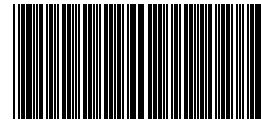




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Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00094443

TITLE OF PROCEEDINGS

First Plaintiff	Barry Jones
Second Plaintiff	Karen Jones
Number of Plaintiffs	4
First Defendant	RCR Tomlinson Limited ACN 008898486
Second Defendant	Paul Joseph Dagleish
Number of Defendants	3

FILING DETAILS

Filed for	Bruce Maxwell James, Defendant 3
Legal representative	Paul Andrew Reidy
Legal representative reference	
Telephone	02 8274 9555
Your reference	C3525

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 (Third Defendant's Commercial List Response.pdf)

[attach.]

Form 1 (version 4)
Practice Note No. SC Eq 3

THIRD DEFENDANT'S COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court
Division	Equity
List	Commercial
Registry	Sydney
Case number	2019/94443

TITLE OF PROCEEDINGS

First plaintiff	Barry Jones
Number of plaintiffs (if more than two)	Four
First defendant	RCR Tomlinson Limited ACN 008 898 486 (Administrators Appointed)
Number of defendants (if more than two)	Three

FILING DETAILS

Filed for	Bruce Maxwell James, Third Defendant
Filed in relation to	Plaintiff's claim
Legal representative	Paul Reidy, Johnson Winter & Slattery
Legal representative reference	C3525
Contact name and telephone	Andreas Piesiewicz, (02) 8274 9518
Contact email	andreas.piesiewicz@jws.com.au

NATURE OF DISPUTE

1. Unless otherwise indicated, Bruce Maxwell James (**Mr James**) adopts the definitions used by the Plaintiffs in the Commercial List Statement (**CLS**). In doing so, Mr James does not make any admissions.
2. In relation to Mr James, the allegations made in the CLS are limited to allegations that he engaged in misleading or deceptive conduct, or conduct that was likely to mislead or deceive, as a result of representations alleged to have been made by him due to statements contained in the 28 August 2018 Announcement and FY18 Financial Report.
3. Mr James says that the conduct of making the 28 August 2018 Announcement and FY18 Financial Report was the conduct of RCR and not him personally, denies that the 28 August 2018 Announcement and FY18 Financial Report contained the

representations alleged, in the alternative, says that if the 28 August 2018 Announcement and FY18 Financial Report contained the representations alleged, there were reasonable grounds for making those representations, and denies that the representations alleged caused any loss.

ISSUES LIKELY TO ARISE

1. Whether the conduct of making the 28 August 2018 Announcement and FY18 Financial Report was the conduct of Mr James personally.
2. Whether any of the representations alleged were contained in the 28 August 2018 Announcement and FY18 Financial Report.
3. If Mr James made any of the representations alleged, whether Mr James had reasonable grounds for making them.
4. If Mr James made any of the representations alleged, whether doing so was misleading or deceptive conduct or conduct that was likely to mislead or deceive.
5. Whether the Plaintiffs and Group Members suffered loss and damage as a result of any such conduct engaged in by Mr James.

THIRD DEFENDANT'S RESPONSES TO CONTENTIONS

A THE PLAINTIFFS AND GROUP MEMBERS

1. The Third Defendant (**Mr James**) does not admit paragraph 1 of the CLS.
2. Mr James does not admit paragraph 2 of the CLS.
3. Mr James does not admit paragraph 3 of the CLS.
4. Mr James does not admit paragraph 4 of the CLS.

B. THE DEFENDANTS

B.1 RCR

5. In answer to paragraph 5 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

B.2 Dalgleish

6. In answer to paragraph 6 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

B.3 Mr James

7. In answer to paragraph 7 of the CLS, Mr James:
- (a) admits sub-paragraph (a) and says further that between 29 January 2014 to 5 August 2018 he was a non-executive director of RCR;
 - (b) admits sub-paragraph (b) and says further that between 29 January 2014 to 5 August 2018 he was a non-executive director of RCR;
 - (c) admits that he is a person and otherwise does not admit sub-paragraph (c);
 - (d) admits that he is a person and otherwise does not admit sub-paragraph (d); and
 - (e) admits that he is a person and otherwise does not admit sub-paragraph (e).

B.4 Prohibition on misleading and deceptive conduct

8. In answer to paragraph 8 of the CLR, Mr James
- (a) says that this paragraph pleads propositions of law and not material facts; and
 - (b) otherwise does not admit the paragraph.
9. In answer to paragraph 9 of the CLR, Mr James
- (a) says that this paragraph pleads propositions of law and not material facts; and
 - (b) otherwise does not admit the paragraph.

B.5 Other relevant RCR personnel

10. Mr James admits paragraph 10 of the CLS.
11. In answer to paragraph 11 of the CLS, Mr James:
- (a) says that McCullough held the role of Chief Operating Officer – East from in or around February or March 2017, then became the Chief Operating Officer of RCR; and
 - (b) otherwise does not admit the paragraph.
12. In answer to paragraph 12 of the CLS, Mr James:
- (a) says that this paragraph pleads propositions of law and not material facts; and

- (b) says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

B.6 RCR's business

13. Mr James admits paragraph 13 of the CLS.
14. Mr James admits that the 24 August 2017 Presentation included a statement in the Key Business Risks section that "*RCR is diversifying its business strategy by increasingly pursuing project development roles on large-scale solar projects where it has traditionally only been engaged as a contractor*" and otherwise does not admit paragraph 14 of the CLS.
15. Mr James admits the from about December 2016 until about April 2018, RCR entered into a number of contracts for the engineering, procurement and construction of solar farms and otherwise says that the words "significant number of substantial contracts" are ambiguous and on that basis does not paragraph 15 of the CLS.
16. In answer to paragraph 16 of the CLS, Mr James:
- (a) admits that from 29 August 2017 to 28 August 2018:
- i. RCR's revenue was largely derived from fixed price EPC contracts;
 - ii. EPC contracts exposed RCR to potential risks including project delays, unanticipated increases in the cost of delivering the project and high working capital requirements in the later stages of the project;
- (b) admits that cash receipts on EPC contracts were dependent on certain milestones being met, which might cause timing differences from a cash collection point of view; and
- (c) otherwise does not admit the paragraph.
17. In answer to paragraph 17 of the CLS, Mr James:
- (a) in relation to sub-paragraph (a) says that in the financial year ending 30 June 2018 sales revenue from RCR's infrastructure business unit was approximately \$1.5 billion, of which approximately \$1 billion was from solar and RCR's overall revenue was approximately \$2 billion;

- (b) in relation to sub-paragraph (b) says that increases in the cost or time to complete an EPC Solar Contract were capable of having an adverse impact on RCR's:
 - (i) cashflow and liquidity;
 - (ii) earning and profitability; and
 - (c) otherwise does not admit paragraph 17.
18. In answer to paragraph 18 of the CLS, Mr James:
- (a) admits that, during the Relevant Period:
 - (i) RCR utilised processes and project-level systems relating to procurement commitments to monitor the time and cost to complete the EPC Solar Contracts;
 - (ii) monthly reports were prepared by management in order to monitor percentage completion and forecast costs to complete the EPC Solar Contracts;
 - (iii) monthly project meetings were held and updates were provided to RCR's board of directors
 - (b) says that during the Relevant Period, RCR had in place a range of policies, processes and procedures in respect of tendering for EPC Solar Contracts, assessing project risks and opportunities, analysing existing and forecast construction status and risk, and analysing RCR Group's existing and forecast financial position and risk; and
 - (c) otherwise does not admit the paragraph.

C. RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES

C.1 11 August 2017

- 19. Mr James admits paragraph 19 of the CLS.
- 20. In answer to paragraph 20 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

C.2 24 August 2017

21. Mr James admits paragraph 21 of the CLS.

22. In answer to paragraph 22 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

C.3 22 February 2018

23. Mr James admits paragraph 23 of the CLS.

24. In answer to paragraph 24 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

C. 4 30 July 2018

25. Mr James admits paragraph 25 of the CLS.

C. 5 1 August 2018

26. Mr James admits paragraph 26 of the CLS.

C. 6 7 August 2018

27. Mr James admits paragraph 27 of the CLS.

28. In answer to paragraph 28 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

C. 7 28 August 2018

29. Mr James admits paragraph 29 of the CLS.

30. In answer to paragraph 30 of the CLS, Mr James:

- (a) in relation to sub-paragraph (a), admits the 28 August Announcement contained the words:

Statutory net loss after tax of \$16.1 million.

and the FY18 Financial Report contained the words:

Statutory Loss after tax of \$16.1 million includes discontinued operations and non-recurring items (FY17: NPAT \$25.7 million).

- (b) in relation to sub-paragraph (b), admits the 28 August Announcement contained the words:

Underlying EBIT loss of \$4.2 million, including cumulative write-downs of \$57 million from tendered margin on the Project.

with a footnote stating:

Underlying EBIT (earnings) is derived from statutory profit after excluding discontinued operations and non-recurring costs such as restructuring costs, legacy legal and claims costs, transaction costs and capital management initiatives. Underlying Earnings are a key financial indicator used to reflect greater understanding of RCR's underlying business performance. See RCR's FY18 Audited Financial Report for additional information.

- (c) in relation to sub-paragraph (c), admits the 28 August Announcement contained the words:

*Underlying EBIT of \$4.2 million loss (FY17: \$41.2 million).
including cumulative write-downs of \$57 million from tendered margin on the Project.*

and the FY18 Financial Report contained the words:

The Underlying EBIT loss was largely attributable to cost overruns on the Daydream and Hayman Solar Farm projects ("Project") resulting in cumulative write-downs of approximately \$57 million from the original tendered margin.

- (d) in relation to sub-paragraph (d), admits the 28 August Announcement contained the words:

Loss largely driven by cost overruns experienced on the Daydream and Hayman Solar Farms project.

and the FY18 Financial Report contained the words:

The Underlying EBIT loss was largely attributable to cost overruns on the Daydream and Hayman Solar Farm projects ("Project") resulting in cumulative write-downs of approximately \$57 million from the original tendered margin.

(e) in relation to sub-paragraph (e), admits the 28 August Announcement contained the words:

- *Net cash of \$54.8 million as at 30 June 2018 before post balance date expected cash outflows of:*
 - *\$35 million relating to cost overruns at the Project; and*
 - *\$30 million relating to cash received from customers for equipment in FY18, which will be paid to suppliers*

(f) in relation to sub-paragraph (f), admits the 28 August Announcement contained the words:

RCR has undertaken a comprehensive review of the Project, which experienced significant cost overruns due to several compounding project-specific issues... The Project is now substantially complete and currently undergoing commissioning.

(g) in relation to sub-paragraph (g), admits the 28 August Announcement contained the words:

Aside from the cost overruns experienced at the Project, RCR continues to operate across a large number of projects which, typical of a contracting business, experience some variance to tendered margins.

and the FY18 Financial Report contained the words:

Outside the cost overruns experienced on the Project, RCR continues to operate across a large number of projects which, typical of a contracting business, experience some variance to tendered margins.

(h) in relation to sub-paragraph (h), admits the 28 August Announcement contained the words:

The Board is working with RCR's Management, now being led by Mr James, to take immediate action to enhance the Company's systems and to re-position the Company towards a more acceptable risk profile. An important element of RCR's near term strategy is to focus on projects that use 'alliance style' contracting models, which are more working capital intensive,

but offer a more favourable risk allocation to RCR as the contractor and should provide a higher degree of margin predictability relative to fixed price Engineering, Procurement and Construction (“EPC”) contracts.

- (i) in relation to sub-paragraph (i), admits the 28 August Announcement contained the words:

With the support of our existing financiers and the underwritten Entitlement Offer, RCR is in a strong financial position, trading on a business as usual basis, and is well placed to deliver for its customers and shareholders.

- (j) in relation to sub-paragraph (j), admits the 28 August Announcement contained the words:

RCR has today announced an Entitlement Offer to raise approximately \$100 million to strengthen the balance sheet and address the financial impacts of cost overruns at the Project.

- (k) in relation to sub-paragraph (k), admits the 28 August Announcement contained the words:

The Project has experienced significant cost overruns due to several compounding project-specific issues, including external delays and materially worse sub-surface ground conditions than were allowed for in the tender estimate, as well as adverse weather conditions. These project-specific issues required the Company to continuously revise its execution methodologies to mitigate delays, leading to increases in subcontractor costs (both people and plant) and logistics cost overruns.

and the FY18 Financial Report contained the words:

The Project cost overruns were caused by several compounding project-specific issues including:

- *external delays which resulted in extension of time submissions;*
- *materially worse sub-surface ground conditions than originally allowed for in the tender estimate, which caused an underestimation of site piling requirements; and*

- *continuous re-planning of construction due to the interdependence with piling, which was compounded by adverse weather conditions, increases in subcontractor costs (both people and plant) and logistics cost overruns.*

(l) in relation to sub-paragraph (l), admits the 28 August Announcement contained the words:

As a result of these cost overruns that arose over the life of the Project, RCR has realised cumulative writedowns of \$57 million from the tendered margin on the Project.

(m) in relation to sub-paragraph (m), admits the 28 August Announcement contained the words:

RCR is currently targeting FY19 Underlying EBIT in the range of \$40 million to \$48 million under AASB 15.

(n) in relation to sub-paragraph (n), admits the FY18 Financial Report contains the words:

The Company believes it was in compliance with all financial covenants under its debt facilities at 30 June 2018. However, to avoid any uncertainty around potential covenant breach at the date of the next covenant reporting, the Company has proactively secured agreement from all financiers that, in calculating the group's EBITDA^[fn] for the 30 June 2018 calculation date and each quarterly calculation date up to and including 30 June 2019, the Company may add back to EBITDA^[fn] the cost impact of the Project of an amount up to \$50 million.

The financiers' support will lapse if the Company does not receive at least \$50 million in proceeds from the capital raising by the earlier of (i) 5 November 2018 (or such later date as agreed to by the majority financiers under the Banking Facility), (ii) the Agent terminating the Financier Support Letters for an event of default (other than as a result of any change to EBITDA relating to the cost impact to the Project) or the Company's failure to comply with its obligations in the Financier Support Letters or (iii) an insolvency event.

with a footnote stating:

EBITDA, as defined in the Syndicated Facility Agreement

- (o) in relation to sub-paragraph (o), admits the 28 August Announcement contained the words:

RCR's Interim CEO, Bruce James said, "the financial impact from the Project was clearly disappointing, however, the outlook for the business remains positive."

- (p) relies on the 28 August 2018 Announcement and the FY18 Financial Report for their full meaning and effect;
- (q) says that to the extent that the particulars to paragraph 30 refer to the 28 August Presentation, that document is not the subject of an allegation of material fact in paragraph 30 of the CLS;
- (r) denies that any of the statements referred to were made by Mr James (as opposed to by RCR); and
- (s) otherwise denies the paragraph.

31. In answer to paragraph 31 of the CLS, Mr James admits that following the release of the 29 August 2018 Announcement and the FY18 Financial Report the price of RCR Shares fell and otherwise does not admit the paragraph.

C. 8 12 November 2018

32. Mr James admits paragraph 32 of the CLS.

C. 9 14 November 2018

33. Mr James admits paragraph 33 of the CLS.

C. 10 22 November 2018

34. Mr James admits paragraph 34 of the CLS.

35. In answer to paragraph 35 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

36. Mr James admits that RCR Shares have not resumed trading and otherwise does not admit paragraph 36 of the CLS.

D REPRESENTATIONS MADE BY RCR, DALGLEISH AND MR JAMES**D.1 Representations made on 11 August 2017**

37. In answer to paragraph 37 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
38. In answer to paragraph 38 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
39. In answer to paragraph 39 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

D.2 Representations on 24 August 2017

40. In answer to paragraph 40 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
41. In answer to paragraph 41 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
42. In answer to paragraph 42 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
43. In answer to paragraph 43 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
44. In answer to paragraph 44 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
45. In answer to paragraph 45 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
46. In answer to paragraph 46 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

47. In answer to paragraph 47 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
48. In answer to paragraph 48 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
49. In answer to paragraph 49 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
50. In answer to paragraph 50 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
51. In answer to paragraph 51 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

D.3 Representations on 22 February 2018

52. In answer to paragraph 52 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
53. In answer to paragraph 53 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
54. In answer to paragraph 54 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

D.4 Representations on 28 August 2018

55. In answer to paragraph 55 of the CLS, Mr James:
- (a) repeats the admissions as to the statements made in the 28 August 2018 Announcement and FY18 Financial Report in paragraph 30 above;
 - (b) relies on the 28 August 2018 Announcement and the FY18 Financial Report for their full meaning and effect;
 - (c) says further that statements in the 28 August 2018 Announcement and the FY18 Financial Report were qualified by and subject to statements in the

28 August 2018 Announcement and FY18 Financial Report as to assumptions, risk factors and forward-looking statements.

Particulars

The statements as to assumptions, risk factors and forward-looking statements included the following:

“Due to the nature of RCR’s business, the Company does not generally provide earnings guidance”, 28 August 2018 Announcement, p. 5

“This FY19 outlook is based on various assumptions, which are summarised below. The assumptions described here do not represent all factors that may affect RCR’s financial performance and should be read conjunction with the risks described in the Company’s FY18 Audited Financial Report which accompanies this announcement”, 28 August 2018 Announcement, p. 6

“Investors should note that revenues, particularly from project work, can vary from expectations for a number of reasons outside of the control of RCR”, 28 August 2018 Announcement, p. 6

“Current projects have been included at their forecast margins, noting that these could increase or decrease as projects progress” 28 August 2018 Announcement, p. 6

“The adoption of AASB 15 may result in increased earnings volatility (up or down)”, 28 August 2018 Announcement, p. 7

“Underlying EBIT is very sensitive to changes in revenue and project margins”, 28 August 2018 Announcement, p. 7

“The Company’s financial position and performance may be adversely affected, sometimes materially, by a number of risk factors, some of which are beyond the control of RCR” FY18 Financial Report, p. 10.

“Potential for cost overruns on projects... There is a risk that additional cost overruns occur across one or more of RCR’s projects which, may have an impact on RCR’s future financial performance. In addition to potentially impacting RCR’s financial performance, additional cost overruns may result in an inability to procure future contracts and maintain existing contracts. Further, future cost overruns have the potential to be costly and damaging to RCR’s reputation and business relationships, which in turn could have an adverse effect on RCR, including its operating and financial performance, industry standing and the value of RCR shares.” FY18 Financial Report, p. 10.

“Ineffective Execution of Strategy... The execution of RCR’s strategy requires a degree of risk-taking. In particular, the success achieved by individual contracts may not translate to profitable returns for RCR (and RCR’s shareholders, in turn)

for various reasons, including lower than expected margins. In such a case, the execution risk of that project may not be commensurate with the profit returned. Any inability to achieve organic growth or to execute acquisition growth strategies may have an adverse impact on share price, shareholder sentiment and the long-term sustainability of the business.” FY18 Financial Report, p. 10.

“Renewable Energy Market Concentration Risk ... RCR is exposed to a range of risks and opportunities associated with engineering, procurement and construction (“EPC”) of large-scale solar projects. This is a sector for RCR which is experiencing growth exposing RCR to a range of risks and opportunities including energy regulations and standards, commissioning, capital investment, increased competition and a range of associated EPC activity risks.

RCR’s current Order Book [fn] and Preferred Contractor Status (and therefore future revenues and earnings) are weighted towards EPC contracts for large-scale solar farms. Any adverse changes in the solar industry may have a significant impact on RCR.” FY18 Financial Report, p. 11.

“Failure of Systems and Process... There can be no assurance that internal control systems and procedures will not result in, or lead to, a future material weakness or loss of accreditations, including a failure of systems to ensure effective control of costs across projects and operations. Failure to maintain proper and effective internal controls may adversely impact RCR.” FY18 Financial Report, p. 13.

“EPC Risks... RCR’s ability to achieve its operating and financial performance objectives is influenced by its ability to complete complex projects to the satisfaction of its customers. The execution and delivery of projects or supply of RCR proprietary equipment involves professional judgment regarding the design, planning, development, construction, commissioning and operation of complex operating facilities and equipment.

Projects may occur over extended time periods and may be impacted or delayed due to procurement, engineering design changes, construction, commissioning, adverse weather, physical environment, supplier events, performance of sub-contractors and joint venture partners, regulatory requirements, employment practices and a wide variety of other circumstances. Projects and operations, cash flows and liquidity could be adversely affected if RCR miscalculates the resources, cost or time needed to complete a project, fails to meet contractual obligations, encounters delays due to varying conditions or if a supplier fails to deliver project materials on time. In addition, some projects require payment of liquidated damages if RCR does not meet project deadlines or other contractual obligations.” FY18 Financial Report, p. 13.

“Tender estimates ... RCR utilises extensive skills and expertise when pricing for fixed price contracts and uses all reasonable efforts to ensure that those tenders accurately reflect the scope of work. There is a risk that the tender estimate is not reflective of the actual position such that RCR suffers a financial loss.” FY18 Financial Report, p. 14.

- (d) says further that the proper context for assessing any representations said to arise from statements in the 28 August 2018 Announcement and the FY18 Financial Report includes statements made in the Prospectus and/or the 28 August Presentation which were also released and published to the ASX at or around the same time on 28 August 2018, and which included a range of qualifications of, and/or statements about, assumptions, risk factors and forward-looking statements similar to those particularised above;
- (e) denies that the representations were made by RCR;
- (f) further or in the alternative, denies that representations alleged at paragraph 55(h) and (i) of the CLS were implied by the representations alleged at paragraph 55(a)-(g) of the CLS;
- (g) further or in the alternative, says that if any of the representations were made by RCR they were not made by Mr James personally (as opposed to being made by RCR); and
- (h) otherwise denies the paragraph.

56. In answer to paragraph 56 of the CLS, Mr James repeats paragraph 55 above and otherwise denies the paragraph.

E WHAT RCR KNEW OR OUGHT TO HAVE KNOWN

57. In answer to paragraph 57 of the CLS, Mr James admits that during the Relevant Period there were delays in completing some of the EPC Solar Contracts and otherwise denies the paragraph.

58. In answer to paragraph 58 of the CLS, Mr James admits that during the Relevant Period there were increases in the cost of completing some of the EPC Solar Contracts and otherwise denies the paragraph.

59. In answer to paragraph 59 of the CLS, Mr James admits that during the Relevant Period to the extent that there were delays in completing some EPC Solar Contracts or increases in the cost of completing some of the EPC Solar Contracts:

- (a) RCR was unable to pass on some costs to customers;

- (b) RCR spent some working capital completing some of the EPC Solar Contracts;
- (c) there were some delays in RCR receiving the milestone payment under some of the EPC Solar Contracts; and
- (d) otherwise denies the paragraph.

60. In answer to paragraph 60 of the CLS, Mr James repeats paragraphs 57 to 59 above and otherwise denies the paragraph.

F CONTINUOUS DISCLOSURE CONTRAVENTIONS

F.1 FY18 Financial Information

61. In answer to paragraph 61 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

62. In answer to paragraph 62 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

63. In answer to paragraph 63 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

64. In answer to paragraph 64 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

65. In answer to paragraph 65 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

F.2 EPC Solar Contract Information

66. In answer to paragraph 66 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

67. In answer to paragraph 67 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

68. In answer to paragraph 68 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

69. In answer to paragraph 69 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

70. In answer to paragraph 70 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

F.3 FY19 Financial Information

71. In answer to paragraph 71 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

72. In answer to paragraph 72 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

73. In answer to paragraph 73 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

74. In answer to paragraph 74 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

75. In answer to paragraph 75 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

F.4 Systemic EPC Solar Contract Information

76. In answer to paragraph 76 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

77. In answer to paragraph 77 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

78. In answer to paragraph 78 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
79. In answer to paragraph 79 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
80. In answer to paragraph 80 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

G MISLEADING OR DECEPTIVE CONDUCT AND MATERIALLY MISLEADING STATEMENTS

G.1 Misleading contraventions from 11 August 2017

81. In answer to paragraph 81 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
82. In answer to paragraph 82 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
83. In answer to paragraph 83 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
84. In answer to paragraph 84 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

G.2 Misleading contraventions from 24 August 2017

85. In answer to paragraph 85 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
86. In answer to paragraph 86 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

87. In answer to paragraph 87 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

88. In answer to paragraph 88 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

G.3 Misleading statements from 22 February 2018

89. In answer to paragraph 89 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

90. In answer to paragraph 90 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

91. In answer to paragraph 91 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

92. In answer to paragraph 92 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

G.4 Misleading statements from 28 August 2018

93. In answer to paragraph 93 of the CLS, Mr James:

- (a) denies that RCR engaged in the conduct alleged; and
- (b) further or in the alternative, denies that any conduct alleged, if engaged in, was engaged in by him personally as opposed to being engaged in by RCR.

94. In answer to paragraph 94 of the CLS, Mr James:

- (a) repeats paragraph 93 above;
- (b) says further that paragraph 94 of the CLS is vague and embarrassing to the extent that it refers to the “circumstances pleaded in paragraphs 57 to 60 above” without identifying when each of those circumstances existed and without pleading the basis on which it is alleged Mr James knew that such circumstances existed;

- (c) alternatively, says that if he made any of the 28 August 2018 Representations and/or the 28 August 2018 Basis Representations (which is denied), there were reasonable grounds for making them.

Particulars

- (i) RCR held regular monthly board meetings, which Mr James attended as a non-executive director, including on 23 January 2018, 20 February 2018, 27 March 2018, 24 April 2018, 28 and 29 May 2018, and 26 June 2018 at which management reported on, and directors discussed, the financial performance and position of RCR including the following regular reports:

- A. Chief Executive Officer and Managing Director's Report on, among other things, the financial position and performance of RCR, major project updates, business development opportunities, and legal matters.
- B. Chief Operating Officer's - Monthly Report on RCR's Infrastructure and Energy businesses', among other things, financial position and performance, project updates, and business development opportunities.
- C. Chief Financial Officer's report on RCR's financial position and performance, including management accounts and forecasts.
- D. Company Secretary's Report on Earnings Guidance and Consensus,

and otherwise held meetings on 30 July, 31 July, 2 August, 5 August, 7 August, 13 August, 19 August and 27 August 2018, which Mr James attended, at which time RCR's FY19 forecast was specifically the subject of reports and/or discussion.

- (ii) While a non-executive director of RCR Mr James was a member of the Audit and Risk Committee (**ARC**) of RCR and attended meetings of the committee on at least 5 February 2018, 14 February 2018, 25 June 2018, 31 July 2018 and 5 August 2018.
- (iii) Following his appointment as interim-CEO and Managing Director on 6 August 2018, Mr James attended ARC meetings as an invitee on 13 August 2018 and 22 August 2018.
- (iv) At or around the time of becoming aware of cost overruns on the Daydream and Hayman Project, the Board held a meeting on 30 July 2018 (which Mr James attended) at which the Board received a briefing on, and discussed, preliminary findings on the forecast cost to complete the Daydream and Hayman Project and otherwise commissioned an internal investigation into

issues which, by final report dated 23 August 2018, relevantly concluded that:

- A. On-site procedures adopted by a limited number of site personnel at the Daydream and Hayman Project had the effect of circumventing RCR's standard processes and project level systems relating to procurement commitments;
 - B. The nature of the conduct with respect to procurement commitments made it difficult for RCR to accurately determine cost-to-date and forecast cost-to-complete on a timely basis;
 - C. The procurement control issues at the site occurred during peak execution months of the Daydream and Hayman Project;
 - D. There were significant challenges in maintaining appropriate project management oversight at the Daydream and Hayman Project;
 - E. Site management at the Daydream and Hayman Project were focused on delivering project milestones under time pressure, and did not give adequate focus to cost management and oversight of site practices with respect to procurement commitments;
 - F. No indication of fraud or collusion on the part of site personnel or management had been detected; and
 - G. The procurement control issues identified at the Daydream and Hayman Project were not systemic within RCR.
- (v) On 1 August 2018 the Board resolved to establish a Due Diligence Committee (**DDC**) to co-ordinate and oversee the implementation of due diligence processes in connection with the capital raising through the Prospectus, the membership of which included Mr James and representatives from King & Wood Mallesons (**KWM**), Macquarie Capital (Australia) Limited (**Macquarie**) and Deloitte Corporate Finance Pty Limited (**Deloitte**). The DDC met on 6 August 2018, 7 August 2018, 13 August 2018, 21 August 2018, 23 August 2018 and 27 August 2018.
- (vi) KWM acted as RCR's legal advisers in relation to the capital raising under the Prospectus, which included preparation of a Due Diligence Planning Memorandum (**DDPM**), Key Issues Report, Legal Work Plan, Prospectus Content and Liability Advice, Legal Due Diligence Report (final versions of which were all dated 27 August 2018). KWM also acted as RCR's legal advisors in relation to (among other things) the "key risks" section of the Prospectus and in relation to continuous disclosure obligations under s 674 and s 708A of the *Corporations Act 2001* (Cth).

- (vii) By letter dated 10 August 2018, RCR engaged Macquarie to act as lead manager and bookrunner in relation to the capital raising under the Prospectus. Under the terms of the engagement, Macquarie's role included assisting RCR with due diligence processes including appointing representatives to attend due diligence committee meetings as a member to, among other things, contribute and otherwise participate in matters directly related to the scope of Macquarie's engagement and review documents, ask any questions and raise any issues that the Macquarie representative considered necessary or appropriate. As part of Macquarie's engagement, it issued and received responses from RCR Management to a Due Diligence Questionnaire concerning a range of matters including financial matters and risks associated with RCR's solar projects, the answers to which were made available to the DDC and to the RCR Board including at the RCR Board meeting on 7 August 2018 and which were subsequently discussed by the directors of RCR.
- (viii) By letter dated 14 August 2018, KWM engaged McGrathNicol Advisory Partnership (**McGrathNicol**) to, among other things, provide assistance in assessing the short-term cashflow forecast and the forecasting process of the RCR Group. McGrath Nicol delivered a draft short-term cashflow report to RCR dated 24 August 2018 on 23 August 2018. Consistent with paragraph 8.5.1 of McGrath Nicol's report to creditors dated 19 March 2019, the executive summary of the draft report stated that, "based on our limited review, the short-term cash forecasting process seems robust".
- (ix) In a report to the ARC dated 21 August 2018 Deloitte indicated that it expected to issue an unqualified audit report which included an emphasis of matter paragraph in relation to RCR's FY18 Financial Report. In its report, Deloitte indicated that it had not identified any uncorrected misstatements that, in its judgment, either individually or in the aggregate, could have a material effect on the financial report for the year ended 30 June 2018. Key audit matters considered included recognition of revenue (with testing of significant contracts, including solar contracts) and the performance of procedures to ensure that the issues identified on the Daydream and Hayman Project were not systemic. On 28 August 2018, Deloitte produced an unqualified audit report in accordance with its report to the ARC.
- (x) On 17 August 2018 RCR retained Deloitte to perform a limited scope financial due diligence focussed on RCR's FY19 forecast earnings before interest and tax and cash flows in connection with the Prospectus, which was to include a qualitative statement on expected FY19 earnings. Deloitte produced a report on 23 August 2018.

(xi) By letter dated 23 August 2018, RCR engaged Deloitte to perform agreed-upon procedures to assist RCR in assessing, in combination with other information, the Preferred Tender report, current order book and other procedures relating to the investor presentation and Prospectus, with Deloitte producing its report on 28 August 2018.

(xii) On or about 27 August 2018 each of the members of the Due Diligence Committee provided confirmations in relation to the Prospectus including that nothing had come to their attention which caused them to believe that, amongst other things, any statement in the Prospectus was false, misleading or deceptive.

(xiii) At a meeting on 27 August 2018, the RCR board (among other things):

- A. Received a final report on the investigation into the Daydream and Hayman Project.
- B. Adopted a revised strategy which included shifting RCR's project portfolio towards 'alliance style' contracting models, which involved higher working capital commitments, but offered a more favourable risk allocation to RCR as the contractor and therefore provided a higher degree of margin predictability.
- C. Resolved to approve the engagement of Deloitte in relation to the FY19 Forecast review and otherwise noted the receipt of Deloitte's limited scope financial due diligence report on the same dated 23 August 2018.
- D. Noted that management confirmed the FY19 forecast remained current, had a reasonable basis, bottom-up approach and was supported by a number of assumptions and sensitivities as set out in a paper marked Annexure A.
- E. Discussed the FY19 Forecast with Management.
- F. Resolved to approve the FY19 Forecast but adjusted for the impact of new accounting standard AASB15 (resulting in a FY19 underlying EBIT of \$43.2 million)
- G. Resolved that the provision of a FY19 forecast to the market was reasonable on the basis of the FY19 Forecast materials presented by Management and on the work completed by Deloitte.
- H. Resolved that RCR provide FY19 Guidance of Underlying EBIT in the range of \$40 million to \$48 million under AASB15 based on specified assumptions set out in a paper marked Annexure A.
- I. Resolved to approve the due diligence processes associated with the Prospectus as described in the DDC report (including approving the

DDPM, accepting the final DDC Report (including a verification report tabled at the DDC meeting held on 27 August 2018), and giving final approval of the adequacy and appropriateness of the due diligence process as described in the DDC Report).

- J. Resolved to approve the draft Prospectus, 28 August 2018 Presentation and a list of statements contained in each which needed to be specifically adopted by the Directors, principally being statements as to the intentions or beliefs of the Directors of the Company, with each Director confirming they were satisfied there were reasonable grounds for making all statements relating to future matters included in, among other things, the Prospectus and 28 August 2018 Presentation.
- K. Resolved to accept the proposed FY18 Deloitte Auditor's Report and approve the FY18 Financial Report.
- L. Resolved that, subject to execution of the Underwriting Agreement for the capital raising, approve the 28 August 2018 Announcement.

(xiv) RCR had in place a range of policies, processes and procedures in respect of tendering for EPC Solar Contracts, assessing project risks and opportunities, analysing existing and forecast construction status and risk, and analysing RCR Group's existing and forecast financial position and risk.

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

(d) says further to paragraph 94(c) that if he made any of the 28 August 2018 Representations (which is denied):

- (i) in relation to the representation alleged at paragraph 55(a) of the CLS, there were reasonable grounds for making it including:
 - A. the size of write-downs on the Daydream and Hayman Project compared to RCR's EBIT for FY2018;
 - B. the processes set out in the particulars to paragraph 94(c) generally;
 - C. the processes performed by Deloitte in preparing an unqualified audit report in relation to the FY18 Financial Report referred to at paragraph (ix) of the particulars to paragraph 94(c);
 - D. the investigation and final report referred to at paragraph (iv) of the particulars to paragraph 94(c).

- (ii) in relation to the representation alleged at paragraph 55(b) of the CLS, there were reasonable grounds for making it as it was made in accordance with the processes set out in the particulars to paragraph 94(c) generally, including the investigation and final report referred to at paragraph (iv) of the particulars to paragraph 94(c).
- (iii) in relation to the representation alleged at paragraph 55(c) of the CLS, there were reasonable grounds for making it, because as was a fact, the Daydream and Hayman Project was substantially complete and was undergoing commissioning;
- (iv) in relation to the representation alleged at paragraph 55(d) of the CLS, there were reasonable grounds for making it including that, as at August 2018, RCR had approximately 33 projects across its Infrastructure, Resources and Energy Business Segments which figures were the subject of the work performed by Deloitte at paragraph (x) of the particulars to paragraph 94(c), and which projects, typical of a contracting business, do, as was the fact, experience some variation in tendered margins.
- (v) in relation to the representation alleged at paragraph 55(e) of the CLS, there were reasonable grounds for making it including:
 - A. the processes set out in the particulars to paragraph 94(c) generally;
 - B. RCR's financial position and performance as at 30 June 2018 as reflected in RCR's FY18 Financial Report which was the subject of processes performed by Deloitte in preparing an unqualified audit report referred to at paragraph (ix) of the particulars to paragraph 94(c);
 - C. the investigation and final report referred to at paragraph (iv) of the particulars to paragraph 94(c) which concluded (among other things) that the procurement control issues identified at the Daydream and Hayman Project were not systemic within RCR;
 - D. RCR's FY19 Forecast which was approved by the Board on 27 August 2018 following consideration of the matters set out in paragraph (xiii) of the particulars to paragraph 94(c), including

the work performed by Deloitte referred to at paragraph (x) of the particulars to paragraph 94(c).

- (vi) in relation to the representation alleged at paragraph 55(f) of the CLS, there were reasonable grounds for making it including:
 - A. the processes set out in the particulars to paragraph 94(c) generally;
 - B. the fact that RCR was, as a matter of fact, targeting FY19 underlying earnings before interest and tax in the range of \$40 million \$48 million under AASB15; and
 - C. the consideration and approval by the Board of RCR's FY19 Forecast on 27 August 2018 following consideration of the matters referred to at paragraph (xiii) of the particulars to paragraph 94(c), including the work performed by Deloitte referred to at paragraph (x) of the particulars to paragraph 94(c).

- (vii) in relation to the representation alleged at paragraph 55(g) of the CLS, there were reasonable grounds for making it including:
 - A. the processes set out in the particulars to paragraph 94(c) generally
 - B. RCR's financial position and performance as at 30 June 2018 as reflected in RCR's FY18 Financial Report which was the subject of the processes performed by Deloitte in preparing an unqualified audit report referred to at (ix) of the particulars to paragraph 94(c);
 - C. the investigation and final report referred to at paragraph (iv) of the particulars to paragraph 94(c) above which concluded (among other things) that the procurement control issues identified at the Daydream and Hayman Project were not systemic within RCR; and
 - D. RCR's FY19 Forecast which was approved by the Board on 27 August 2018 following consideration of the matters set out in paragraph (xiii) of the particulars to paragraph 94(c), including the work performed by Deloitte referred to at paragraph (x) of the particulars to paragraph 94(c).

- (viii) In relation to the implied representation alleged at paragraph 55(h) of the CLS, there were reasonable grounds for making it as there were reasonable grounds for making the express representations at paragraph 55(a) – (g) of the CLS as set out above.
- (ix) In relation to the implied representation alleged at paragraph 55(i) of the CLS, there were reasonable grounds for making it as there were reasonable grounds for making the express representations at paragraph 55(a) – (g) of the CLS as set out above.
- (e) says further to paragraphs 94(c) and (d) above that to the extent that the Prospectus contained materially similar statements to those referred to at paragraph 30 of the CLS, the due diligence procedures undertaken by RCR in connection with the Prospectus (including the verification processes undertaken) constituted further reasonable grounds for making the 28 August 2018 Representations and the 28 August 2018 Basis Representations (if, which is denied, they were made).
- (f) says further to (c) to (e) above that the reasonable grounds relied upon for making the 28 August 2018 Representations (if made) also constituted reasonable grounds for making the 28 August 2018 Basis Representations (if, which is denied, they were made).
- (g) otherwise denies paragraph 94 of the CLR.

95. Mr James denies paragraph 95 of the CLR and repeats paragraph 94 above.

96. Mr James denies paragraph 96 of the CLR and repeats paragraph 94 above.

H DISCLOSURE DOCUMENT CONTRAVENTIONS

H.1 30 August 2017 Cleansing Notice

97. In answer to paragraph 97 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

98. In answer to paragraph 98 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

99. In answer to paragraph 99 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

100. In answer to paragraph 100 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
101. In answer to paragraph 101 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
102. In answer to paragraph 102 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
103. In answer to paragraph 103 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

H.2 THE PROSPECTUS

104. In answer to paragraph 104 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
105. In answer to paragraph 105 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
106. In answer to paragraph 106 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
107. In answer to paragraph 107 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
108. In answer to paragraph 108 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
109. In answer to paragraph 109 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
110. In answer to paragraph 110 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

I MARKET CONTRAVENTIONS CAUSED GROUP MEMBERS' LOSS

I.1 Market based causation

111. In response to paragraph 111 of the CLS, Mr James:
- (a) does not admit paragraphs 111(a)-(d) of the CLS; and
 - (b) denies paragraph 111(e) of the CLS.
112. Mr James denies paragraph 112 of the CLS.
113. Mr James denies paragraph 113 of the CLS.
114. Mr James denies paragraph 114 of the CLS.
115. Mr James denies paragraph 115 of the CLS.
116. Mr James denies paragraph 116 of the CLS.

I.2 Reliance

117. Mr James denies paragraph 117 of the CLS.

I.3 Loss and damage

118. Mr James denies paragraph 118 of the CLS.

J DISCLOSURE DOCUMENT CAUSED SOME GROUP MEMBERS' LOSS

J.1 No transaction case in respect of the Prospectus Contraventions

119. Mr James denies paragraph 119 of the CLS.

J.2 Market based causation

120. Mr James denies paragraph 120 of the CLS.

J.3 Reliance

121. Mr James denies paragraph 121 of the CLS.

J.4 Loss and damage

122. Mr James denies paragraph 122 of the CLS.

J.5 Section 1318 of the *Corporations Act 2001 (Cth)*

123. If, which is denied, Mr James is found to have contravened s 1041H of the *Corporations Act 2001 (Cth)*, Mr James says that:
- (a) he is a person who has acted honestly and that, having regard to all the circumstances of the case, ought fairly to be excused for such contravention;

Particulars

- i. It is not alleged that Mr James acted dishonestly.
 - ii. The circumstances of the case are those identified in the particulars to paragraph 94(c) above.
- (b) the Court should, pursuant to s 1318 of the *Corporations Act 2001* (Cth), relieve him wholly from liability in respect of such contravention on such terms as the Court thinks fit.

QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

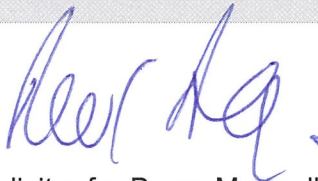
None.

E. MEDIATION

Mr James is prepared to mediate at an appropriate time.

SIGNATURE

Signature of legal representative



Capacity

Solicitor for Bruce Maxwell James

Date of signature

19 June 2019