- 46. In making, maintaining and/or failing to correct or qualify the Continuous Disclosure Representation, RCR engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
 - 46.1 section 1041H of the Corporations Act;
 - 46.2 section 12DA(1) of the ASIC Act; and/or
 - 46.3 section 18 of the ACL,

(Continuous Disclosure Misleading Conduct Contravention).**(C) Risk Management Representation**

47. Throughout the Relevant Period, RCR represented to the Affected Market that RCR:

47.1 effectively managed risk in relation to major projects, including through project reporting; and

47.2 had in place internal controls sufficient to enable RCR effectively to identify, assess and mitigate risk in relation to major projects, including the risk of cost overruns.

(Risk Management Representation).**Particulars**

(a) *The Risk Management Representation was express, or alternatively, implied.*

(b) *To the extent it was express, the Plaintiff repeats the statements at Schedule 1 paragraphs 7 to 8.*

(c) *To the extent it was implied, it was to be implied from:*

(1) *the statements at Schedule 1 paragraphs 7 to 8; and*

(2) *the absence of any statement by RCR during the Relevant Period qualifying the statements referred to above.*

48. RCR failed to correct or qualify the Risk Management Representation at any time during the Relevant Period.

49. The Risk Management Representation was a continuing representation in the Relevant Period.

50. Throughout the Relevant Period, RCR in fact:

50.1 did not effectively manage risk in relation to major projects, including through project reporting; and

- 50.2 did not have in place internal controls sufficient to enable RCR effectively to identify, assess and mitigate risk in relation to major projects, including the risk of cost overruns.

Particulars

The Plaintiff repeats the matters pleaded in paragraphs 19 and 20 above.

51. The conduct pleaded in paragraphs 47 to 48 was conduct engaged in by RCR:
- 51.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- 51.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- 51.3 in trade or commerce, within the meaning of section 18 of the ACL.
52. In making, maintaining and/or failing to correct or qualify the Risk Management Representation, RCR engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:
- 52.1 section 1041H of the Corporations Act;
- 52.2 section 12DA(1) of the ASIC Act; and/or
- 52.3 section 18 of the ACL,

(Risk Management Misleading Conduct Contravention).

(D) First Earnings Guidance Representation

53. On 24 August 2017, RCR represented to the Affected Market that RCR was “on track to deliver further revenue and earnings growth in FY18” (**First Earnings Guidance Representation**).

Particulars

The First Earnings Guidance Representation was express and was made in writing in an ASX Announcement and Media Release dated 24 August 2017 and entitled “RCR Announces Strong Full Year Result and a Capital Raising to Support Future Growth”.

54. RCR failed to correct or qualify the First Earnings Guidance Representation at any time during the Relevant Period.
55. The Earnings Guidance Representation was:
- 55.1 a continuing representation in the Relevant Period; and
- 55.2 a representation with respect to a future matter within the meaning of:
- (a) s 769 of the Corporations Act;
- (b) s 12BB of the ASIC Act; and
- (c) s 4 of the ACL; or
- 55.3 alternatively, a representation of fact.
56. At the time the First Earnings Guidance Representation was made, and throughout the remainder of the Relevant Period,
- 56.1 RCR did not have reasonable grounds for making the First Earnings Guidance Representation; and/or
- 56.2 RCR was not, in fact, on track to deliver further revenue and earnings growth in FY18.

Particulars

The Plaintiff repeats the matters pleaded in paragraphs 19, 20, and 23 to 26 above.

57. The conduct pleaded in paragraphs 53 to 54 was conduct engaged in by RCR:
- 57.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- 57.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- 57.3 in trade or commerce, within the meaning of section 18 of the ACL.

58. In making, maintaining and/or failing to correct or qualify the First Earnings Guidance Representation, RCR engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:

58.1 section 1041H of the Corporations Act;

58.2 section 12DA(1) of the ASIC Act; and/or

58.3 section 18 of the ACL,

(First Earnings Guidance Misleading Conduct Contravention).

(E) Second Earnings Guidance Representation

59. On 22 February 2018, RCR represented to the Affected Market that RCR was “well placed for expected revenue and earnings growth” (**Second Earnings Guidance Representation**).

Particulars

The Second Earnings Guidance Representation was express and was made in writing in an ASX Announcement and Media Release dated 22 February 2018 and entitled “RCR’s Delivers Record Half Revenues, Cash Conversion and Earnings Growth”.

60. RCR failed to correct or qualify the Second Earnings Guidance Representation at any time during the Relevant Period.

61. The Second Earnings Guidance Representation was:

61.1 a continuing representation in the Relevant Period; and

61.2 a representation with respect to a future matter within the meaning of:

(a) s 769 of the Corporations Act;

(b) s 12BB of the ASIC Act; and

(c) s 4 of the ACL; or

61.3 alternatively, a representation of fact.

62. At the time the Second Earnings Guidance Representation was made, and throughout the remainder of the Relevant Period,

62.1 RCR did not have reasonable grounds for making the Second Earnings Guidance Representation; and/or

62.2 RCR was not, in fact, well placed for revenue and earnings growth.

Particulars

The Plaintiff repeats the matters pleaded in paragraphs 19, 20, and 23 to 26 above.

63. The conduct pleaded in paragraphs 53 to 54 was conduct engaged in by RCR:

63.1 in relation to financial products (being RCR Shares), within the meaning of sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

63.2 in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or

63.3 in trade or commerce, within the meaning of section 18 of the ACL.

64. In making, maintaining and/or failing to correct or qualify the Second Earnings Guidance Representation, RCR engaged in conduct which was misleading or deceptive, or likely to mislead or deceive, in contravention of:

64.1 section 1041H of the Corporations Act;

64.2 section 12DA(1) of the ASIC Act; and/or

64.3 section 18 of the ACL,

(Second Earnings Guidance Misleading Conduct Contravention, and together with the Continuous Disclosure Misleading Conduct Contravention, the Risk Management Misleading Conduct Contravention and the First Earnings Guidance Misleading Conduct Contravention, the **Misleading Conduct Contraventions).**

VII. CAUSATION, INCLUDING INDIRECT (MARKET-BASED) CAUSATION

65. During the Relevant Period, the Plaintiff and the Group Members acquired an interest in RCR Shares in a market of investors or potential investors in RCR Shares:

- 65.1 operated by the ASX;
 - 65.2 regulated by, inter alia, section 674(2) of the Corporations Act and Listing Rule 3.1;
 - 65.3 where the price or value of RCR Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and Listing Rule 3.1;
 - 65.4 where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of RCR Shares (namely the information the subject of the Disclosure Contraventions, or any one of them); and
 - 65.5 where misleading or deceptive conduct had occurred (namely the conduct the subject of the Misleading Conduct Contraventions) by the making of statements to the market that a reasonable person would expect to have a material effect on the price or value of RCR Shares.
66. During the Relevant Period, the Plaintiff and the Group Members acquired an interest in RCR Shares in circumstances in which the Disclosure Contraventions and the Misleading Conduct Contraventions (**Market Contraventions**) (or any one or combination of them) caused the market price of RCR Shares to be, or materially contributed to the market price of RCR Shares being, substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of acquisition but for those Market Contraventions (or any one or combination of them).

Particulars of indirect / market-based causation

Full particulars of the extent to which the Market Contraventions caused the market price for RCR Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed at the time of acquisition will be provided after the Plaintiff has served expert evidence.

67. Further or in the alternative to paragraph 66, the decline in the price of RCR Shares pleaded in paragraph 22 above was caused or materially contributed to by the information communicated to the Affected Market by RCR in respect of the Market Contraventions.

68. Further or in the alternative to paragraphs 66 and 67, during the Relevant Period, the Plaintiff and some Group Members acquired their respective interests in RCR Shares in reliance upon one or more of the Continuous Disclosure Representation, the Risk Management Representation, the First Earnings Guidance Representation and/or the Second Earnings Guidance Representation.
69. Further or in the alternative to paragraphs 66 to 68, during the Relevant Period, the Plaintiff and some Group Members would not have acquired their respective interests in RCR Shares had they known:
- 69.1 of the Ground Conditions Information, the Project Issues Information, and/or the Cost Overruns Information; and/or
- 69.2 that the Continuous Disclosure Representation, the Risk Management Representation, the First Earnings Guidance Representation and/or the Second Earnings Guidance Representation was false or misleading.

VIII. LOSS AND DAMAGE

70. By reason of the matters pleaded in paragraphs 65 to 69 above, the Plaintiff and the Group Members have suffered loss and damage by and resulting from the Market Contraventions (or any one or combination of them).

Particulars

- (a) *The loss suffered by the Plaintiff will be calculated by reference to one or more of the following measures of loss and damage:*
- (1) *the difference between the price at which RCR Shares were acquired by the Plaintiff during the Relevant Period and the true value of that interest at that time; or*
- (2) *the difference between the price at which RCR Shares were acquired by the Plaintiff during the Relevant Period and the market price that would have prevailed at that time had the Market Contraventions not occurred; or*
- (3) *the nature and quantum of the decline in the price of RCR Shares on 28 August 2018 as a result of the disclosure of*

information which had not previously been disclosed in respect of the Market Contraventions; or

- (4) *the difference between the price at which the RCR Shares were acquired by the Plaintiff during the Relevant Period and the amount "left in hand" or that might be realised on the sale of those shares.*
- (b) *Further particulars of the Plaintiff's loss will be provided after the service of the Plaintiff's expert evidence.*
- (c) *Particulars of the losses of the Group Members will be provided following opt-out, the determination of the Plaintiff's claim and identified common issues at an initial trial, and if and when it becomes necessary for a determination to be made on the individual claims of the Group Members. The losses of the Group Members are presently expected to involve one or more of the following measures of loss and damage:*
- (1) *the difference between the price at which RCR Shares were acquired during the Relevant Period and the true value of the shares at that time; or*
- (2) *the difference between the purchase price paid for the shares and the price that the shares would then have been trading at on the day of purchase, had the Market Contraventions not occurred and the market been properly informed; or*
- (3) *in the alternative, the difference between the purchase price of the shares and (i) if the shares were sold: the price at the time they were sold; or (ii) if the shares are retained: the listed price of the shares at the date of the judgment.*

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

- 1 None.

E. MEDIATION

- 1 The parties have not attempted mediation. The Plaintiff is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature

Capacity

Solicitor on the Record

Date of signature

16 November 2018

This pleading was prepared by Adam Hochroth and Patrick Meagher and Quinn Emanuel Urquhart & Sullivan.

SCHEDULE 1**RCR's Misleading Public Statements****(A) CONTINUOUS DISCLOSURE STATEMENTS**

1. On 25 August 2016, RCR published its 2016 Annual Report.
2. In the 2016 Annual Report, RCR made the following statements:
 - 2.1 (p 68) "The company is committed to maintaining a level of disclosure that meets the standards and provides all investors with timely and equal access to information issued by the Company";
 - 2.2 (p 68) "The Company's Continuous Disclosure Policy reinforces its commitment to ASX continuous disclosure requirements and outlines management's accountabilities and the processes to be followed for ensuring compliance";
 - 2.3 (p 69) "The Company is committed to giving all shareholders comprehensive, timely and equal access to information about its activities so that they can make informed decisions. Similarly, prospective new investors are entitled to be able to make informed investment decisions when considering the purchase of shares in the Company";
 - 2.4 (p 69) "The Company's Shareholder Communication Policy provides that the Company will communicate effectively with its shareholders, give shareholders ready access to balanced and understandable information about RCR and encourages shareholder participation at General Meetings and AGMs. The way it does this includes:...ensuring the disclosure of full and timely information about the Company's activities in accordance with the general and continuous disclosure principles of the ASX Listing Rules and the *Corporations Act 2001*";
 - 2.5 (p 73) RCR has complied with its obligation to make timely and balanced disclosure to the ASX; and
 - 2.6 (p 73) RCR has written policies designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance.

3. On 24 August 2017, RCR published its 2017 Annual Report.
4. In the 2017 Annual Report, RCR made the following statements:
 - 4.1 (p 63) “The Company is committed to giving all shareholders comprehensive, timely and equal access to information about its activities so that they can make informed decisions. Similarly, prospective new investors are entitled to be able to make informed investment decisions when considering the purchase of shares in the Company;”
 - 4.2 (p 64) “The Company’s Shareholder Communication Policy provides that the Company will communicate effectively with its shareholders, give shareholders ready access to balanced and understandable information about the Company and encourages shareholder participation at General Meetings and AGMs. The way it does this includes... ensuring the disclosure of full and timely information about the Company’s activities in accordance with the general and continuous disclosure principles of the ASX Listing Rules and the Corporations Act 2001”;
 - 4.3 (p 64) “The Company is committed to maintaining a level of disclosure that meets the standards and provides all investors with timely and equal access to information issued by the Company”.
 - 4.4 (p 64) “The Company’s Continuous Disclosure Policy reinforces its commitment to ASX continuous disclosure requirements and outlines management’s accountabilities and the processes to be followed for ensuring compliance”;
 - 4.5 (p 70) RCR has complied with its obligation to make timely and balanced disclosures to the ASX; and
 - 4.6 (p 70) RCR has written policies designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance.
5. During the Relevant Period, RCR had in place a Continuous Disclosure Policy, which was referred to in the 2016 Annual Report (p 68) and in the 2017 Annual Report (p 68) and which was available throughout the Relevant Period in RCR’s website.
6. In the Continuous Disclosure Policy, RCR made the following statements:

- 6.1 (p 1) “As a company listed on the Australian Securities Exchange (ASX), RCR Tomlinson Ltd (RCR) is committed to: complying with its disclosure obligations under the ASX Listing Rules; and the promotion of investor confidence by ensuring that all investors have equal and timely access to material information concerning RCR, including material information about its financial position, performance, ownership and governance”; and
- 6.2 (p 1) “Both the Corporations Act and the ASX Listing Rules require RCR to ensure that once it becomes aware of any certain information concerning it that a reasonable person would expect to have a material effect on the price or value of RCR shares that is not generally available or previously been made available to ASX (Price Sensitive Information), it must immediately advise ASX of that information. RCR will become aware of information if a Director or executive officer of RCR has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a Director or executive officer of RCR”.

(B) RISK MANAGEMENT STATEMENTS

7. In the 2016 Annual Report, RCR made the following statements:
- 7.1 (p 23) “RCR’s management system is designed to support the high performance and sustainable development of our business, to increase transparency of key risk indicators, enhance corporate governance and strengthen primary management control information”;
- 7.2 (p 35) “The Company has a risk management policy and internal controls to enable the identification, assessment and mitigation of material business risks. Key processes include tender, contracting and project management, treasury and credit risks”; and
- 7.3 (p 69) “The Board and management recognise that risk management and internal compliance and control are key elements of good corporate governance”.
8. In the 2017 Annual Report, RCR made the following statements:
- 8.1 (p 35) “Effective risk management anticipates and evaluates uncertainties that could impact the Company’s business objectives. By recognising and

managing risk, the Company is able to make the most out of opportunities to create shareholder value and deliver on commitments to our employees, customers, the environment and the community. The Company has defined five discrete risk environments, being: Strategic, Operational, Project, Financial and Compliance”;

- 8.2 (p 35) “The Company has a risk management policy and internal controls to enable the identification, assessment and mitigation of material business and project risks. Key processes include tender, contracting and project management, treasury and credit risks. Project risks are evaluated as a potential barrier to delivering contracted scopes against cost, time and technical performance targets, while maintaining health, safety and environmental performance at acceptable levels. RCR’s risk management framework sets the minimum required standard for project management in the delivery of major projects. Major project risk management activities include contracting principles, project reviews, identification, analysis and control risks and opportunities, risk registers and monthly project reporting”;
- 8.3 (p 35) “The Company manages risk as an intrinsic part of its business and is committed to conducting business activities in a way that is aimed at achieving continued growth of shareholder value in a sustainable manner”; and
- 8.4 (p 65) “The Board and management recognise that risk management and internal compliance and control are key elements of good corporate governance”.