

REPLY

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/00171592

TITLE OF PROCEEDINGS

First Plaintiff	John Smith
Second Plaintiff	Rosemary Smith
Defendant	Australian Executor Trustees Limited ACN 007 869 794

TITLE OF THIS CROSS-CLAIM

First Cross-claimant	Australian Executor Trustees Limited
Second Cross-claimant	IOOF Holdings Limited
First cross-defendant	AXIS Specialty Europe SE
Second cross-defendant	Willis Australia Limited

FILING DETAILS

Filed for	Australia Executor Trustees Limited and IOOF Holdings Limited, Cross-Claimants
Filed in relation to	Cross-claim
Legal representative	Mark Wilks, Corrs Chambers Westgarth
Legal representative reference	9116109
Contact name and telephone	Mark Wilks, (02) 9210 6159
Contact email	mark.wilks@corrs.com.au

PLEADINGS AND PARTICULARS

In reply to the Defence filed on behalf of the first cross-defendant, AXIS Specialty Europe SE (**AXIS**), on 18 July 2016, the cross-claimants, Australian Executor Trustees Limited (**AET**) and IOOF Holdings Limited (**IOOF**), plead as follows:

- 1 AET and IOOF admit paragraphs 8(a) and (b) of the defence.
- 2 AET and IOOF admit paragraph 23A of the defence.

3 In answer to paragraph 25A of the defence, AET and IOOF:

- (a) Admit that the ASOC (as defined in the defence) included the matters pleaded at sub-paragraphs 25A (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of the defence, amongst other allegations;
- (b) Say that, at paragraph 39 of the ASOC, the Plaintiffs (**the Smiths**) alleged that the group members have suffered loss and damage by reason of AET's contraventions of section 283DA(b)(ii) of the Corporation Act 2001 (Cth);
- (c) Refer to the claims made by the Smiths against AET in the ASOC as if set out in full herein;
- (d) Say that the ASOC was amended by the Further Amended Statement of Claim (**FASOC**) filed by the Smiths on 3 June 2016;
- (e) Refer to the claims made by the Smiths against AET in the FASOC as if set out in full herein.

4 In answer to paragraph 30A of the defence, AET and IOOF:

- (a) Admit that pursuant to clause 2.1 of the trust deed, as amended by the Deed of Amendment dated 24 November 2005, Provident could at any time issue debentures to any person who applied for them under the trust deed, subject to the terms of the trust deed and the amendments to the trust deed made from time-to-time;
- (b) Rely on the terms of the trust deed, and the amendments to the trust deed made from time-to-time, as if set out in full herein;
- (c) Otherwise join issue with AXIS in relation to the paragraph.

5 Except to the extent that they constitute admissions of the allegations in the first cross-claim, AET and IOOF join issue with AXIS as to the other matters pleaded in the defence.

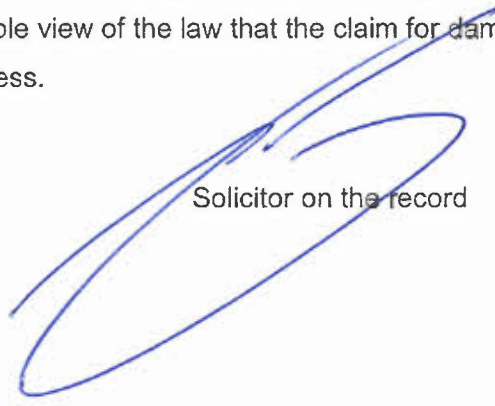
SIGNATURE OF LEGAL REPRESENTATIVE

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

Signature

Capacity

Date of signature



Solicitor on the record

[on separate page]


AFFIDAVIT VERIFYING

Name Gary Riordan
Address Level 6, 161 Collins Street, Melbourne, Victoria
Occupation General Counsel
Date

I say on oath:

- 1 I am the General Counsel of the first cross-claimant and second cross-claimant and am authorised to make this affidavit on their behalf.
- 2 I believe that the allegations of fact contained in the reply are true.
- 3 I believe that the allegations of fact that are denied in the reply are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the reply are true.

SWORN at Melbourne

Signature of deponent 

Name of witness VICTORIA FRANKFELD

Address of witness LEVEL 6, 161 COLLINS ST, MELBOURNE

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Not applicable.

Identification document relied on

Signature of witness 

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.