

**FOURTH CROSS-CLAIM  
COMMERCIAL LIST STATEMENT**

**COURT DETAILS**

|             |                                  |              |
|-------------|----------------------------------|--------------|
| Court       | Supreme Court of New South Wales |              |
| Division    | Equity                           | FILED        |
| List        | Commercial List                  | 3 0 AUG 2018 |
| Registry    | Sydney                           |              |
| Case number | 2018/00076580                    | (TL)         |



**TITLE OF PROCEEDINGS**

|                      |  |
|----------------------|--|
| First Plaintiff      | <b>Giabal Pty Ltd</b>  |
| Second Plaintiff     | <b>Geoffry Edward Underwood</b>  |
| First Defendant      | <b>Gunns Plantations Ltd (In Liquidation) (Receivers and Managers Appointed)</b> |
| Number of defendants | 11   |

**TITLE OF CROSS-CLAIM PROCEEDINGS**

|                            |  |
|----------------------------|--|
| Cross-claimant             | <b>John Eugene Gay</b>   |
| First Cross-defendant      | <b>Gunns Plantations Ltd (in Liquidation) (Receivers and Managers Appointed)</b> |
| Number of Cross-Defendants | 10   |

**FILING DETAILS**

|                                |   |
|--------------------------------|---|
| Filed for                      | <b>John Eugene Gay, Cross-Claimant</b>  |
| Filed in relation to           | Fourth Cross-Claim                      |
| Legal representative           | Richard Mereine<br>HWL Ebsworth Lawyers |
| Legal representative reference | RM:NP:881154                            |
| Contact name and telephone     | Richard Mereine<br>(03) 8644 3656       |
| Contact email                  | rmereine@hwle.com.au                    |

**STATEMENT DETAILS**

Words not otherwise defined in this Fourth Cross-Claim Commercial List Statement take their meaning from the Amended Commercial List Statement dated 6 August 2018 (**ACLS**) and Amended Commercial List Response of the Fourth Defendant dated 29 August 2018 (**ACLR**).

## A. NATURE OF DISPUTE

1. This Proceeding concerns a representative proceeding in which the Plaintiffs have made claims against the Cross-Claimant and the Cross-Defendants on their own behalf and on behalf of Group Members.
2. In the ACLR the Cross-Claimant denies that the Plaintiffs and the Group Members are entitled to the relief claimed by them against him in the ACLS.
3. Solely for the purpose of this Cross-Claim, the Cross-Claimant says that if he is liable to the Plaintiffs (which is denied) then the Cross-Defendants are also liable to the Plaintiffs and he is entitled to contribution from the Cross-Defendants on the basis set out below.

## B. ISSUES LIKELY TO ARISE

If the Cross-Claimant is liable to the Plaintiffs (which is denied) then the key issues that will likely arise between the Cross-Claimant and the Cross-Defendants are as follows:

1. Whether the Cross-Claimant is entitled to contribution from any or all of the Cross-Defendants pursuant to sections 3(1)(c) and 3(2) of the *Wrongs Act 1954* (Tas), alternatively sections 5(1)(c) and 5(2) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW), or alternatively any other similar or equivalent provision of any other applicable legislation.
2. Whether the Cross-Claimant is entitled to contribution from any or all of the Cross-Defendants in equity.
3. The amount of the contribution recoverable from the Cross-Defendants.

## C. CROSS-CLAIMANT'S CONTENTIONS

Solely for the purpose of this Cross-Claim, if the Plaintiffs prove the allegations made against the Cross-Claimant in the ACLS (which are denied) and, notwithstanding the denials, non-admissions and positive assertions made in the ACLR, the Cross-Claimant is found to be liable to the Plaintiffs (which is denied), then:

1. The Cross-Claimant repeats as against the Cross-Defendants the allegations made by the Plaintiffs in the following paragraphs of section C of the ACLS and the allegations made by him in the following paragraphs of the ACLR:
  - (a) as against the First Cross-Defendant, paragraphs 1, 14-52, 56-67, 73-76, 79-80, 87-90 and 101-103 of the ACLS and paragraphs 4(a), 6(a), 7(a), 8(a), 9(a), 82(c) - 82(g) and 82(h)(ii), 82(h)(viii), 82(h)(xii), 82(h)(xiii) and 82(xiv) of the ACLR;
  - (b) as against the Second Cross-Defendant, paragraphs 2-3, 14-52, 56-64, 68, 73-76, 81, 95-96 and 101-103 of the ACLS and paragraphs 9(b), 10(a) and 85(b) of the ACLR;

- (c) as against the Third Cross-Defendant, paragraphs 4, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of the ACLS and paragraphs 4(a), 82(e), 82(h)(viii) and 82(h)(xiv) of the ACLR;
  - (d) as against the Fourth Cross Defendant, paragraphs 6, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of the ACLS and paragraphs 6(a), 82(f), 82(h)(xii) and 82(h)(xiv) of the ACLR;
  - (e) as against the Fifth Cross-Defendant, paragraphs 7, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of the ACLS and paragraphs 7(a), 82(d), 82(h)(ii), 82(h)(xiv) of the ACLR;
  - (f) as against the Sixth Cross-Defendant paragraphs 8, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of the ACLS and paragraphs 8(a), 82(g), 82(h)(xiii) and 82(h)(xiv) of the ACLR;
  - (g) as against the Seventh Cross-Defendant paragraphs 9, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of the ACLS and paragraphs 9(a), 9(b) and 85(b) of the ACLR;
  - (h) as against the Eighth Cross-Defendant paragraphs 10, 14-52, 56-64, 69, 73-76, 82-84, 91-94 and 101-103 of the ACLS and paragraphs 10(a) and 85(b) of the ACLR;
  - (i) as against the Ninth Cross-Defendant and Tenth Cross-Defendant paragraphs 12-64, 70-78, 86 and 97-103 of the ACLS and paragraphs 12(a), 12(b)(ii), 12(b)(iii), 78(e), 82(h)(iii), 82(h)(vi), 82(h)(vii), 82(h)(ix), 82(h)(x), 82(h)(xi) and 82(h)(xiv) of the ACLR.
2. Based on the facts and matters repeated in paragraph 1 above, if the Cross-Claimant is found liable to the Plaintiffs as alleged in the ACLS (which is denied):
- (a) each of the Cross-Defendants is liable in respect of the same damage as the Cross-Claimant within the meaning of section 3(1)(c) of the *Wrongs Act 1954* (Tas), or alternatively section 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW), or alternatively any other similar or equivalent provision of any other applicable legislation; and
  - (b) to the extent that the Plaintiffs' claims are not apportionable as alleged by the Cross-Claimant in the ACLR, the Cross-Claimant is entitled to contribution from the Cross-Defendants in respect of that damage to the extent found by the Court to be just and equitable pursuant to sections 3(1)(c) and 3(2) of the *Wrongs Act 1954* (Tas), alternatively sections 5(1)(c) and 5(2) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW), or alternatively any other similar or equivalent provision of any other applicable legislation.
3. Further or alternatively, based on the facts and matters repeated in paragraph 1 above, if the Cross-Claimant is found liable to the Plaintiffs as alleged in the ACLS (which is denied), the

Cross-Claimant is entitled to contribution in equity from the Cross-Defendants against the Plaintiffs' claims on the basis that the Cross-Defendants are liable in equity to make good the Plaintiffs' loss.

- 4. In the circumstances set out in paragraphs 1 to 3 above, the Cross-Claimant claims against each Cross-Defendant the relief set out in the Cross-Summons dated 27 August 2018.

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

None

**E. MEDIATION**

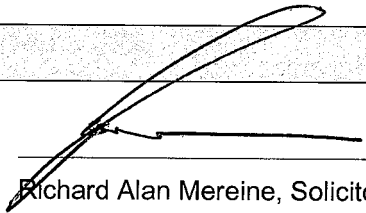
The parties have not yet attempted mediation. The Cross-Claimant is willing to proceed to mediation at the appropriate time.

**SIGNATURE**

Signature of legal representative

Capacity

Date of signature



Richard Alan Mereine, Solicitor for the Cross-Claimant

29/08/ 2018