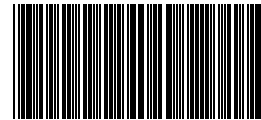




Filed: 12 October 2018 3:00 PM



D00011W7MJ

Commercial List Statement

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00076580

TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd
Second Plaintiff	Geoffry Underwood
First Defendant	Gunns Plantations Limited (in Liquidation)
Second Defendant	Gunns Limited (in Liquidation)(Receivers & managers Appointed)
Number of Defendants	11

TITLE OF THIS CROSS-CLAIM

First Cross Claimant	Gunns Plantations Limited (in Liquidation)
Second Cross Claimant	Gunns Limited (in Liquidation)(Receivers & managers Appointed)
First Cross Defendant	Andrew Gray
Second Cross Defendant	Mathew Gary Wallace

FILING DETAILS

Filed for	Gunns Plantations Limited (in Liquidation), Cross Claimant 1 Gunns Limited (in Liquidation)(Receivers & managers Appointed), Cross Claimant 2
Filed in relation to	Cross-Claim 2
Legal representative	Benjamin Renfrey
Legal representative reference	
Telephone	(08)82397158
Your reference	B8450

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Statement (Further Amended Second Cross-Claim Commercial List Statement (12.10.2018).PDF)

[attach.]

FURTHER AMENDED SECOND CROSS-CLAIM
COMMERCIAL LIST CROSS-CLAIM STATEMENT

(FILED PURSUANT TO THE ORDERS OF JUSTICE BALL DATED 8 OCTOBER 2018)

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/76580

TITLE OF PROCEEDINGS

First plaintiff	Giabal Pty Ltd
Second plaintiff	Geoffry Underwood
First defendant	Gunns Plantations Limited (In Liquidation)
Number of defendants	11

TITLE OF THIS CROSS-CLAIM

First Cross-Claimant	Gunns Plantations Limited (In Liquidation) First Defendant)
Second Cross-Claimant	Gunns Limited (In Liquidation)(Receivers & managers Appointed) (Second Defendant)
First Cross-Defendant	Andrew Gray (Tenth Defendant)
Second Cross-Defendant	Matthew Wallace (Eleventh Defendant)

FILING DETAILS

Filed for	Gunns Plantations Limited (In Liquidation), First Cross-Claimant Gunns Limited (In Liquidation) (Receivers & managers Appointed), Second Cross-Claimant
Legal representative	Ben Renfrey, Johnson Winter & Slattery
Legal representative reference	B8450
Contact name and telephone	Ben Renfrey 08 8239 7111

PRELIMINARIES

- A The terms defined in the Amended Commercial List Statement filed by the Plaintiffs on 6 August 2018 (**CLS**) and in the Amended Commercial List Response filed by the First and Second Defendants on 20 July 2018 (**CLR**) have the same meaning in this document, unless otherwise defined or stated.

A NATURE OF DISPUTE

- 1 The Plaintiffs in the Proceedings have brought representative proceedings against the First and Second Cross-Claimants (**the Cross-Claimants**) and the First and Second Cross-Defendants (**the Cross-Defendants**) on their behalf and on behalf of Group Members in relation to investments that they made in the Gunns Woodlot Schemes for the 2002-2003, 2005-2006 and 2008-2009 financial years.
- 2 As set out in the CLR, the Cross-Claimants deny that the Plaintiffs or the Group Members are entitled to the relief claimed by them against the Cross-Claimants.
- 3 However, for the purposes of this Cross-Claim only, the Cross-Claimants allege that, if they are liable to the Plaintiffs, then the Cross-Defendants are liable.

B ISSUES LIKELY TO ARISE

If (which is denied) the First and/or Second Cross-Claimants are liable to the Plaintiffs then the key issues likely to arise as between the Cross-Claimants and the Cross-Defendants are the following:

- 1 Whether any or all of the Cross-Defendants are liable for the same loss or damage as the First and/or Second Cross-Claimants within the meaning of s 3(1)(c) of the *Wrongs Act 1954* (Tas) (**Tas Act**), or alternatively s 5(1)(c) of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) (**NSW Act**), or alternatively any other similar or equivalent provision of any other applicable legislation.
- 2 Whether the First and/or Second Cross-Claimants are entitled to contribution from any or all of the Cross-Defendants in equity.
- 3 The amount of contribution recoverable from those Cross-Defendants.

C FIRST CROSS-CLAIMANTS' CONTENTIONS

For the purposes of this Cross-Claim only, if, contrary to the denials and non-admissions set out in the CLR, the Plaintiffs prove the allegations they have made against the Cross-Claimants and one or both of them is liable to the Plaintiffs, then:

Allegations made by the Plaintiffs

- 1 The Cross-Claimants repeat against the Cross-Defendants the allegations made by the Plaintiffs in paragraphs 12, 13, 14-64, 70-78, 86 and 97-103 of section C of the CLS.

Allegations made by the First and Second Defendants

- 1A The Cross-Claimants repeat against the Cross-Defendants the allegations made by:
- a. the First Defendant in paragraph 53 of the First Defendant's CLR filed on 20 July 2018; and
 - b. the Second Defendant in paragraph 53 of the Second Defendant's CLR filed on 20 July 2018.

Contribution at law or equity

- 2 On the basis of the facts and matters alleged by the Plaintiffs and repeated as set out in paragraph 1 above:
- a. each of the Cross-Defendants is liable in respect of the same damage as the First and/or Second Cross-Claimants, within the meaning of s 3(1)(c) of the Tas Act, or alternatively s 5(1)(c) of the NSW Act, or alternatively any other similar or equivalent provision of any other applicable legislation;
 - b. to the extent the Plaintiffs' claims are not apportionable, then the Cross-Claimants are entitled to contribution from the Cross-Defendants against the Plaintiffs' claims to the extent as may be found by the Court to be just and equitable pursuant to s 3(1)(c) and (2) of the Tas Act, or alternatively s 5(1)(c) and (2) of the NSW Act, or alternatively any other similar or equivalent provision of any other applicable legislation;
 - c. further or alternatively, the Cross-Claimants are 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.

Relief

- 3 Accordingly, the Cross-Claimants claim against each of the Cross-Defendants the relief set out in the Cross-Summons of the same date.

D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

None.

E MEDIATION STATEMENT

A mediation has not yet taken place in this proceedings. The Cross-Claimants consider that these proceedings should be mediated at the same time as the principal proceedings.

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 statement of cross-claim has reasonable prospects of success.

I have advised the Cross-Claimants that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor employed by Johnson Winter & Slattery

Date of signature

12 OCTOBER 2018

NOTICE TO CROSS-DEFENDANT

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.