

NOTICE OF FILING

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Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32
File Number: VID1010/2019
File Title: MATTHEW HALL v ARNOLD BLOCH LEIBLER (A FIRM)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 20/08/2021 9:25:07 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 33
Rule 16.32

Amended Defence

No. VID1010 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Matthew Hall

Applicant

Arnold Bloch Leibler (a firm)

Respondent

In answer to the Amended Statement of Claim filed on 26 July 2021 ~~17 September 2019~~
(**Statement of Claim**) the Respondent says as follows:

Notes:

- (1) *Without admission, capitalised terms not otherwise defined below have the same meaning as that ascribed to them in the Statement of Claim.*
- (2) *Where an allegation in the Statement of Claim is not admitted on the basis that the Respondent does not know the matters alleged, that should be understood to mean either:
 - (a) *the Respondent does not know the matter alleged; or*
 - (b) *the legal representatives of the Respondent cannot ~~presently obtain effective instructions to admit the extent of the Respondent's knowledge, ascertain the veracity of the matter alleged, or otherwise to plead to the relevant allegation after obtaining the information, as they are yet to obtain access to the documents~~ referred to in [108] of Arnold Bloch Leibler (A Firm) v. Slater & Gordon Limited [2020] FCA 1496 that can be used without limitation.**

Upon the legal representatives obtaining the documents referred to in paragraph 2(b) above, the Respondent may seek leave to amend this Defence.

- (3) *In accordance with Note 3 to rule 16.41 of the Federal Court Rules 2011, the Respondent has not pleaded to any matter set out in the particulars in the Statement of Claim and does not thereby admit those matters notwithstanding any admission or otherwise of any allegation in the Statement of Claim to which a particular relates.*
- (4) *Further particulars of this Amended Defence may be provided following production of documents pursuant to subpoenas, notices to produce service of the Respondent's evidence and/or receipt of the Cross-respondents' evidence.*

Filed on behalf of	Arnold Bloch Leibler (a firm), Respondent
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A. INTRODUCTION

A.1. The Applicant and the Group Members

1 As to paragraph 1, the Respondent:

- (a) admits that the Applicant has purported to commence this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of the persons described in paragraph 1 of the Statement of Claim;
- (b) denies that the Applicant or any of the persons described in paragraph 1 of the Statement of Claim have suffered loss or damage by reason of the conduct of the Respondent pleaded in the Statement of Claim; and
- (c) otherwise does not know and therefore cannot admit the allegations in paragraph 1.

2 The Respondent does not know and therefore cannot admit the allegations in paragraph 2.

3 As to paragraph 3, the Respondent repeats the matters pleaded in paragraph 1 above.

A.2. The Respondent

4 The Respondent admits the allegations in paragraph 4.

5 As to paragraph 5, the Respondent:

- (a) admits the allegations in sub-paragraphs (a) and (b);
- (b) says that one of the areas in which his practice focussed was mergers and acquisitions, including takeovers and public listings and capital raisings, including Corporations Act and ASX listing rule advice; and
- (c) otherwise denies the allegations in paragraph 5.

A.3. Slater and Gordon Limited

6 The Respondent admits the allegations in paragraph 6.

B. SGH'S BUSINESS

B.1. SGH's Legal Services

7 As to paragraph 7, the Respondent:

- (a) admits that the Annual Reports published by SGH for each year from 2012 to 2015 stated that SGH carried on a business that included the provision of personal injuries law services and non-personal injuries law services in the manner described in each Annual Report; and
- (b) otherwise does not know and cannot admit the allegations in paragraph 7.

8 As to paragraph 8, the Respondent:

- (a) admits that the Annual Reports published by SGH for each year from 2012 to 2015 stated that most PI Work performed by SGH was performed in the manner alleged in paragraph 8 of the Statement of Claim; and
- (b) otherwise does not know and cannot admit the allegations in paragraph 8.

9 As to paragraph 9, the Respondent:

- (a) says that the paragraph:
 - (i) does not contain an allegation of fact against it; and
 - (ii) is so vague as to be embarrassing; and
- (b) under cover of that objection, does not otherwise plead to (but does not thereby admit) the allegations in paragraph 9.

B.2. SGH UK

10 ~~As to paragraph 10, the Respondent admits paragraph 10:~~

- ~~(a) admits that, on 30 January 2012, SGH released an announcement to the Australian Stock Exchange which stated that:
 - ~~(i) SGH had "agreed to acquire the business of prominent United Kingdom law firm Russell Jones & Walker"; and~~
 - ~~(ii) the agreement "comes after more than 12 months of extensive due diligence"; and~~~~
- ~~(b) otherwise does not know and cannot admit the allegations in paragraph 10.~~

11 As to paragraph 11, the Respondent:

- (a) admits that SGH released announcements to the effect and on the dates set out in the particulars to paragraph 11 of the Statement of Claim; and

(b) otherwise does not know and cannot admit the allegations in paragraph 11.

12 As to paragraph 12, the Respondent:

(a) repeats paragraphs 10 and 11 above;

(b) says that prior to the commencement of the Relevant Period, controlled entities of SGH carried on business in the UK providing legal services to consumers in the United Kingdom; and

(c) otherwise does not know and therefore cannot admit the allegations in paragraph 12.

C. PI WORK AND UK PI WORK

13 ~~The Respondent admits the allegations in~~ As to paragraph 13, ~~the Respondent:~~

~~(a) admits that the documents referred to in the particulars to paragraph 13 of the Statement of the Claim contain statements to the effect set out there; and~~

~~(b) otherwise does not know and therefore cannot admit the allegations in paragraph 13.~~

C.1. Types of UK PI Work

14 The Respondent admits the allegations in paragraph 14.

15 As to paragraph 15, the Respondent:

(a) admits that at all material times rule 26.6 of the Civil Procedure Rules 1998 (United Kingdom) provided for the allocation of PI Work, which work was allocated in relation to defended cases, to case management tracks described as the "the small claims track", "the fast track" and "the multi-track" in accordance with the terms of the rule; and

(b) will rely on the terms of rule 26.6 for its meaning and effect; and

(c) otherwise denies the allegations in paragraph 15.

16 As to paragraph 16, the Respondent:

(a) admits that at all material times claims for soft tissue injury known as "whiplash claims" were made in the UK; and

(b) otherwise denies the allegations in paragraph 16.

C.2. Reforms relevant to UK PI Work

17 As to paragraph 17, the Respondent:

- (a) admits that the documents referred to in Schedule A were created in the period between 3 November 2008 and 30 March 2015; and
- (b) otherwise denies~~does not know and therefore cannot admit~~ the allegations in paragraph 17.

18 As to paragraph 18, the Respondent:

- (a) repeats paragraph 17 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 18.

19 As to paragraph 19, the Respondent:

- (a) repeats paragraph 17 above; and
- (b) otherwise denies~~does not know and therefore cannot admit~~ the allegations in paragraph 19.

20 As to paragraph 20, the Respondent:

- (a) as to sub-paragraph (a):
 - (i) admits that it was stated, on page 5 of the Instinctif Report, that "a change of the small claims threshold remains a strong possibility" and that "there is broad support for reform on this issue – and it is relatively simple to implement";
 - (ii) says further that the Instinctif Report also stated that:
 - (A) "in practice new measures would only be introduced under a 'perfect storm' of events, which is highly unlikely" (page 3);
 - (B) "there are **significant obstacles to new measures**", which were set out (pages 3-4);
 - (C) the "risk of further legislation" would require an "unlikely perfect storm of events", and the government had "deferred an increase in the threshold for small claims from £1,000 to £5,000 in November 2013, in part as a result of resistance from the Transport Select Committee" (pages 5-6); and

- (iii) otherwise does not know and therefore cannot admit the allegations in paragraph 20(a);
- (b) as to sub-paragraph (b):
 - (i) says that the Instinctif Report, Comres Annexure:
 - (A) stated that "there appears to be limited awareness regarding personal injury claims legislation among a significant number of MPs" (page 3) and that "many MPs lack a detailed understanding of personal injury claims legislation" (page 10);
 - (B) stated that most MPs do not see changes to legislation on personal injury claims "as a priority for the next Parliament and would rather assess the impact of this session's legislation before making any changes" (page 4);
 - (C) stated that a small majority (53%) of MPs support introducing change to the legislation on personal injury claims in the next Parliament (without specifying what that "change in legislation" was), but that only 11% strong support change (page 6); and
 - (D) does not record members of Parliament as having been surveyed specifically on their attitude to the RTA Claim Reform Programme or the Small Claims Track Threshold Program;
 - (ii) will rely on the Instinctif Report as to its meaning and effect; and
 - (iii) otherwise does not know and therefore cannot admit the allegations in paragraph 20(b).

21 As to paragraph 21:

- (a) it repeats paragraphs 17 to 20 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 21.

C.3 Potential impact of the alleged RTA Claim Reform Programme as at 30 March 2015

22 The Respondent does not know and therefore cannot admit the allegations in paragraph 22.

- 23 As to paragraph 23, the Respondent:
- (a) repeats paragraph 17 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in paragraph 23.
- 24 As to paragraph 24, the Respondent:
- (a) repeats paragraph 17 above;
 - (b) otherwise does not know and therefore cannot admit the allegations in paragraph 24.
- 25 As to paragraph 25, the Respondent:
- (a) repeats paragraph 17 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in paragraph 25.
- 26 As to paragraph 26, the Respondent:
- (a) repeats paragraph 17 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in paragraph 26.
- 27 As to paragraph 27, the Respondent:
- (a) repeats paragraph 17 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in paragraph 25 above.
- 28 As to paragraph 28, the Respondent:
- (a) repeats paragraph 17 above; and
 - (b) otherwise does not know and therefore cannot admit the allegations in paragraph 28.
- 29 As to paragraph 29, the Respondent:
- (a) repeats paragraph 17 above; and

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 29.

30 As to paragraph 30, the Respondent:

(a) repeats paragraph 17 above; and

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 30.

31 As to paragraph 31:

(a) repeats paragraph 17 above; and ;

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 31.

C.4. Significance of the alleged RTA Claim Reform Programme to SGH prior to 30 March 2015

32 As to paragraph 32, the Respondent:

(a) admits the documents referred to in the particulars to subparagraphs (a) and (b) of paragraph 32 recorded the revenue figures as alleged; and

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 32.

33 As to paragraph 33, the Respondent:

(a) repeats paragraph 32 above; and

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 33.

34 As to paragraph 34, the Respondent:

(a) repeats paragraph 33 above; and

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 34.

35 As to paragraph 35, the Respondent:

(a) repeats paragraph 33 above; and

- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 35.

D. SGH'S PROPOSED ACQUISITION OF PSD

D.1. The 30 March Publications

36 ~~As to paragraph 36, the~~The Respondent admits the allegations in paragraph 36.:

- ~~(a) admits that, on or about 30 March 2015, the 30 March Announcement, the 30 March Cleansing Notice and the 30 March Appendix 3B were lodged with the ASX; and~~
- ~~(b) otherwise does not know and therefore cannot admit the allegations in paragraph 36.~~

37 The Respondent admits the allegations in paragraph 37.

D.2. The Entitlement Offer

38 As to paragraph 38, the Respondent:

- (a) says that the 30 March Announcement stated that:
- (i) the Entitlement Offer was to be a fully underwritten 2 for 3 pro rata accelerated renounceable entitlement offer; and
 - (ii) SGH would fund the balance of the upfront consideration by fully underwritten bank debt;
- (b) will rely on the 30 March Announcement as to its meaning and effect; and
- (c) otherwise admits the allegations in paragraph 38.

39 The Respondent admits the allegations in paragraph 39.

40 The Respondent admits the allegations in paragraph 40.

41 The Respondent admits the allegations in paragraph 41.

D.3. Statements in the 30 March Publications

42 As to paragraph 42, the Respondent:

- (a) says that page 2 of the 30 March Presentation contained the following statement:

IMPORTANT Investors should note that this presentation contains pro forma financial information. In particular, a pro forma balance sheet has been prepared by adjusting the audited balance sheet of Slater & Gordon as at 31 December 2014 to reflect the impact of the Acquisition and the Entitlement Offer. The pro forma financial information and past information provided in this presentation is for illustrative purposes only and is not represented as being indicative of Slater & Gordon's views on its future financial condition and/or performance. Investors should also note that this presentation does not include financial statements of Quindell or the PSD business.

- (b) says that page 3 of the 30 March Presentation contained the following statement:

The presentation includes certain "forward-looking statements" such as indications of, and guidance on, future events, future earnings and the future financial performance and financial position of Slater & Gordon. Forward looking statements can generally be identified by the use of forward-looking words such as "expect", "anticipate", "likely", "intend", "should", "could", "may", "predict", "plan", "propose", "will", "believe", "forecast", "estimate", "target", "outlook", "guidance" or other similar expressions and include statements regarding the timing and outcome of the acquisition and the capital raising, Slater & Gordon's strategies and plans and the future operational and financial performance of the PSD business and Slater & Gordon. Any forward looking statements included in this document involve subjective judgment and analysis and are subject to significant uncertainties, risks and contingencies and other factors, including the risks described in this presentation under "Key Risks", many of which are outside the control of, and are unknown to, Slater & Gordon and its officers, employees, agents or associates and may involve significant elements of subjective judgement and assumptions as to future events which may or may not be correct.

Forward looking statements, including projections, guidance on future earnings and estimates are provided as a general guide only and should not be relied upon as an indication, prediction or guarantee of future performance. No presentation, warranty or assurance (express or implied) is given or made in relation to any forward looking statement by any person (including the Company). In particular, no representation, warranty or assurance (express or implied) is given that the occurrence of the events expressed or implied in any forward looking statements in this presentation will actually occur. Actual results, performance or

achievement may vary materially from any projections and forward looking statements and the assumptions on which those statements are based. The forward looking statements in this presentation speak only as at the date of this presentation.

In particular, the risk factors detailed in this presentation may affect the future operating and financial performance of Slater & Gordon. ...

- (c) says that page 6 of the 30 March Announcement contained the following statement:

This announcement contains certain "forward-looking statements" within the meaning of the securities laws of applicable jurisdictions. Forward-looking statements can generally be identified by the use of forward-looking words such as 'may', 'could', 'should', 'expect', 'anticipate', 'estimate', 'scheduled', 'intend' or 'continue' or the negative thereof or comparable terminology and include statements regarding the timing and outcome of the acquisition and the Entitlement Offer, Slater & Gordon's strategies and plans and the future operational and financial performance of the PSD business and Slater & Gordon. Any forecasts or other forward-looking statements contained in this announcement are subject to known and unknown risks and uncertainties and may involve significant elements of subjective judgment and assumptions as to future events which may or may not be correct. There are usually differences between forecast and actual results because events and actual circumstances frequently do not occur as forecast and these differences may be material. Slater and Gordon does not give any representation, assurance or guarantee that the occurrence of the events expressed or implied in any forward-looking statements in this announcement will actually occur and you are cautioned not to place undue reliance on forward-looking statements.

- (d) as to sub-paragraph (a), admits that the 30 March Announcement and the 30 March Presentation contained statements to the effect alleged;
- (e) as to sub-paragraph (b), admits that the 30 March Announcement and the 30 March Presentation contained statements to the effect alleged;
- (f) as to sub-paragraph (c), admits that the 30 March Presentation contained a statement to the effect alleged;
- (g) as to sub-paragraph (d):

- (i) admits the 30 March Presentation contained a statement to the effect alleged in sub-paragraph (d)(i);
 - (ii) as to sub-paragraph (d)(ii), says that the 30 March Presentation contained a statement that recognition of goodwill of A\$710 million being the excess of the acquisition purchase consideration over the fair value of the net assets was stated to be one of the pro-forma acquisition adjustments made in preparation of the pro-forma SGH combined balance sheet;
- (h) as to sub-paragraph (e):
- (i) admits the 30 March Presentation contained statements to the effect alleged;
 - (ii) says further that the 30 March Presentation also included a statement that a key risk specific to the acquisition of PSD was the decline in new business generation, and that a number of factors could have a material impact on PSD's ability to generate new business and accordingly generate new revenue, including changes to and developments in the regulatory landscape;

Particulars

30 March Presentation, slide 58.

- (i) will rely on the 30 March Publications as to their meaning and effect; and
- (j) otherwise denies paragraph 42.

43 As to paragraph 43, the Respondent:

- (a) admits that the 30 March Announcement contained statements to the effect alleged in sub-paragraphs (a) to (e) and (g);
- (b) as to sub-paragraph (f), admits that the 30 March Announcement contained a statement to the effect alleged (save that the moratorium was described as a moratorium initially);
- (c) will rely on the 30 March Announcement as to its meaning and effect; and
- (d) otherwise denies the allegations in paragraph 43.

- 44 As to paragraph 44, the Respondent:
- (a) as to sub-paragraph (a), says that SGH made a statement that SGH had agreed to acquire PSD, which was a leading personal injury law firm in the UK, operating across the value chain including:
 - (i) legal services relating to RTA, employee liability/public liability and NIHL cases; and
 - (ii) complementary services – marketing, health and motor services;
 - (b) admits the allegations in sub-paragraphs (b) to (r);
 - (c) will rely on the 30 March Presentation as to its meaning and effect; and
 - (d) otherwise denies the allegations in paragraph 44.
- 45 As to paragraph 45, the Respondent:
- (a) repeats sub-paragraphs 42(a) to (c) above;
 - (b) admits that the 30 March Presentation contained statements to the effect alleged;
 - (c) will rely on the 30 March Presentation as to its meaning and effect; and
 - (d) otherwise denies the allegations in paragraph 45.
- 46 As to paragraph 46, the Respondent:
- (a) admits the allegations in sub-paragraph (a);
 - (b) admits that, by the 30 March Cleansing Notice, SGH made a statement that, as at the date of that notice, SGH had complied with section 674 of the Corporations Act;
 - (c) will rely on the 30 March Cleaning Notice as to its meaning and effect; and
 - (d) otherwise denies the allegations in paragraph 46.

D.3A The Offer Booklet

- 46A In further response to the matters pleaded in Part D.3, the Respondent relies on the matters pleaded in paragraphs 46B to 46D.

46B On 9 April 2015:

- (a) a Retail Entitlement Offer Booklet (**Offer Booklet**) was dispatched to SGH retail shareholders eligible to participate in the Retail Entitlement Offer (**Potential Retail Entitlement Offer Participants**); and
- (b) the Offer Booklet was published on the ASX website and the SGH website.

Particulars

This is recorded on p 59 of the Offer Booklet.

46C The Offer Booklet contained the following statements:

- (a) the Potential Retail Entitlement Offer Participants should in particular consider the risk factors outlined in the "Key risks" section of the 30 March Presentation that could affect the operating and financial performance of SGH, or the value of an investment in SGH (page 2);
- (b) a statement in relation to future performance, forward looking statements, opinions and estimates as follows (page 2):

Future performance and forward looking statements

This Retail Offer Booklet contains certain 'forward looking statements'. Forward looking statements can generally be identified by the use of forward looking words such as 'expect', 'anticipate', 'likely', 'intend', 'propose', 'should', 'could', 'may', 'will', 'predict', 'plan', 'believe', 'forecast', 'estimate', 'target', 'continue', 'objectives', 'outlook', 'guidance' and other similar expressions within the meaning of securities laws of applicable jurisdictions and include, but are not limited to, statements regarding the outcome and effects of the Entitlement Offer and the use of proceeds, certain plans, strategies and objectives of management, expected financial performance and Slater & Gordon's debt arrangements. The forward looking statements, opinions and estimates contained in this Retail Offer Booklet are based on assumptions and contingencies which are subject to change without notice, as are any statements about market and industry trends, which are based on interpretations of current market conditions. They involve known and unknown risks and uncertainties and other factors, many of which are beyond the control of Slater & Gordon and its officers, employees, agents and associates, and may involve significant elements of subjective judgement and assumptions as to future events which may or may not be correct.

Refer to the 'Key Risks' section of the Slater & Gordon Investor Presentation included in Section 3 of this Retail Offer Booklet for a summary of certain general and Slater & Gordon specific risk factors that may affect Slater & Gordon. There can be no assurance that actual outcomes will not differ materially from these forward looking statements. A number of important factors could cause actual results or performance to differ materially from the forward looking statements. Investors should consider the forward looking statements contained in this Retail Offer Booklet in light of those disclosures. There are usually differences between forecast and actual results because events and actual circumstances frequently do not occur as forecast and their differences may be material. Any forward-looking statements are provided as a general guide only and should not be relied upon as an indication or guarantee of future performance. Readers are cautioned not to place undue reliance on forward-looking statements.

- (c) the Potential Retail Entitlement Offer Participant should consult their financial advisor before making a decision (page 5).

46D By exercising their rights pursuant to the Entitlement Offer, the Potential Retail Entitlement Offer Participant represented that:

- (a) they had read and understood the Offer Booklet in its entirety;
- (b) they acknowledged that the Offer Booklet was not a prospectus and did not contain all the information that they may require in order to assess an investment in SGH;
- (c) they acknowledged the statement of risks in the "Key Risks" section of the 30 March Presentation;
- (d) they acknowledged that investments in SGH were subject to risk.

Particulars

Offer Booklet, p 9 ("Representations by acceptance").

D.4. Representations conveyed by the 30 March Publications

47 As to paragraph 47, the Respondent:

- (a) repeats paragraphs 42 to 46D above; and
- (b) otherwise denies the allegations in paragraph 47.

48 As to paragraph 48, the Respondent:

- (a) admits that the 30 March Cleansing Notice stated that "as at the date of this notice, SGH has complied with ... the provisions of Chapter 2M of the Act as they apply to SGH; and ... section 674 of the Act"; and
- (b) otherwise denies the allegations in paragraph 48.

E. ABL'S ROLES AND RESPONSIBILITIES

E.1. Australian legal adviser to Slater & Gordon

49 As to paragraph 49, the Respondent:

- (a) says that, between mid-February 2015 and mid-March 2015, SGH retained the Respondent to:
 - (i) act as Australian legal advisor in relation to the Entitlement Offer;
 - (ii) participate as a member of the DDC established by SGH in relation to the Entitlement Offer, on the terms provided in the DDPM;
 - (iii) provide Australian legal advice to the DDC on the Entitlement Offer, the Offer Documents and legal matters arising in connection with the due diligence process; and
 - (iv) provide a legal opinion in respect of the contents of the Offer Documents, on the terms provided in the DDPM,

(the **Retainer**); and
- (b) otherwise denies the allegations in paragraph 49.

Particulars

The Retainer was partly oral, partly in writing and partly to be implied. To the extent it was oral, it was constituted by conversations between Wenig and Grech in January to February 2015 to the effect alleged in sub-paragraph (a)(i) above.

To the extent it is in writing, it comprised:

- A. an email from Jason van Grieken of the Respondent (**van Grieken**) to Kirsten Morrison (Morrison) of SGH dated 23 February 2015 (ABL.001.001.1806);

- B. an email from van Grieken to Morrison and Kara Sheehan (**Sheehan**) of SGH dated 4 March 2015 (ABL.001.001.1806);
- C. the DDPM (ABL.001.016.3931 at 3937 ff) as adopted by the DDC (as to which, the Respondent refers to sub-paragraph 70M(b) below).

To the extent it is to be implied, it is to be implied from the request made by SGH for and the performance by the Respondent of the work undertaken by the Respondent in relation to the Entitlement Offer; the Respondent's participation on the DDC; and the ABL Signed Legal Opinion Letter provided by the Respondent to the DDC.

50 As to paragraph 50, the Respondent:

- (a) admits that at all material times, it was obliged to use reasonable skill and care in providing services to SGH pursuant to the Retainer; and
- (b) otherwise denies the allegations in paragraph 50.

51 As to paragraph 51, the Respondent:

- (a) admits that each of its partners and employed solicitors was obliged to comply with the provisions of the *Legal Profession Act* (2004) (Vic) and/or its interstate equivalents and all other obligations imposed on solicitors by applicable statute and general law; and
- (b) otherwise denies the allegations in paragraph 51.

E.2. Member and Chair of the Due Diligence Committee

52 As to paragraph 52, the Respondent:

- (a) admits the allegations in paragraph 52; and
- (b) says further that the overall responsibility for the due diligence process lay with the board of directors of SGH (**SGH Board**), who were:
 - (i) entitled to rely on the report from the DDC, to the extent such reliance was reasonable and in accordance with their obligations under Part 2D.1 of the Corporations Act and at general law;
 - (ii) to supplement the report with their own enquiries as they saw fit having regard to their obligations under Part 2D.1 of the Corporations Act and at general law.

Particulars

DDPM, cl 5.3.

53 As to paragraph 53, the Respondent:

- (a) says that the due diligence process was as set out in the DDPM;
- (b) will rely on the DDPM for its meaning and effect; and
- (c) otherwise denies paragraph 53.

54 As to paragraph 54, the Respondent:

- (a) admits that the persons identified in paragraph 54(a)(i) to (iii) of the Statement of Claim were members of the DDC in the pleaded roles;
- (b) admits subparagraph (b);
- (c) says further that in addition to the members of the DDC, the following entities were observers to the DDC:
 - (i) Citigroup Global Markets Australia Pty Limited (**Citi**), in its role as corporate adviser and underwriter of the Entitlement Offer and represented by Aidan Allen (John McLean and Thomas Fraczek as alternates);
 - (ii) Macquarie Capital Australia Limited (**Macquarie**), in its role as corporate adviser and underwriter of the Entitlement Offer and represented by Dominic Meagher; and
 - (iii) Greenhill & Co Australia Pty Ltd (**Greenhill**), in its role as corporate adviser and Michelle Jablko; and
- (d) otherwise denies the paragraph.

55 As to paragraph 55, the Respondent:

- (a) says that:
 - (i) the overall responsibility for the due diligence process lay with the Board of SGH, who were entitled to rely on a report from the DDC, to the extent such reliance was reasonable and in accordance with their obligations under Part 2D.1 of the *Corporations Act* and at general law, supplemented by their own enquiries as they saw fit and having regard

to their obligations under Part 2D.1 of the Corporations Act and at general law;

- (ii) the DDC was to rely on reports from various entities and persons responsible for the various aspects of the business of SGH, supplemented by the DDC's own enquiries as it saw fit; and
- (iii) subject to the matters pleaded in subparagraphs (i) and (ii) above, the DDC, as a whole, had the responsibilities pleaded in subparagraphs (a) to (n) of the Statement of Claim;

Particulars

DDPM, cl 5.3.

- (iv) all reports, sign-offs and opinions provided to the DDC were to be provided to, and could be relied on by, the Respondent and all other members of the DDC, the Underwriters and Greenhill;

Particulars

DDPM, cl 5.5(b).

- (v) each member of the DDC was to participate in the due diligence process having regard to their area of skill, knowledge, expertise and their accepted area of responsibility;

Particulars

DDPM, cl 5.5(c).

- (vi) in the Respondent's case, it was to participate in the due diligence process on matters pertaining to the laws applicable in Australia in connection with corporate fund-raising;
- (vii) where a member of the DDC lacked particular expertise on a matter, they were entitled to rely upon those members with the expertise (and those with expertise may rely on another member with expertise to the extent a matter has been specifically delegated to the latter);

Particulars

DDPM, cl 5.5(c).

- (viii) the DDC was to delineate and delegate the task of investigating on specified identified issues to specific members and others selected by the DDC (defined in the DDPM as "Reporting Persons");

Particulars

DDPM, cl 5.4.

- (ix) the Respondent's role as a Reporting Person was to:
 - (A) recommend and provide advice on an appropriate due diligence system; and
 - (B) provide Australian legal advice on the Entitlement Offer, Offer Documents and legal matters arising in connection with the due diligence process.

Particulars

DDPM, cl 5.4(a).

- (x) the role of SGH, as a Reporting Person, through its executive and management, was to:
 - (A) have primary responsibility for making commercial, financial and accounting enquiries, and provide information on commercial, operational and other business issues and other assistance as required by the Due Diligence Committee;
 - (B) consider and respond to the Respondent's due diligence questionnaire (**ABL Management Questionnaire**) and be available at meetings of the DDC for discussion of the responses to the ABL Management Questionnaire;
 - (C) verify information and statements in the Offer Documents as agreed by the DDC; and
 - (D) provide sign-offs (in a form agreed with the Underwriters) to SGH, the DDC, the Underwriters and Greenhill regarding the Offer documents and their participation in the due diligence process.

Particulars

DDPM, cl 5.4(b).

- (xi) the role of Baker & McKenzie as a Reporting Person was to provide legal advice on the Entitlement Offer in respect of the jurisdictions outside of Australia and the UK to which the Entitlement Offer was to be extended;

Particulars

DDPM, cl 5.4(c).

- (xii) the role of Macfarlanes LLP (**Macfarlanes**) as a Reporting Person was to provide legal advice on the Entitlement Offer in respect of extending the Entitlement Offer to the UK;

Particulars

DDPM, cl 5.4(d).

- (xiii) the role of Mutual Trust as a Reporting Person was to provide a tax letter outlining various taxation issues in relation to the Offer Entitlement for inclusion in the Booklet;

Particulars

DDPM, cl 5.4(e).

- (xiv) SGH was responsible for bringing forward all material information relating to its business (including information relevant to its strengths, weaknesses, opportunities and threats);

Particulars

DDPM, cl 5.4.

- (xv) the Respondent's liability to other members of the DDC, including SGH, was limited in the manner set out in Part 5.7 of the DDPM;
 - (xvi) the DDPM governed the roles and responsibilities of the members and observers of the DDC, including the Respondent and its representative, and will rely on the DDPM for its meaning and effect;
- (b) says that the effect of the DDPM was that the Respondent's duties to SGH under the Retainer and general law in relation to its role on the DDC was limited to the performance of the roles and responsibilities required of the Respondent under the DDPM as pleaded in subparagraph (a) above; and
 - (c) otherwise denies the allegations in paragraph 55.

56 As to paragraph 56, the Respondent:

- (a) repeats paragraph 55 above;

- (b) says that the DDPM governed the roles and responsibilities of the Chairman of the DDC and will rely on the DDPM for its meaning and effect; and
- (c) otherwise admits the allegations in paragraph 56.

57 As to paragraph 57, the Respondent:

- (a) denies the allegations in paragraph 57;
- (b) repeats paragraphs 49, 52(b), 55 and 56 above;
- (c) says that:
 - (i) the Verification Report provided that the Respondent was responsible, in relation to the Cleansing Notice, prior to signing the Verification Report dated 29 March 2015, for certifying that:
 - (A) the Respondent had read and approved the Cleansing Notice;
 - (B) the Verification Schedule to the Verification Report contained a cross reference to relevant documentation or other matters within the Respondent's knowledge upon which it had relied for verification of the Cleansing Notice (**Verification Material**);
 - (C) to the best of the Respondent's knowledge information and belief, having made all reasonable and proper enquiries:
 - (a) no statement in the Cleansing Notice, considered in the context in which it appears in the Offer Documents, is misleading or deceptive; and
 - (b) there are no matters relevant to the subject to which the statement in the Cleansing Notice relates which have been omitted from the Offer Documents;

Particulars

Verification Report, Part 3 and Verification Schedule, "Cleansing Notice".

- (ii) the Respondent disclaimed all responsibility whatsoever for any matter, statement or omission in the Offer Documents or in the Verification Report for which it was not specifically denoted responsibility including, without limitation, any omission, misstatement or any matters which are incomplete in the Offer Documents or the Verification Report or which occurs as a result of the failure of any of the Signatories (as set out in

Part 6 of the Verification Report dated 29 March 2015) to provide supporting documentation after having been requested to provide such documentation and despite having provided assurances that such documentation would be forthcoming.

Particulars

Verification Report, Part 4.

- (d) further says that SGH was responsible, in relation to:
- (i) the 30 March Announcement;
 - (ii) the 30 March Presentation Slides 1 and 4-80;
 - (iii) (together with the Respondent), the 30 March Presentation Slides 2 and 3; and
 - (iv) in the premises, each of the statements alleged in paragraphs 42 to 45 of the Statement of Claim,
- (collectively, the **SGH Statements**) for certifying that:
- (v) SGH had read and approved the SGH Statements;
 - (vi) the Verification Schedule to the Verification Report contained a cross reference to relevant documentation or other matters within SGH's knowledge upon which it had relied for verification of the SGH Statements;
 - (vii) to the best of SGH's knowledge information and belief, having made all reasonable and proper enquiries:
 - (A) no statement in the SGH Statements, considered in the context in which it appears in the Offer Documents, is misleading or deceptive; and
 - (B) there are no matters relevant to the subject to which the statement in the SGH Statements relates which have been omitted from the Offer Documents.

Particulars

Verification Report, Part 3; Verification Schedule

- (da) further say that SGH was responsible for confirming that each of the statements alleged in paragraphs 42 to 54 of the Statement of Claim could be cross-

referenced to independent source documents to establish the truth and accuracy of the statement, or, where that was not feasible, the truth and accuracy of the statement was based on direct personal knowledge and expertise and/or analysis, demonstrating that the relevant statement had been made on reasonable grounds;

Particulars

Verification Report, clause 2.1

- (e) further says that the Verification Material relating to each of the statements alleged in paragraphs 42 to 45 of the Statement of Claim₁ were as follows:
- (i) the 30 March Announcement (insofar as it included statements relating to PSD): Board minute approving entry into principal transaction documents; Quindell Sale agreement; EY Report; a due diligence report by Macfarlanes (Macfarlanes DD Report); Instinctif Report; Investor presentation;
 - (ii) page 7 of the 30 March Investor Presentation: Macfarlanes DD report;
 - (iii) page 8 of the 30 March Investor Presentation: no verification required;
 - (iv) page 9 of the 30 March Investor Presentation: Management statement;
 - (v) page 13 of the 30 March Investor Presentation: no verification required;
 - (vi) page 15 of the 30 March Investor Presentation: Management statements; Macfarlanes DD report;
 - (vii) page 17 of the 30 March Investor Presentation: Management statements; financial model; EY report;
 - (viii) page 19 of the 30 March Investor Presentation: EY DD report; Macfarlanes DD report; Instinctif Report; Management statements;
 - (ix) page 20 of the 30 March Investor Presentation: Management statement;
 - (x) page 21 of the 30 March Investor Presentation: no verification required;
 - (xi) page 25 of the 30 March Investor Presentation: no verification required;
 - (xii) page 28 of the 30 March Investor Presentation: financial model; Management statements;

- (xiii) page 30 of the 30 March Investor Presentation: Management statement;
- (xiv) page 41 of the 30 March Investor Presentation: Management statement; Rule 15 of AIM rules, Signed irrevocables, Quindell sale agreement, Quindell notice of meeting documentation, Applications for approval from regulators;
- (xv) page 45 of the 30 March Investor Presentation: Management statement;
- (xvi) page 51 of the 30 March Investor Presentation: Management statement;
- (xvii) page 53 of the 30 March Investor Presentation: Macfarlane DD report; management statement;
- (xviii) page 59 of the 30 March Investor Presentation: Management statement; and
- (xix) page 61 of the 30 March Investor Presentation: Management statement; and

Particulars

Verification Schedule

- (f) further says that where the Verification Material was designated as "Statement", it was to be provided by way of statement made on behalf of the Directors or management of SGH and verified by Grech on behalf of the board of SGH upon Grech's execution of the Verification Report.

Particulars

Verification Report, clause 2.4

E.3. ABL Legal Opinion

58 As to paragraph 58, the Respondent:

- (a) repeats paragraph 55 above;
- (b) says that the Respondent had responsibility for providing to the directors of SGH its opinion as to whether:

- (i) SGH and the Entitlement Offer satisfied the conditions in s 708AA(2) of the Corporations Act;
- (ii) the Cleansing Notice complied with s.708AA(7) of the Corporations Act or SGH was (for any other reason) not entitled to make the offer made pursuant to the Entitlement Offer by issuing the Cleansing Notice (when read together with the Investor Presentation) in accordance with s.708AA(7) of the Corporations Act;
- (iii) anything had come to the Respondent's attention that caused it to believe that the Offer Documents contained any statement that was false, misleading or deceptive or likely to mislead or deceive (including by way of statements included in or omissions from the Offer Documents), or whether there was an omission of material from the Offer Documents having regard to the content requirements of s 708AA(7) of the Corporations Act; and

Particulars

Offers Documents Legal Opinion, [4] to [6].

- (c) otherwise denies the allegations in paragraph 58.

E.4. ABL's duty of care to Group Members

59 As to paragraph 59, the Respondent:

- (a) admits that a reasonable person in the position of the Respondent and/or Wenig would have foreseen:
 - (i) the matters alleged in subparagraphs (a) and (d); and
 - (ii) that investors may rely on the Offer Documents in deciding whether to participate in the Entitlement Offer;
- (b) repeats paragraphs 42(a) to (c), 46C and 46D above; and
- (c) otherwise denies the allegations in paragraph 59.

60 As to paragraph 60, the Respondent:

- (a) admits the allegations in sub-paragraphs (a) to (b); and
- (b) otherwise denies the allegations in paragraph 60.

61 The Respondent denies the allegations in paragraph 61.

62 The Respondent does not know and therefore cannot admit the allegations in paragraph 62.

63 The Respondent denies the allegations in paragraph 63.

64 The Respondent denies the allegations in paragraph 64.

65 The Respondent denies the allegations in paragraph 65.

F. ABL'S CONDUCT

F.1. Materials to which ABL had access and reviewed

66 The Respondent admits the allegations in paragraph 66.

67 As to paragraph 67, the Respondent:

(a) admits that:

(i) part 5.4 of the DDPM set out the role of various Reporting Persons, including the Respondent, as pleaded in paragraph 55 above;

(ii) part 5.5(h) of the DDPM stated that:

Subject to this section 5, the conduct of the Due Diligence Committee will be based on the following principles ... copies of all materials provided to and produced by the Due Diligence Committee (including minutes of all meetings, expert reports, verifications questions and answers) will be provided to the Board, each member of the Due Diligence Committee, the Underwriters and Greenhill; ~~and~~

(b) admits that some of the documents referred to in paragraph 67(a), and all of the documents referred to in paragraph 67(b), were provided to ABL and/or Wenig; and

(c) otherwise does not know and therefore cannot admit the allegations in paragraph 67.

68 In response to paragraph 68, tThe Respondent:

(a) admits that ABL assessed and/or reviewed the documents referred to in paragraph 68; and

(b) otherwise does not know and therefore cannot admit the allegations in paragraph 68.

69 In response to paragraph 69, tThe Respondent:

- (a) admits that each of the documents referred to in paragraph 69 was provided to ABL; and
- (b) otherwise denies the allegations therein. ~~does not know and therefore cannot admit the allegations in paragraph~~

F.2. Work done by ABL

70 As to paragraph 70, the Respondent:

- (a) says that:
 - (i) on 24 March 2015, Greenhill provided the Respondent with a draft as at 24 March 2015 at 12.15 pm of the 30 March Presentation;
 - (ii) on 24 March 2015 at 3.44 pm, Wenig emailed Grech, Brown, Sheehan and Morrison of SGH, Greenhill and the Underwriters (inter alios) his comment that "*in the Risks/Mitigants section, my preference would be to shift the balance somewhat towards greater description of the risks*";
 - (iii) on 25 March 2015, the Respondent provided to Greenhill its comments on the draft risks/mitigants section in the investor presentation;
 - (iv) the "Key Risks" section of the 30 March Presentation was the primary responsibility of SGH, and it repeats paragraph 55(a)(ii) above; and
- (b) otherwise denies ~~does not know and therefore cannot admit~~ the allegations in paragraph 70.

Particulars

As to at (a)(i)-(iii), the Respondent refers to the email chain dated 24-25 March 2015 (ABL.001.001.8590) and attachment ABL.001.001.8600.

F.2.A. ABL Management Questionnaire

70A. Further, on or around 24 March 2015, the Respondent provided the ABL Management Questionnaire to SGH.

Particulars

Email from van Greiken to the Grech and Brown (inter alios) dated 24 March 2015 ABL.001.001.6939 and ABL.001.001.7008.

- 70B. On or around 28 March 2015, Grech and Brown provided to the Respondent their response to the ABL Management Questionnaire (Due Diligence Response).

Particulars

The responses are contained in letter, dated 28 March 2015, on the Respondent's letterhead and addressed to Grech and Brown (ABL.001.016.3931 at 4010).

- 70C. By way of the Due Diligence Response:

- (a) In response to Question 25, "*Please identify the factors which may cause profitability and net debt for the current and next financial year to be materially worse than internal forecasts or analyst expectations and for each factor identified provide your opinion of the risk of occurrence. As part of your response please consider any impacts that may occur as a result of the acquisition of Quindell Plc*", Grech and Brown each stated:

Response: *Disclosure will be made in the investor presentation regarding key risk factors.*

- (b) Grech and Brown each acknowledged that:
- (i) SGH and advisors of SGH would rely on the responses given by them;
 - (ii) The Respondent would rely on the responses given to ensure that all material information was disclosed to the ASX.

F.2B. Verification process

- 70D. On or around 29 March 2015, SGH provided to the Respondent for execution a copy of the Verification Report, signed by Grech and Brown.

Particulars

ABL.001.016.3914.

- 70E. On or around 29 March 2015, Wenig signed the Verification Report.

Particulars

ABL.001.016.3914

- 70F. By signing the Verification Report each of Grech and Brown, as signatories for SGH, certified to the DDC that, in relation to each statement for which SGH was denoted responsibility in the Verification Report:

- (a) he had read and approved the statement;
- (b) the column headed "Verification Material" adjacent to the statement contained a cross-reference to the relevant documentation, or other matters within his knowledge, which he had relied on for verification of the statement;
- (c) to the best of his knowledge and belief, having made all reasonable and proper enquiries:
 - (i) no such Statement, considered in the context in which it appears in the Offer Documents, is misleading or deceptive; and
 - (ii) there are no matters relevant to the subject to which the Statement relates which have been omitted from the Offer Documents; and
- (d) he had a continuing responsibility to bring to the attention of the DDC any new circumstances which arise or otherwise come to his knowledge during the period between signing the Verification Report and the close of the retail component of the Entitlement Offer which may render any of the statements misleading or deceptive or constitute an omission from the Offer Documents.

Particulars

Verification Report, clauses 3 and 6.

- 70G. In the premises, by signing the Verification Report, each of Grech and Brown (personally and on behalf of SGH) confirmed to the DDC (including the Respondent) that the statements pleaded in paragraph 42 to 45 of the Statement of Claim, the verification of which was the responsibility of SGH as pleaded in paragraph 57(d) above, were verified in accordance with the procedure set out in the Verification Report and pleaded in paragraph 70C above (**SGH Verification Confirmation**).
- 70H. Further, by signing the Verification Report, Grech (on behalf of the directors of SGH) verified to the DDC (including the Respondent) that, to the extent the Verification Material was designated as "Management statement", had been verified for completeness and accuracy on behalf of the directors of SGH (**Management Statement Confirmation**).

Particulars

Verification Report, clause 2.4

- 70I. On 29 March 2015, the Respondent undertook a random audit, as set out in clause 2.7 of the Verification Report, of the Offer Documents and determined that the 15 statements in the Offer Documents it randomly audited had been properly verified.

Particulars

The random audit is recorded in an ABL file note entitled "Random Audit of Verification Materials" (ABL.001.016.3929) as having occurred on 29 March 2015 at Slater & Gordon at 485 La Trobe St, Melbourne, attended by Sheehan of SGH and Benjamin Reisner of the Respondent, with each of audit items 1-15 listed as properly verified.

F.2C. Management sign-offs provided to the DDC

70J. On 29 March 2015:

- (a) Grech signed and provided to the members of the DDC, including the Respondent, a document entitled "Management Sign-Off: Slater & Gordon Limited Entitlement Offer" (**Grech Sign-Off**);
- (b) Brown signed and provided to the members of the DDC, including the Respondent, a document entitled "Management Sign-Off: Slater & Gordon Limited Entitlement Offer" (**Brown Sign-Off**),

collectively, the **Management Sign-Offs**.

Particulars

The Grech Sign-Off is signed by Grech, dated 29 March 2015, is addressed to the Board of Directors of SGH, and copied to the members of the DDC (ABL.001.002.7927).

The Brown Sign-Off is signed by Brown, dated 29 March 2015, is addressed to the Board of Directors of SGH, and copied to the members of the DDC (ABL.001.002.7931).

70K. In the Management Sign-Offs, each of Grech and Brown stated that:

- (a) he had been provided with the 30 March Cleansing Notice, the Offer Booklet and the Investment Presentation;
- (b) he had read and understood the DDPM and the due diligence process outlined in the DDPM, and understood the purpose of due diligence;
- (c) all information and responses he had provided during the course of the due diligence process had been true, complete and accurate in all respects and had not been false, misleading or deceptive, or likely to mislead or deceive;

- (d) he had satisfied himself, having regard to his knowledge of SGH's business, that SGH had complied with s 674 and the provisions of Chapter 2M of the Corporations Act;
- (e) he had satisfied himself, having regard to his knowledge of SGH's business, that all information that investors and their professional advisers would reasonably require for the purposes of making an informed assessment of:
 - (i) the assets and liabilities, financial position and performance, profits and losses and prospects of SGH; or
 - (ii) the rights and liabilities attaching to the new shares to be issued by SGH pursuant to the Entitlement Offer,have previously been disclosed to the ASX or he had otherwise notified such information to the DDC;
- (f) he had read and understood the final drafts of each of the 30 March Cleansing Notice, the Offer Booklet and the Investment Presentation, and he believed that:
 - (i) each of the 30 March Cleansing Notice, the Offer Booklet and the Investment Presentation were accurate, and did not contain any statement that was false, misleading or deceptive or likely to mislead or deceive (including by way of statements in or omissions from those documents);
 - (ii) there was no omission from any of the 30 March Cleansing Notice, the Offer Booklet and the Investment Presentation of information which was required to be included by s 708AA of the Corporations Act as modified by ASIC Class Order 08/35;
 - (iii) where the 30 March Cleansing Notice, the Offer Booklet or the Investment Presentation contained a statement of opinion or statement about a future matter, those statements were based on reasonable grounds;
- (g) nothing had come to his attention that caused him to believe, and he did not believe, that:
 - (i) the 30 March Cleansing Notice did not comply with s 708AA of the Corporations Act;
 - (ii) the 30 March Cleansing Notice was defective;

- (iii) the 30 March Cleansing Notice, the Offer Booklet or the Investment Presentation contained a statement that was false, misleading or deceptive, or likely to mislead or deceive, including by omission;
 - (iv) there was an omission from either the 30 March Cleansing Notice, the Offer Booklet or the Investment Presentation of information required by the Corporations Act;
 - (v) where the 30 March Cleansing Notice, the Offer Booklet or the Investment Presentation contained a statement of opinion or statements about a future matter, those statements were not based on reasonable grounds;
- (h) he would immediately advise Wenig, as Chair of the DDC, in writing, if at any time prior to the issue of the new shares in SGH pursuant to the Entitlement Offer, he became aware of:
- (i) a false, misleading or deceptive statement in any of the 30 March Cleansing Notice, the Offer Booklet or the Investment Presentation;
 - (ii) an omission from the Offer Documents of information required to be included by the Corporations Act;
 - (iii) any new circumstance that had arisen since the 30 March Cleansing Notice, the Offer Booklet or the Investment Presentation were lodged which may have been required to be included in the documents if it had arisen before lodgement.

F.2D Due Diligence Report

70L. On 29 March 2015, Grech, Brown and Wenig each executed the Due Diligence Report (**Due Diligence Report**).

Particulars

ABL.001.002.8025.

- 70M. By the Due Diligence Report, each of SGH and the Respondent stated that:
- (a) the Offer Documents were verified in accordance with the process outlined in the DDPM (*page 2*);
 - (b) each DDC member had reviewed the DDPM and the Due Diligence Process (as defined in the DDPM) had been adopted; and

- (c) where a matter has fallen outside a DDC member's area of expertise, that member has relied on those members of the DDC to whom a particular investigation in relation to that matter was assigned and/or with the appropriate expertise.

Particulars

As to (a), this is stated on page 2. As to (b), this is stated at clause 4(a)(i). As to (c), this is stated at clause 4(b).

71 The Respondent admits the allegations in paragraph 71.

72 As to paragraph 72, the Respondent:

- (a) admits that the work undertaken by the Respondent included:
- (i) its work in relation to the verification process, referred to in paragraphs 70D to 70I above, including receiving the Verification Report signed by Grech and Brown as referred to in paragraph 70D above;
 - (ii) receiving and considering the Management Sign-Offs referred to in paragraphs 70J to 70K above;
 - (iii) preparing the ABL Management Questionnaire and receiving and considering the Due Diligence Response, as referred to in paragraphs 70A to 70C above;
 - (iv) its work in relation to the Due Diligence Report, referred to in paragraphs 70L to 70M above;
 - (v) the preparation and provision of the ABL Signed Legal Opinion Letter; and
- (b) otherwise denies the allegations in paragraph 72.

F.3. ABL's Legal Opinions

73 As to paragraph 73, the Respondent:

- (a) says that a draft form of the Respondent's DD Report and a draft of the opinion letter the Respondent was to issue (Draft ABL Letter) were provided by the Respondent to SGH on a date on or prior to 27 March 2015; and
- (b) otherwise denies the allegations in paragraph 73.

74 As to paragraph 74, the Respondent:

- (a) admits that it, through Wenig, issued the ABL Signed Legal Opinion Letter to the SGH Board (copied to the other members of the DDC) on or about 29 March 2015;
- (b) says that the Draft ABL Letter was in draft form, and was not signed; and
- (c) otherwise denies the allegations in paragraph 74.

75 As to paragraph 75, the Respondent:

- (a) says that the ABL Signed Legal Opinion Letter stated the following limitations and qualifications to, and assumptions made in forming, its opinion (**Limitations, Qualifications and Assumptions**):
 - (i) the Respondent expressed no opinion in relation to the laws of another jurisdiction or factual matters (except as expressly provided in the letter);
 - (ii) the Respondent expressed no opinion on any acquisition advice which it had provided in relation to the Acquisition;
 - (iii) the Respondent, in giving the opinion, held itself out as having skills and expertise with respect to the laws within Australia, its States and Territories only;
 - (iv) the Respondent specifically disclaimed any skills or expertise in any capacity other than with respect to Australian law, whether financial, investment or otherwise;
 - (v) the ABL Signed Legal Opinion Letter was strictly limited to the matters stated in it and did not apply by implication to other matters;
 - (vi) the opinions expressed by the Respondent in the letter were qualified by the following:
 - (A) the Respondent expressed no opinion on any matter requiring skill or expertise of a non-legal nature, such as any operational, financial, statistical, or accounting data referred to in the Offer Documents or its adequacy;
 - (B) in determining issues of materiality for the purpose of meeting disclosure requirements for the Entitlement Offer, the Respondent had relied on decisions made by the DDC, based on advice provided to it by persons with particular expertise or knowledge in relation to the matters concerned;

- (C) the Respondent had made the following assumptions which, from the material it had seen and the responses it had received, it had no basis to suspect were incorrect:
- (a) responses to questions which have been put to directors, officers and agents of SGH have not been misleading or deceptive and have been true, correct and accurate in all respects;
 - (b) each SGH director has personally:
 - (i) read and understood the Offer Documents and all reports prepared by the DDC and presented to the directors;
 - (ii) carefully considered what inquiries that director ought to make and made such inquiries of management and members of the DDC as the director has considered necessary;
 - (iii) brought to bear in the process of inquiry the director's own skill and experience so that he or she is personally reasonably satisfied with the inquiries and resulting responses;
 - (iv) satisfied himself or herself (relying on the Due Diligence Process) that he or she has no question or doubt concerning any statement included in or any material omitted from the Offer Documents or material generated in the course of implementing the Due Diligence Process and further is satisfied to the best of his or her knowledge that:
 - 1. no statement included in the Offer Documents is false or misleading and there are no omissions of information required to be included by the *Corporations Act* from the Offer Documents;
 - 2. every expert or other person whose statements are relied on in the Offer Documents is competent and trustworthy

to make those statements and, where applicable, has not withdrawn their consent for inclusion of those statements in the Offer Documents; and

3. the Offer Documents comply with the *Corporations Act*.

- (b) as to the allegations in sub-paragraph (a), admits that the Draft ABL Letter and ABL Signed Legal Opinion Letter contained the statements referred to in (i)-(iii), but says that such statements were qualified by the Limitations, Qualifications and Assumptions;
- (c) as to the allegations in sub-paragraph (b), admits that the Draft ABL Letter and ABL Signed Legal Opinion Letter:
 - (i) contained the statements referred to in (b)(i)-(ii), but says that such statements were qualified by the Limitations, Qualifications and Assumptions;
 - (ii) contained a statement that in the Respondent's opinion, qualified by the Limitations, Qualifications and Assumptions, the Due Diligence Process should constitute the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the *Corporations Act* and to ensure that the Offer Documents are not misleading or deceptive and that there are no omissions from the Offer Documents that are required to be included by the *Corporations Act*;
- (d) denies that any opinions of the Respondent were conveyed by the ABL Draft Letter;
- (e) will rely on the ABL Signed Legal Opinion Letter and the ABL Draft Letter as to their meaning and effect; and
- (f) otherwise denies the allegations in paragraph 75.

76 As to paragraph 76, the Respondent:

- (a) repeats paragraphs 55, 57, and 70A to 70M above;
- (b) says that, by executing the ABL Signed Legal Opinion Letter, the Respondent represented that:

- (i) nothing had come to the Respondent's attention that caused it to believe and it did not believe that the due diligence program and the scope of the due diligence inquiries as described in the DPPM:
 - (A) had not been implemented, completed or conducted, as the case may be, in accordance with the terms of the DDPM in all material respects (or that there were any material deviations from it not approved by the DDC); or
 - (B) would not be appropriate to ensure that the Offer Documents meet the disclosure requirements of section 708AA(7) of the Corporations Act for the Entitlement Offer(which was not a representation of the Respondent's opinion);
- (ii) in the Respondent's opinion, the Due Diligence Process should constitute the taking of reasonable steps for the purposes of sections 1308(4), 1308(5) and 1309(2) of the Corporations Act and to ensure that the Offer Documents are true and not misleading or deceptive and that there are no omissions from the Offer Document that are required to be included by the Corporations Act;

Particulars

Paragraphs 7 and 8 of the ABL Signed Opinion Letter

- (iii) properly construed, the representation pleaded in subparagraph (ii) above was a representation that nothing had come to the Respondent's attention that caused it to believe and it did not believe any matter that would cause it to have an opinion other than that pleaded in subparagraph (ii) above;
- (iv) each of the representations pleaded above were subject to:
 - (A) proper performance by SGH and its management of the procedure set out in the Verification Report;
 - (B) the Limitations, Qualifications and Assumptions;
 - (C) the SGH Verification Confirmation being accurate and SGH having accurately verified each of the matters for which it was responsible in the Verification Report, including each of the statements alleged in paragraphs 42 to 45 of the Statement of Claim;

- (D) the Management Statement Confirmation being accurate and SGH and/or its board and management having confirmed that each statement in respect of which the Verification Material was a "Management Statement" had been accurately verified;
 - (E) the Management Sign-Offs having been accurate and each of the matters pleaded in paragraph 70K above being correct; and
 - (F) the Due Diligence Response being accurate, including as to the matter pleaded in paragraph 70C above.
- (v) the statements in the ABL Signed Legal Opinion Letter did not amount to verification of any statement by reason of steps that the Respondent took or could have taken other than:
- (A) those steps set out in Part 1 of the ABL Signed Legal Opinion Letter;
 - (B) the procedure set out in Part 10 of the DDPM;
 - (C) steps set out in the Verification Report in respect of statements for which the Respondent had verification responsibility which did not include any of the statements pleaded in paragraphs 43 to 45 of the Statement of Claim; and
 - (D) in relation to the Cleansing Notice confirmation that the Respondent had taken the steps required of it in the Verification Report and pleaded in paragraph 57(c)(i) above; and

Particulars

These matters pleaded in subparagraphs (iv) and (v) are to be implied from the terms of the ABL Signed Legal Opinion Letter, the DDPM, the Due Diligence Report, the Verification Report and the surrounding circumstances.

- (c) otherwise denies the allegations in paragraph 76.

77 As to paragraph 77, the Respondent:

- (a) says that the Respondent and Wenig engaged in the conduct referred to in paragraphs 70 to 76 above for the purpose of carrying out:
 - (i) the Retainer insofar as it related to the Respondent's role on the DDC and the provision of the ABL Signed Legal Opinion Letter;

- (ii) the responsibilities of the Respondent referred to in paragraph 55 above; and
 - (iii) the Respondent's responsibility to provide a written opinion to the SGH Board as referred to in paragraph 58 above; and
- (b) otherwise denies the allegations in paragraph 77.

G. THE ALLEGED TRUE POSITION AS AT 30 MARCH 2015

78 As to paragraph 78, the Respondent:

- (a) repeats paragraphs 44 and 45 above; and
- (b) admits that, as at 30 March 2015, part of PSD's business included performing legal work in respect of personal injury claims in the UK involving whiplash; and
- ~~(b)(c)~~ otherwise denies ~~does not know and therefore cannot admit~~ the allegations in paragraph 78.

79 As to paragraph 79, the Respondent:

- (a) repeats paragraphs 17, ~~and 20~~ and 78 above; ~~and~~
- (b) admits that if reforms in the UK affecting legal work in respect of personal injury claims in the UK involving whiplash were to occur, that could affect that part of PSD's business; and
- ~~(b)(c)~~ otherwise denies ~~does not know and therefore cannot admit~~ the allegations in paragraph 79.

80 As to paragraph 80, the Respondent:

- (a) repeats paragraphs 13, 44, 45 and 70 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 80.

81 As to paragraph 81, the Respondent:

- (a) repeats paragraphs 13, 44, 45 and 70 above; and
- (b) otherwise denies ~~does not know and therefore cannot admit~~ the allegations in paragraph 81.

82 As to paragraph 82, the Respondent:

- (a) repeats paragraphs 13, 17, 20, 44, 45 and 70 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 82.

83 As to paragraph 83, the Respondent:

- (a) repeats paragraph 17 and 20 above; ~~and~~
- (b) will rely on the 30 March Publications as to their meaning and effect; and
- ~~(b)~~(c) otherwise denies ~~does not know and therefore cannot admit~~ the allegations in paragraph 83.

84 As to paragraph 84, the Respondent:

- (a) repeats paragraphs 17, 42, 46B and 46C above;
- (b) will rely on the 30 March Publications as to their meaning and effect; and
- (c) otherwise denies the allegations in paragraph 84.

85 The Respondent denies the allegations in paragraph 85.

86 The Respondent denies the allegations in paragraph 86.

87 The Respondent denies the allegations in paragraph 87.

88 The Respondent denies the allegations in paragraph 88.

89 The Respondent denies the allegations in paragraph 89.

90 The Respondent denies the allegations in paragraph 90.

91 As to paragraph 91, the Respondent:

- (a) repeats paragraph 70 above; and
- (b) otherwise denies the allegations in paragraph 90.

92 As to paragraph 92, the Respondent:

- (a) repeats paragraph 70 above; and
- (b) otherwise denies the allegations in paragraph 92.

93 As to paragraph 93, the Respondent:

- (a) repeats paragraph 70 above; and
- (b) otherwise denies the allegations in paragraph 93.

94 As to paragraph 94, the Respondent:

- (a) repeats paragraph 17 above; and
- (b) otherwise denies the allegations in paragraph 94.

95 The Respondent admits the allegations in paragraph 95.

96 As to paragraph 96, the Respondent:

- (a) says that a signed copy of the Respondent's Legal Due Diligence Report dated 29 March 2015 was emailed by the Respondent to Grech and Brown of SGH (inter alios) on 30 March 2015 at 7:43 am; and
- (b) ~~says that, in the absence of particularisation of what is meant by "final due diligence reports" and "all due diligence advisers", the paragraph is ambiguous and/or embarrassing and liable to be struck out and, under cover of that objection, it otherwise does not otherwise plead to (but does not thereby admit) paragraph 96.~~

Particulars

A copy of this email is ABL.001.002.7925. The Respondent's Legal Due Diligence Report is attached (ABL.001.002.7942).

- (b) otherwise denies the allegations in paragraph 96.

97 The Respondent denies the allegations in paragraph 97.

98 The Respondent denies the allegations in paragraph 98.

99 As to paragraph 99, the Respondent:

- (a) denies the allegations in the paragraph;
- (b) says that, by executing the ABL Signed Legal Opinion Letter, the Respondent represented that its opinions were subject to:
 - (i) proper performance by SGH and its management of the procedure set out in the DDPM, the Legal Due Diligence Report and the Verification Report;

- (ii) the Limitations, Qualifications and Assumptions;
 - (iii) the SGH Verification Confirmation being accurate and SGH having accurately verified each of the matters for which it was responsible in the Verification Report, including each of the statements alleged in paragraph 42 to 45 of the Statement of Claim;
 - (iv) the Management Statement Confirmation being accurate and SGH and/or its board and management having confirmed that each statement in respect of which the Verification Material was "Management statement" had been accurately verified;
 - (v) the Management Sign-Offs having been accurate and each of the matters pleaded in paragraph 70G above being correct; and
 - (vi) the Due Diligence Response being accurate, including as to the matter pleaded in paragraph 70C above; and
- (c) further says that it had reasonable grounds for making the statements in the ABL Signed Legal Opinion Letter ~~pleaded in paragraph 77 above.~~

Particulars

- (a) Nothing had come to the Respondent's attention that caused it to believe and it did not believe that ~~the statements in paragraphs 7 and 8 of the conclusions in the ABL Signed Legal Opinion Letter were inaccurate.~~
- (aa) The Respondent was aware that its roles and responsibilities, and SGH's roles and responsibilities, in relation to the due diligence process were set out in the DDPM, the Legal Due Diligence Report and the Verification Report and that each of the Respondent and (as far as the Respondent was aware) SGH had properly performed those roles and responsibilities allocated to them without the Respondent becoming aware that any of the conclusions in the ABL Signed Legal Opinion Letter were inaccurate or lacked a reasonable basis.
- (ab) The Respondent was aware, at the time that it executed the ABL Signed Legal Opinion Letter, that substantial due diligence in relation to the acquisition of Quindell had been performed by SGH with the assistance of external advisers other than ABL, including Greehill, Citi,

Macfarlanes, Ernst & Young and others. The Respondent was further aware that the acquisition due diligence included consideration by SGH of the risk of regulatory reform that may affect Quindell's business, including by obtaining advice in that respect from Instinctif. SGH had not informed the Respondent nor was the Respondent otherwise aware of any matter arising from the acquisition due diligence that indicated that the conclusions set out in the ABL Signed Legal Opinion Letter were inaccurate or lacked a reasonable basis having regard to the disclosures made by SGH to the ASX including in the 30 March Publications.

- (ac) The Respondent was aware that SGH had provided responses to Citi and Macquarie, including responses to the Underwriters' Questionnaire, in relation to commercial matters relating to Quindell and the Entitlement Offer and that none of the responses indicated that the conclusions set out in the ABL Signed Legal Opinion Letter were inaccurate or lacked a reasonable basis having regard to the disclosures made by SGH to the ASX including in the 30 March Publications.
- (b) The verification procedure had, to the best of the Respondent's knowledge, been performed according to the procedure set out in the DDPM, the Verification Report and paragraph 1 of the ABL Signed Legal Opinion Letter.
- (c) By the SGH Verification Confirmation, Grech and Brown on behalf of SGH had confirmed that the matters for which SGH had the responsibility of verifying, including each of the statements alleged in paragraph 43 to 45 of the Statement of Claim, had been verified in accordance with the procedure in the Verification Report.
- (d) By the Management Statement Confirmation, Grech, on behalf of the board of SGH, confirmed that each statement in the Verification Schedule that was to be verified by "Management statement" had been appropriately verified.

- (e) By the Management Sign-Offs, each of Grech and Brown had represented to Wenig and/or the Respondent each of the matters pleaded in paragraph 70G above.
- (f) By the Due Diligence Response, SGH had made the statement pleaded in paragraph 70C above.
- (g) Further, in relation to the Cleansing Notice, the Respondent had verified the Cleansing Notice in accordance with the procedure set out in the Verification Report and pleaded in paragraph 57(c)(i) above.
- (h) No matter was otherwise known by the Respondent or ought reasonably to have been known by the Respondent that would cause it to be aware that any statement expressed by it in the ABL Signed Legal Opinion Letter was inaccurate or lacked a reasonable basis.

100 As to paragraph 100, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats paragraph 99 above.

101 The Respondent denies the allegations in paragraph 101.

H. THE ALLEGED CONSEQUENCES OF ABL'S CONDUCT

102 As to paragraph 102, the Respondent:

- (a) repeats paragraphs 75 and 76 above; and
- (b) otherwise denies the allegations in paragraph 102.

103 As to paragraph 103, the Respondent:

- (a) repeats paragraphs 75 and 76 above; and
- (b) otherwise denies the allegations in paragraph 103.

104 As to paragraph 104, the Respondent:

- (a) repeats paragraphs 75 and 76 above; and
- (b) otherwise denies the allegations in paragraph 104.

- 105 As to paragraph 105, the Respondent:
- (a) repeats paragraphs 75 and 76 above; and
 - (b) otherwise denies the allegations in paragraph 105.

106 The Respondent denies the allegations in paragraph 106.

107 The Respondent denies the allegations in paragraph 107.

108 The Respondent denies the allegations in paragraph 108.

H.1. Completion of the Entitlement Offer, and the acquisition of PSD

109 As to paragraph 109, the Respondent:

- (a) admits that on 2 April 2015, SGH announced to the ASX the completion of completed the Institutional Entitlement Offer and Institutional Shortfall Bookbuild raising gross proceeds of approximately \$608 million through the issue of approximately 95.5 million new SGH shares;
- (b) otherwise denies ~~does not know and therefore cannot admit~~ the allegations in paragraph 109.

110 ~~As to paragraph 110, the Respondent~~ admits paragraph 110.:

- ~~(a) admits that the SGH Appendix 3B (New Issue announcement) dated 14 April 2015 recorded that 94,253,906 SGH shares were issued or were to be issued as part of the Institutional Entitlement Offer at a price of AUD6.37 per share;~~
- ~~(b) otherwise does not know and therefore cannot admit the allegations in paragraph 110.~~

111 ~~As to paragraph 111, the Respondent~~ admits paragraph 111.:

- ~~(a) admits that, on 23 April 2015, SGH announced to the ASX the completion of the Retail Entitlement Offer and Retail Shortfall Bookbuild raising AUD120 million through the issue of approximately 18.8 new SGH shares; and~~
- ~~(b) otherwise does not know and therefore cannot admit the allegations in paragraph 111.~~

112 ~~As to paragraph 112, the Respondent~~ admits paragraph 112.:

- ~~(a) admits that the SGH Appendix 3B (New Issue announcement) dated 29 April 2015 recorded that 45,568,943 SGH shares issued as part of the Retail~~

~~Entitlement Offer and Retail Shortfall Bookbuild in the amounts and at the prices pleaded in paragraph 112; and~~

~~(b) otherwise does not know and therefore cannot admit the allegations in paragraph 112.~~

113 As to paragraph 113, ~~t~~The Respondent admits paragraph 113.:

~~(a) admits that, on 29 May 2015, SGH announced to the ASX the completion of its acquisition of PSD; and~~

~~(b) otherwise does not know and therefore cannot admit the allegation in paragraph 113.~~

114 As to paragraph 114, ~~t~~The Respondent admits paragraph 114.:

~~(a) admits that the Acquisition Debt Facilities were reported in note 32 of the Notes to the Financial Statements in SGH's Annual Report for 2015; and~~

~~(b) otherwise does not know and therefore cannot admit the allegations in paragraph 114.~~

I. ABL'S ALLEGED LIABILITY

I.1. Alleged misleading or deceptive conduct

115 As to paragraph 115, the Respondent:

(a) admits that the Respondent's conduct admitted in paragraphs 70 to 77 above was conduct in trade or commerce within the meaning of s 2 of the ACL; and

(b) otherwise denies the allegations in paragraph 115.

116 The Respondent denies the allegations in paragraph 116.

117 The Respondent denies the allegations in paragraph 117.

I.2. Negligence

118 As to paragraph 118, the Respondent:

(a) denies the allegation in paragraph 118; and

(b) repeats paragraphs 49, 72, 75, 76 and 99 above.

119 The Respondent denies the allegations in paragraph 119.

J. THE 26 NOVEMBER ANNOUNCEMENT AND ITS ALLEGED IMPACT

120 As to paragraph 120, the Respondent:

- (a) admits the allegations in sub-paragraphs (a)-(b);
- (b) admits that the article referred to in the particulars to sub-paragraph (c) was published on the website Bloomberg.com on 26 November 2015 at 3:02 am AEDT;
- (c) otherwise does not know and therefore cannot admit the allegations in paragraph 120.

121 As to paragraph 121, the Respondent:

- (a) admits that the 26 November Announcement was released to the ASX on 26 November 2015;
- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 121.

122 As to paragraph 122, the Respondent:

- (a) admits that the 26 November Announcement contained the statements pleaded in paragraph 122;
- (b) further says that the 26 November Announcement stated that:
 - (i) SGH would provide further information on the impact (if any) of the proposals, if implemented, on its financial performance in FY17 and beyond;
 - (ii) "[w]hilst the Government's announcement was unexpected, the Company believes that the scale and diversity of the Slater Gordon Solutions business in the UK positions it well to deal with the potential impact of any future legislative change"; and
- (c) will rely on the 26 November Announcement as to its meaning and effect; and
- (d) otherwise denies the allegations in paragraph 122.

123 As to paragraph 123, the Respondent:

- (a) repeats paragraph 122 above; and
- (b) otherwise denies the allegations in paragraph 123.

124 The Respondent denies the allegations in paragraph 124.

K. ALLEGED CONTRAVENING CONDUCT ALLEGEDLY CAUSED LOSS

125 The Respondent denies the allegations in paragraph 125.

126 The Respondent denies the allegations in paragraph 126.

127 As to paragraph 127, the Respondent:

(a) admit the SGH Shares were in a market of investors or potential investors which had the features alleged in sub-paragraphs (a)-(c);

(b) otherwise denies the allegations in paragraph 127.

128 The Respondent denies the allegations in paragraph 128.

129 The Respondent denies the allegations in paragraph 129.

130 The Respondent denies the allegations in paragraph 130.

131 The Respondent denies the allegations in paragraph 131.

132 The Respondent denies the allegations in paragraph 132.

133 Further or in the alternative to the matters pleaded above, if the Respondent is adjudged liable to the Applicant or any Group Member (which is denied) and if (which is not presently known to the Respondent), the Applicant or any Group Member has recovered any amount from any third party (including any adviser), whether in cash or in kind, or by way of formal or informal settlement or external dispute resolution scheme or otherwise, or by way of any scheme of arrangement under the *Corporations Act*, or by any other means, in respect of the loss claimed by the Applicant or Group Member in these proceedings, such amount must be brought to account by the Applicant or Group Member.

K.1. Proportionate liability – other concurrent wrongdoers

134 If (which it denies) the Respondent is adjudged liable to the Applicant and/or any Group Member for any loss or damage alleged in the Statement of Claim, then:

(a) each of the claims made by the Applicant against the Respondent in the Statement of Claim:

(i) is an "apportionable claim" within the meaning of s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AE of the Wrongs Act 1958 (Vic) (**Wrongs Act**), s 34 of the Civil

Liability Act 2002 (NSW) (**CL Act (NSW)**), s 28 of the Civil Liability Act 2003 (Qld) (CL Act (Qld)), s 5AI of the Civil Liability Act 2002 (WA) (**CL Act (WA)**), s 43A(1) of the Civil Liability Act 2002 (Tas) (**CL Act (Tas)**), s 107B of the Civil Law (Wrongs) Act 2002 (ACT) (**CL Act (ACT)**), and/or s 4 of the Proportionate Liability Act 2005 (NT) (**PL Act**); and/or

- (ii) is one in which the Respondent's liability is apportionable, within the meaning of s 8(1) of the *Law Reform (Contributory Negligence and Apportionment of Liability Act 2001* (SA) (**LR Act**);

- (b) SGH is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;

- (c) Grech is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;

- (d) Skippen is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;

- (e) Ian Court is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;

- (f) Ken Fowlie is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL

Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;

- (g) Rhonda O'Donnell is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;
- (h) Erica Lane is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;
- (i) Wayne Brown is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;
- (j) Pitcher Partners (a firm) (**Pitchers**) is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;
- (k) Ernst & Young LLP (**EY UK**) is a concurrent wrongdoer within the meaning of that expression in s 1041L of the Corporations Act, s 12GP of the ASIC Act, s 87CB of the CC Act, s 24AH of the Wrongs Act, s 34 of the CL Act (NSW), s 30 of the CL Act (Qld), s 5AI of the CL Act (WA), s 43(2) of the CL Act (Tas), s 107D of the CL Act (ACT) and/or s 6 of the PL Act, and/or a wrongdoer within the meaning of that expression in s 8 of the LR Act;
- (l) by reason of s 101N of the Corporations Act, s 12GR of the ASIC Act, s 87CD of the CC Act, s 24AI of the Wrongs Act, s 35 of the CL Act (NSW), s 31 of the CL Act (Qld), s 5AK of the CL Act (WA), s 43B of the CL Act (Tas), s 107F of the CL Act (ACT), Part 2 Division 2 of PL Act and/or s 8 of the LR Act (as the case may be), the liability of Respondent is limited to an amount reflecting the

proportion of the damage or loss that the court considers just, having regard to the extent of the Respondent's responsibility for the damage or loss.

Particulars

The particulars to (b)-(k) are in Annexure A to this defence.

L. RELIEF FROM LIABILITY

- 120 The proceedings against the Respondent are civil proceedings for alleged negligence, default or breach of duty in the Respondent's capacity as an expert (within the meaning of s 9 of the Corporations Act) in relation to a matter relating to SGH.
- 121 At all material times, the Respondent acted honestly.
- 122 In all of the circumstances of the case, and in answer to the whole of the Statement of Claim, if (which is denied) the Respondent is liable to the Applicant or any Group Member, the Respondent ought fairly be excused from any liability, in whole or in part, pursuant to s 1318 of the Corporations Act.

Date: ~~10 December 2020~~ 19 August 2021



Signed by Tricia Hobson
Lawyer for the Respondent

This pleading was settled by Peter M Wood, Nicholas Bender and Georgie Coleman of Counsel.

Certificate of lawyer

I Tricia Hobson certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~10 December 2020~~ 19 August 2021



Signed by Tricia Hobson
Lawyer for the Respondent

Annexure: Concurrent wrongdoers

Note:

Where paragraphs of the Statement of Claim filed in these proceedings are referred to and repeated below, the Respondent does so in the alternative to the matters raised in its Amended Defence and for the purposes of its defence of proportionate liability only. What is particularised in this annexure does not derogate from or otherwise modify the Respondent's defence to the allegations of the Statement of Claim.

Where reference is made below to the "same loss" being caused to the Applicant and Group Members by concurrent wrongdoers as the loss claimed by the Applicant (including on behalf of Group Members) in these proceedings, that means that some or all of the loss claimed by the Applicant against ABL is the same as some or all of the loss caused by the relevant concurrent wrongdoer.

A. SGH

A.1. Misleading or deceptive conduct arising from representations made by SGH to ABL

- 1 The Respondent refers to and repeats:
 - (a) paragraphs 52(b), 55(a), 70A to 70D, 70F to 70M of this Defence; and
 - (b) Parts C to E of the Further Amended Statement of Cross-claim filed by the Respondent in these proceedings against SGH (**Cross-claim**).

- 2 But for the misleading or deceptive conduct of SGH pleaded in Part E of the Cross-claim, the Respondent would not have:
 - (a) provided the ABL Legal Opinions (and particularly the Due Diligence Legal Opinions), because it would have identified that the Due Diligence Process had not been implemented, completed or conducted on the part of SGH in accordance with the terms of the DDPM;
 - (b) provided the ABL Legal Opinions in respect of the 30 March Publications (and particularly the Offer Document Legal Opinions) without disclosure in the Offer Documents of the Reform Information and/or the Reform Impacts Exposure Information;
 - (c) provided the ABL Legal Opinions (and particularly the Offer Documents Legal Opinions) in respect of the 30 March Publications to the extent they contained the Risk Profile Representation;
 - (d) provided the ABL Legal Opinions in respect of the 30 March Cleansing Notice unless SGH had disclosed to the Affect Market prior to or with the 30 March

Publications the Reform Information and/or the Reform Impacts Exposure Information;

- (e) provided the ABL Legal Opinions (and particularly the Due Diligence Legal Opinions), unless the due diligence process had identified and resulted in:
 - (i) the disclosure in the Offer Documents, or disclosure to the Affected Market prior to the 30 March Publications, of the Reform Information and/or the Reform Impacts Exposure Information;
 - (ii) omission from the Offer Documents of the Risk Profile Representation.

3 By reason of the matters particularised in paragraph 2 above, were it not for the SGH Due Diligence Misleading or Deceptive Conduct, each of the PSD Acquisition and/or the Entitlement Offer would not have proceeded or, alternatively, would have proceeded on different terms including as to price, because:

- (a) the Respondent would not have issued the ABL Legal Opinions;
- (b) SGH and/or the SGH Board would not have received any of the ABL Legal Opinions, and accordingly would not have approved the PSD Acquisition at all or, alternatively, on the same terms, issued the Offer Documents and/or the 30 March Cleansing Notice and ~~therefore the Entitlement Offer would not have proceeded;~~ and/or
- (c) the Underwriters would not have underwritten the Entitlement Offer at all or, alternatively, on the same terms.

3A Alternatively, if SGH had not engaged in the misleading or deceptive conduct pleaded in Part E of the Cross-claim and, as a result, the PSD Acquisition and Entitlement Offer proceeded following disclosure in the Offer Documents of the Reform Information and/or the Reform Impacts Exposure Information, then some or all Group Members would not have taken up their entitlements and, to the extent they did so, ABL would not be liable to them in the manner alleged by the Applicant (or to SGH).

4 In the premises, the contraventions by SGH of s 18 of the *Australian Consumer Law*, s 12DA of the ASIC Act and s 1041H of the Corporations Act pleaded in Part E of the Cross-claim caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.

A.2. Misleading or deceptive conduct arising from representations made by SGH to the market

5 The Respondent refers to and repeats the allegations made by the Applicant against SGH in the statement of claim dated 12 October 2016, filed in Proceeding No VID 1213 of 2016 (**SGH Statement of Claim**) (including adopting the definitions therein), save for:

- (a) paragraphs 300 to 330, relating to representations made by SGH in December 2015; and
- (b) sub-paragraph 332(d), relating to contraventions in December 2015 (with the resulting change to the definition of **Market Contraventions**).

6 By reason of the matters alleged in paragraphs 332 to 343 of the SGH Statement of Claim, the contraventions by SGH of ASX Listing Rule 3.1, s 674(2) of the Corporations Act, s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations Act pleaded in Part H, Part L and Part O of the SGH Statement of Claim caused the same loss to the Applicant and Group Members as the loss the Applicant and Group Members claim against the Respondent in these proceedings.

A.3. Misleading or deceptive conduct arising from representations made by SGH to Pitcher Partners

7 The Respondent refers to and repeats:

- (a) paragraphs 88 to 108 of the Applicant's second further amended statement of claim dated 10 December 2020~~29 April 2019~~, filed in Proceeding No VID 918 of 2018 (**Pitchers/EY Statement of Claim**);
- (b) sub-paragraph 118(b) of the ~~second amended~~ defence to the second further amended statement of claim filed by Pitcher Partners (a firm) on 14 December 2020 ~~dated 22 October 2019~~ and filed in Proceeding VID 918 of 2018 (**Pitchers Defence**), and the particulars subjoined thereto.

8 By reason of the matters alleged in sub-paragraph 118(b) of the Pitchers Defence and the particulars subjoined thereto, the contraventions by SGH of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations Act particularised at XIV therein caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.

B. SKIPPEN, GRECH, COURT, FOWLIE, O'DONNELL AND LANE

9 Save to delete Morrison from the definition of SGH Long-Term Executives, the Respondent refers to and repeats sub-paragraphs 111(b), 111(c), 112(b), 112(c),

114(b), 114(c), 116(b), 116(c), 117(b), 117(c), 119(a), 119(b), 234(a), 234(b), 241(a) and 241(b) of the SGH Statement of Claim.

10 The Respondent also refers to and repeats Sections B, C, D and G.1 of the Statement of Claim.

11 Further, as at 28 to 30 March 2015, information as to matters alleged in paragraphs 17 to 35 and 78 to 82 of the Statement of Claim was known (or ought reasonably have come to be known) by Grech, Fowlie, Court, Skippen, Lane and/or O'Donnell in the course of the performance of their respective duties, including through:

(a) consideration at a Board meeting on 12 July 2011 (attended by Grech, Fowlie, Court and Lane) of regulatory risk in the UK and impact on the business of future legislative or regulatory changes (PIP.007.002.0005);

(b) consideration at a Board meeting on 13 September 2011 (attended by Grech, Fowlie, Court and Lane) of regulatory risk in the UK market (SGH.601.002.2008 and SGH.601.002.2579);

(ba) receipt by Grech, Brown and Fowlie on 7 January 2015 of Citi and Greenhill's views of the key issues with respect to Project Malta, which included as a key issue the implications of raising of the Fast Track fee cap (small claims threshold) (SGH.605.031.8223, SGH.605.031.8226);

(bb) an email Grech received from Cath Evans of S&G on 16 February 2015, in which it was stated 'We need to make sure we understand the potential impact of an increase to the small claims cap to 5,000 given 95% of all Malta claims are in this category.... This would obviously be a game changer' (SGH.605.002.9697);

(bc) an email Grech received from Emma Holt of Pannone on 16 February 2015 which stated 'an increase of the limit to 5k could be very significant and we do need to understand the consequences' (SGH.605.003.0435);

(bd) attendance by Grech at a meeting with senior management of Aviva on 16 February 2015 for the purposes of discussing their lobbying activity prior to the UK general election, which discussions included discussion of the risk of reform in relation to the small claims track (SGH.605.003.0324; SGH.605.003.0325);

(be) Fowlie commenting on a 'Project Malta questions' document which stated, under 'Legislative Reform', 'We need to make sure we understand the potential impact of an increase to the small claims cap to £5,000 given 95% of all Malta claims are in this category.... ' and forwarding this document to Grech (inter alios) on 18 February 2015 (SGH.605.030.3868, SGH.605.030.3870);

(bf) a 'draft deck' with respect to Project Matla, which was received by Grech and Fowlie on 18 and 19 February 2015 and with respect of which Fowlie made 'a number of comments on the risks pages', and which draft deck stated that the number 1 key external risk was legislative reform, and that 'the A-G's musings about increasing the small claims threshold from £1,000 to £5,000 would be a serious threat and a simpler change to enact' (SGH.605.003.1523, SGH.605.003.1525);

(bg) attendance by Grech at a meeting with Instinctif on 21 February 2015 (SGH.605.002.8440);

(c) consideration at a Board meeting on 20 March 2015 (attended by Grech, Fowlie, Court, Skippen, Lane and O'Donnell) of regulatory risk issues, including broad support remaining for changes in the small claims threshold from £1,000 to £5,000 (SGH.029.001.0018 and PIP.002.001.0047);

(d) the Instinctif Report, which was received by at least Grech and Fowlie, each of whom was or ought to have been aware of the need for SGH to perform additional modelling in relation to potential reforms in respect of the Small Claims Track in respect of whiplash claims (see, in relation to Grech, SGH.605.002.6677; SGH.605.003.0443; SGH.605.002.9759; SGH.605.003.0435; SGH.605.003.1523; SGH.605.003.1525; SGH.605.003.4419; SGH.605.006.3763; SGH.605.006.3872 and, in relation to Fowlie, SGH.605.002.6677; SGH.605.030.1608; I SGH.605.030.1609; SGH.605.030.3868); and which Court, Skippen, Lane, and O'Donnell each also ought to have known given it formed part of the due diligence of the Acquisition;

(e) the EY Report dated 18 March 2015 (which the directors ought to have known given it formed part of the due diligence of the Acquisition) and the FRP Report (which was prepared by SGH);

(f) the particulars subjoined to paragraphs 17 to 35 and 78 to 82 of the Amended Statement of Claim, in so far as they relate to information received by SGH and/or its directors and/or Chief Financial Officer.

12 On or about 29 March 2015, the SGH Board resolved to publish the 30 March Publications and the 9 April Retail Offer Booklet (SGH.029.001.0982), and it can be inferred that:

(a) at least Grech and Fowlie caused to be published the 17/20 April Announcement, from the fact each is quoted in the announcement;

(b) at least Grech caused to be published the 1 June Announcement, from the fact he is quoted in the announcement;

- (c) at least Grech caused to be published the 28 August Publications, from the fact that he signed the 28 August Appendix E, is quoted in the 28 August Announcement, and is listed as an author of the 28 August Investor Presentation;
 - (d) at least Skippen and Grech caused to be published the 20 November Publications, from the fact that each is listed as an author (or speaker) in the documents.
- 13 By resolving to publish, and causing to be published, the ASX announcements and publications particularised in paragraph 12 above, Skippen, Grech, Court, Fowlie, O'Donnell and Lane (**SGH Directors**) engaged in conduct in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act; in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or in trade or commerce within the meaning of section 18 of the ACL.
- 14 By reason of the matters particularised in paragraphs 9 to 13 above and alleged in Section G.1 of the Statement of Claim and Sections F, K and N of the SGH Statement of Claim, each of the SGH Directors contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act, and/or s 18 of the ACL (**SGH Directors' Market Contraventions**).
- 15 By reason of the matters alleged in paragraphs 332 to 343 of the SGH Statement of Claim, the SGH Directors' Market Contraventions caused the same loss to the Applicant and Group Members as the loss the Applicant and Group Members claim against the Respondent in these proceedings.
- 16 Further, the Respondent refers to and repeats:
 - (a) paragraphs 88 to 108 of the Pitchers/EY Statement of Claim;
 - (b) sub-paragraph 118(d) of the Pitchers Defence and the particulars subjoined thereto, in so far as it relates to the SGH Directors;
 - (c) subparagraph 110(c) of the defence to the second further amended statement of claim filed by EY UK on 19 February 2021 in Proceeding No VID 918 of 2018 (**EY UK Defence**) and the particulars subjoined thereto in so far as it relates to the SGH Directors.
- 17 By reason of the matters alleged in sub-paragraph 118(d) of the Pitchers Defence and the particulars subjoined thereto, the contraventions by the SGH Directors of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations

Act particularised at XIV therein caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.

C. BROWN, GRECH AND SKIPPEN

18 Further to the matters particularised in section B above, the Respondent refers to and repeats paragraphs 57(f), 70A, 70C, 70D, 70F-70H, and 70J-70K of this Amended Defence and Parts C to E of the Cross-claim.

19 But for the misleading or deceptive conduct of Grech and Brown pleaded in Part E of the Cross-claim, the Respondent would not have taken the steps particularised in paragraph 2 above.

20 In the premises, the contraventions by Grech and Brown of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations Act pleaded in Part E of the Cross-claim caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.

21 Further, the Respondent refers to and repeats:

(a) paragraphs 88 to 108 of the Pitchers/EY Statement of Claim;

(b) sub-paragraph 118(c) of the Pitchers Defence and the particulars sub-joined thereto;

(c) sub-paragraph 118(d) of the Pitchers Defence and the particulars subjoined thereto, in so far as it relates to Brown;

(d) sub-paragraph 110(c) of the EY UK Defence and the particulars subjoined thereto, in so far as it relates to Brown, Grech and Skippen.

22 By reason of the matters particularised in paragraph 21 above, the conduct of each of Brown, Grech and Skippen referred to in sub-paragraphs 118(c) and 118(d) of the Pitchers Defence caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.

D. PITCHERS

23 The Respondent refers to and repeats the allegations in the Pitchers/EY Statement of Claim, ~~save that, with respect to paragraph 87, the words "during the Relevant Period" are replaced with "during the period between 30 March 2015 and 25 November 2015".~~

24 By reason of the matters alleged in the Pitchers/EY Statement of Claim, the contraventions by Pitchers of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations Act, as alleged in Section F of the

Pitchers/EY Statement of Claim, caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.

E. EY UK

25 The Respondent refers to and repeats the allegations which the Applicant ~~seeks leave to make~~ against EY UK, as set out in the Pitchers/EY Statement of Claim ~~proposed second further amended statement of claim attached as Attachment A to the interlocutory application dated 13 November 2020 filed by the Applicant in Proceeding No VID 918 of 2018 (Proposed EY Allegations)~~, save that, with respect to paragraph 88U, the words "during the Relevant Period" are replaced with "during the period between 30 March 2015 and 25 November 2015".

26 By reason of the matters alleged in the Pitchers/EY Statement of Claim ~~Proposed EY Allegations~~, the contraventions by EY UK of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations Act, as alleged in Section GB.3 of the Proposed EY Allegations, caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.

27 Further or alternatively, the Respondent refers to and repeats:

- (a) paragraphs 88 to 108 of the Pitchers/EY Statement of Claim;
- (b) sub-paragraph 118(e) of the Pitchers Defence and the particulars subjoined thereto.

28 By reason of the matters alleged in sub-paragraph 118(e) of the Pitchers Defence and the particulars subjoined thereto, the EY UK Audit Representations particularised at VI therein are contraventions by EY UK of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations Act, and caused the same loss to the Applicant and Group Members as the loss they claim against the Respondent in these proceedings.