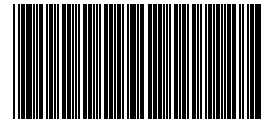




Filed: 13 September 2019 9:10 PM



D00016K1XT

## Commercial List Response

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00193556

### TITLE OF PROCEEDINGS

First Plaintiff	Kerry Michael Quirk
First Defendant	Suncorp Portfolio Services Limited in its capacity as trustee for the Suncorp Master Trust
Second Defendant	Geoffrey Edward Summerhayes
Number of Defendants	3

### FILING DETAILS

Filed for	Sean Carroll, Defendant 3
Legal representative	Maira Leonie Saville
Legal representative reference	
Telephone	9296 2528

### ATTACHMENT DETAILS

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

Commercial List Response (CLR 13.09.19.pdf)

[attach.]

Practice Note No. SC Eq. 3

**COMMERCIAL LIST RESPONSE****COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2019/193556

**TITLE OF PROCEEDINGS**

Plaintiff	<b>Kerry Michael Quirk</b>
First Defendant	<b>Suncorp Portfolio Services Limited</b> in its capacity as trustee for the Suncorp Master Trust
Second Defendant	<b>Geoffrey Edward Summerhayes</b>
Third Defendant	<b>Sean Carroll</b>

**FILING DETAILS**

Filed for	<b>Sean Carroll</b> , the Third Defendant
Filed in relation to	Plaintiff's Commercial List Statement
Legal representative	Moira Leonie Saville, King & Wood Mallesons
Legal representative reference	602-0044733
Contact names and telephone	Moira Leonie Saville, (02) 9296 2311 Jack Power, (02) 9296 2130
Contact emails	moira.saville@au.kwm.com jack.power@au.kwm.com

## A. NATURE OF DISPUTE

Unless indicated otherwise, Sean Carroll, the Third Defendant, adopts in his Commercial List Response (**CLR**) the definitions in the Plaintiff's Commercial List Statement (**CLS**). He does so only for convenience and without admission of any matter that the Plaintiff might allege by those definitions.

1 The CLS indicates a number of fundamental misapprehensions as to the factual circumstances of the Master Trust and the application of both the SIS Act and the FOFA legislation to the affairs of the Master Trust including, but not limited to:

### Grandfathering

- (a) allegations regarding the operation of the FOFA legislation, which misstate the scope and effect of the conflicted remuneration provisions contained within Division 4 of Part 7.7A of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) lack of clarity as to whether the Plaintiff alleges that the First Defendant (**SPSL**) was or was not a platform operator. If (which is not admitted) it was not a platform operator, SPSL is entitled to the benefit of section 1528(1) of the Corporations Act. If SPSL was a platform operator, it is entitled to the benefit of section 1528(2) of the Corporations Act and regulation 7.7A.16 of the Corporations Regulations 2001 (Cth) (**Corporations Regulations**);
- (c) misconceptions as to the purpose and effect of entry into the Distribution Agreements by SPSL, so as to suggest that entry into those Distribution Agreements was for the purpose and had the effect of grandfathering commission arrangements in respect of existing members of the Master Trust. In fact, the documents particularised by the Plaintiff indicate that the Distribution Agreements were entered into to ensure that commissions could continue to be paid for any new members investing into the Master Trust in the period from 1 July 2013 to 31 June 2014; and
- (d) in any event, the Plaintiff's case is misconceived in alleging that commissions paid in respect of persons who were members of the Master Trust as at 20 June 2013 were not paid pursuant to "arrangements" for the purposes of section 1528 of the Corporations Act (or otherwise). In fact, such payments were made pursuant to arrangements, which may variously be evidenced by written agreements or courses of conduct.

## **Super Simplification Program (SSP)**

- 2 The Plaintiff does not allege that the Third Defendant contravened or was involved in any contravention(s) with respect to the SSP. Further, the SSP is not relied upon in support of any relief against the Third Defendant.

### **B. ISSUES LIKELY TO ARISE**

- 1 The issues likely to arise for determination at the initial trial of the Plaintiff's case and the issues of law or fact common to the Plaintiff and the Group Members are to be determined following the filing of the Plaintiff's replies (if any) to the Commercial List Responses.

### **C. THIRD DEFENDANT'S RESPONSES TO PLAINTIFF'S CONTENTIONS**

In response to the allegations in the CLS, the Third Defendant says as follows:

#### **A Parties**

- 1 In response to paragraph 1 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraph 3 below; and
  - (b) otherwise does not admit the paragraph.
- 2 In response to paragraph 2 of the CLS, the Third Defendant:
- (a) says that the Plaintiff became a member of the Master Trust on 5 August 2013;

#### **Particulars**

Letter from SPSL to the Plaintiff dated 6 August 2013

- (b) says that the term 'Original Superannuation Funds' as listed by the Plaintiff at paragraphs 15(a) to 15(bb) of the CLS does not refer to separate superannuation funds, but rather individual descriptors each of which is part of the one superannuation fund, being the Master Trust; and
  - (c) otherwise does not know and cannot admit the paragraph.
- 3 In response to paragraph 3 of the CLS, the Third Defendant:

- (a) repeats its answers to paragraph 2 above;
- (b) says that, to the extent the definition of Group Members contained in paragraph 3 of the CLS extends to persons whose accounts were affected by the payment of Conflicted Remuneration (as this term is defined in paragraph 20 of the CLS) to Financial Services Licensees in the period 1 July 2013 to 21 June 2019, inclusive, for reasons other than the conduct alleged against SPSL and the Directors in the CLS, this proceeding is not validly commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW);

### **Particulars**

*Civil Procedure Act 2005* (NSW), ss 157 and 161

- (c) refers to paragraphs 11 and 12 below and responds to the remainder of the CLS on the basis that Group Members are those persons who were members of the Master Trust who satisfy the criteria in paragraphs 3(b) and 3(c) of the CLS;
  - (d) for the reasons set out in this CLR, no members' interests in the Master Trust were affected by the payment of remuneration of the type described in paragraph 3(b) of the CLS and otherwise alleged in the CLS; and
  - (e) otherwise denies this paragraph.
- 4 As to paragraph 4 of the CLS, the Third Defendant:
- (a) admits paragraph 4(a) of the CLS;
  - (b) admits paragraph 4(b) of the CLS;
  - (c) denies paragraph 4(c) of the CLS and says that the AFSL number stated at that paragraph is not that of SPSL;

### **Particulars**

SPSL's AFSL number is 237905

- (d) admits paragraph 4(d) of the CLS;
- (e) as to paragraph 4(e) of the CLS:

- (i) admits that SPSL was at all material times, and is, the trustee of the Master Trust; and
  - (ii) refers to paragraph 2 above;
- (f) as to paragraph 4(f) of the CLS:
- (i) admits that SPSL was at all material times, and is, carrying on the business of acting as a trustee of two registrable superannuation entities;
  - (ii) denies that SPSL was at all material times, and is, investing money on behalf of the beneficiaries of those superannuation entities;

### **Particulars**

A trustee of a registrable superannuation entity invests money in its capacity as trustee, subject to the terms of the trust by which it is governed

- (g) admits paragraphs 4(g), 4(h) and 4(i) of the CLS; and
  - (h) otherwise denies the paragraph.
- 5 In response to paragraph 5 of the CLS, the Third Defendant:
- (a) acknowledges that paragraph;
  - (b) says that 'Suncorp' is defined by the Plaintiff at paragraph 1 of the Nature of Dispute section in the CLS as 'Suncorp Portfolio Services Limited in its capacity as trustee of the Master Trust';
  - (c) repeats and refers to its response to paragraphs 2 and 4(e) of the CLS;
  - (d) notes that the Third Defendant's employment with and professional connection to the Suncorp Group extends, as is relevant for the purpose of this proceeding, from 1 July 2013 to on or around 1 March 2016; and
  - (e) says further that, unless context otherwise requires, each reference to SPSL in this CLR is to be read as a reference to SPSL in its capacity as the trustee of the Master Trust.

- 6 In response to paragraph 6 of the CLS, the Third Defendant:
- (a) admits paragraph 6(a) of the CLS;
  - (b) in response to paragraph 6(b) of the CLS:
    - (i) admits that Suncorp Life provided administrative services to SPSL for the period referred to at paragraph 5(d) of the CLR;
    - (ii) does not know and cannot admit the balance of paragraph 6(b) of the CLS for the period after 1 March 2016; and
  - (c) admits paragraphs 6(c) of the CLS.
- 7 The Third Defendant admits paragraph 7 of the CLS.
- 8 In response to paragraph 8 of the CLS, the Third Defendant:
- (a) admits that at all material times SPSL was an issuer of financial products under the Corporations Act;
  - (b) admits that trading as Suncorp Life was the issuer of financial products under the Corporations Act for the period referred to in paragraph 5(d) of the CLR above; and
  - (c) otherwise does not know and cannot admit the paragraph.
- 9 In response to paragraph 9 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraph 8 above:
    - (i) admits that for the period referred to at paragraph 5(d) of the CLR above, the Financial Products were promoted and distributed by the members of the Suncorp Adviser Network through their own representatives and other Financial Services Licensees; and
    - (ii) otherwise does not know and cannot admit the paragraph.
- 10 In response to paragraph 10 of the CLS, the Third Defendant:
- (a) in response to paragraph 10(a) of the CLS:

- (i) says that the he was a director of SPSL from 17 December 2012 to 16 April 2014; and
  - (ii) says that the Second Defendant was a director of SPSL from 30 June 2008 to 30 September 2015;
- (b) in response to paragraph 10(b) of the CLS says that Ms Duncan was the Executive Manager Superannuation, Product and Portfolio Management at SPSL from 28 February 2014 to 3 October 2015:
- (c) in response to paragraph 10(c) of the CLS, admits that the receipt, reading, authorisation or participation in authorisation and signing or execution of the Distribution Agreements by the Directors as particularised at paragraphs 35, 47, 57(b), 58(b), 59(b) and 59(c) of the CLS would, so far as that occurred, constitute conduct for and on behalf of SPSL;
- (d) in response to paragraph 10(d) of the CLS:
  - (i) denies that the Directors had the knowledge particularised at paragraph 47, alleged at paragraph 57(a), 57(b);
  - (ii) says that the CLS does not identify any other fact which the Directors (or either of them) are alleged to have known; and
  - (iii) says that the CLS does not identify any facts which Cathy Duncan is alleged to have known; and
- (e) otherwise denies the paragraph.

## **B Background**

### **B.1. Superannuation Funds**

11 The Third Defendant admits paragraph 11 of the CLS.

12 In response to paragraph 12 of the CLS, the Third Defendant:

- (a) refers to its response to paragraph 2 above;
- (b) says that, at all material times:
  - (i) SPSL was the issuer of interests in the Master Trust;



- (ii) the Master Trust was a registrable superannuation entity within the meaning of s 10(1) of the SIS Act; and
    - (iii) the Master Trust was a regulated superannuation fund within the meaning of s 19(1) of the SIS Act; and
  - (c) otherwise denies the paragraph.
- 13 In response to paragraph 13 of the CLS, the Third Defendant:
- (a) says that during the period referred to at subparagraph 5(d) of the CLR above, Suncorp Life provided some administration services to SPSL; and
  - (b) otherwise does not know and therefore cannot admit paragraph 13 of the CLS.
- 14 In response to paragraph 14 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 2 and 4(e) above;
  - (b) admits that during the period referred to at paragraph 5(d) of the CLR above, the Plaintiff and Group Members joined the Master Trust through distribution channels within the Suncorp Group, independent Financial Service Licensees and/or employer-sponsored plans; and
  - (c) otherwise does not know and cannot admit the paragraph.
- 15 In response to paragraph 15 of the CLS, the Third Defendant:
- (a) repeats paragraphs 2 and 4(e) above; and
  - (b) otherwise denies the paragraph.
- 16 The Third Defendant denies paragraph 16 of the CLS, save that he admits that:
- (a) the administration and other fees charged by SPSL are determined by the terms of each offer within the Master Trust and, once paid, form part of SPSL's general revenue along with revenue from SPSL's other operations (which were SPSL's own moneys, not assets of the Master Trust); and
  - (b) at all times since at least 1 January 2013, commissions which were paid by SPSL to Financial Services Licensees were paid out of SPSL's own moneys.

## **B.2 SIS Act**

17 The Third Defendant:

- (a) relies on s52(2) of the SIS Act for its full force and effect at all material times (including as amended);
- (b) repeats its answers to paragraph 18 below; and
- (c) otherwise denies the paragraph.

18 In response to paragraph 18 of the CLS, the Third Defendant:

- (a) in relation to paragraph 18(a) of the CLS:
  - (i) admits paragraph 18(a) of the CLS for the period from 1 July 2013 onwards; and
  - (ii) otherwise denies paragraph 18(a);
- (b) denies paragraph 18(b) of the CLS;
- (c) in relation to paragraph 18(c):
  - (i) admits paragraph 18(c) of the CLS for the period from 1 July 2013 onwards;
  - (ii) otherwise denies paragraph 18(c); and
- (d) says further that SPSL's covenant to perform the trustee's duties and exercise the trustee's powers in the best interests of beneficiaries was a duty to act in the best interests of existing members of the Master Trust, and did not extend to a duty to act in the best interests of the Plaintiff and group members except to the extent and for the periods during which the Plaintiff and each group member was a member of the Master Trust.

## **B.3 FOFA**

19 In response to paragraph 19 of the CLS, the Third Defendant:

- (a) admits that Schedule 1 to the *Corporations Amendment (Future of Financial Advice) Act 2012* (Cth) commenced on 1 July 2012;

- (b) admits that Schedule 1 to the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth) commenced on 1 July 2012; and
- (c) otherwise denies the paragraph.

20 In response to paragraph 20 of the CLS, the Third Defendant:

- (a) relies upon the terms of s 963A of the Corporations Act for their full force and effect;
- (b) says paragraph 20 of the CLS misstates and overstates the effect of s 963A of the Corporations Act, in particular by omitting the limiting and subordinating conjunction “that” where it appears in the chapeau to s 963A. In s 963A, the words which follow “that” operate to qualify and circumscribe the “benefit” described in the words which precede “that”, whereas in paragraph 20 of the CLS this qualification is ignored and the words following “because” are treated as surplusage; and
- (c) says that in the period following 1 July 2013, the definition of “conflicted remuneration” set out in s 963A of the Corporations Act did not extend to certain benefits that would otherwise fall within the description contained in paragraph 20 of the CLS and Division 4 (Conflicted remuneration) of Part 7.7A of the Corporations Act did not apply in respect of those benefits;

#### **Particulars**

Corporations Act, ss 1528(1), 1528(2) and 1528(4)

Corporations Regulations, regs 7.7A.16 and 7.7A.16F

- (d) further says that, to the extent that SPSL provided any benefits that would otherwise fall within the description contained in paragraph 20 of the CLS in the period following 1 July 2013, those benefits were not conflicted remuneration by reason of:
  - (i) s 1528(2) of the Corporations Act and reg 7.7A.16 of the Corporations Regulations because SPSL was a platform operator; or
  - (ii) alternatively, s 1528(1) of the Corporations Act if (which is not admitted) SPSL was not a platform operator; and

- (e) otherwise denies the paragraph.
- 21 In response to paragraph 21 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 20 above; and
  - (b) denies the paragraph.
- 22 In response to paragraph 22 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 20 above; and
  - (b) denies the paragraph.
- 23 In response to paragraph 23 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 20 above; and
  - (b) denies the paragraph.
- 24 In response to paragraph 24 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 20 above; and
  - (b) denies the paragraph.

**C. Grandfathering**

- 25 In response to paragraph 25 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraph 2 above;
  - (b) says that, prior to 1 July 2013, benefits provided to financial services licensees were not benefits within the meaning of s 963A of the Corporations Act and Division 4 (Conflicted remuneration) of Part 7.7A of the Corporations Act did not apply in respect of those benefits; and

**Particulars**

Corporations Act, ss 1528(1), 1528(2) and 1528(4)  
Corporations Regulations, regs 7.7A.16 and 7.7A.16F

- (c) denies the paragraph.

- 26 In response to paragraph 26 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 16 and 25 above; and
  - (b) does not know and cannot admit the paragraph.
- 27 In response to paragraph 27 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 25 and 26 above;
  - (b) says that prior to 20 June 2013, there were in place arrangements within the meaning of s 1528 of the Corporations Act (or otherwise) for the payment of commission in respect of persons who were then members of the Master Trust that would involve ongoing payment of commission in respect of those members following 1 July 2013 (**Existing Arrangements**);
  - (d) says that the Distribution Agreements did not alter the substance of the Existing Arrangements;
  - (e) says that the Existing Arrangements are evidenced by, among other things, a course of conduct involving payments of the kind referred to at paragraph 27(b) above; and
  - (f) denies the paragraph.
- 28 In response to paragraph 28 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraphs 20 to 25 and 27 above and 30 to 39 below;
  - (b) says that neither paragraph 25 nor paragraph 28 of the CLS alleges the existence of an obligation to make the payment referred to in paragraph 25 of the CLS; and
  - (c) denies the paragraph.
- 29 In response to paragraph 29 of the CLS, the Third Defendant:
- (a) refers to and repeats paragraph 28 above; and
  - (b) denies the paragraph.
- 30 The Third Defendant admits paragraph 30 of the CLS.

- 31 In response to paragraph 31 of the CLS, the Third Defendant:
- (a) admits that on 13 June 2013, Suncorp provided draft Distribution Agreements to various staff members at Suncorp; and
  - (b) otherwise denies the paragraph.

**Particulars**

The Third Defendant repeats the particulars at paragraph 31 of the CLS

- 32 In response to paragraph 32 of the CLS, the Third Defendant:
- (a) repeats paragraph 27 above;
  - (b) says that the amendments to the Distribution Agreements were not required in order lawfully to continue paying commissions that were referable to persons who became (or would become) members of the Master Trust before 1 July 2013 and in respect of whom commission payments were or would be ongoing as at 30 June 2013; and
  - (c) denies the paragraph.

- 33 In response to paragraph 33 of the CLS, the Third Defendant:
- (a) does not know and therefore does not admit paragraph 33(a) of the CLS; and
  - (b) as to paragraph 33(b) of the CLS:
    - (i) refers to and repeats paragraph 27 above; and
    - (ii) denies the paragraph.

**Particulars**

Email from Lucy Lowing to various recipients sent on 24 June 2013 at 10:15 am

- 34 In response to paragraph 34 of the CLS, the Third Defendant:
- (a) in response to paragraph 34(a) of the CLS:

- (i) says that each of the Distribution Agreements was executed on or about 27 June 2013;
  - (ii) says that the final decisions by the Directors to execute the Distribution Agreements occurred at the time that each of the Distribution Agreements was executed; and
  - (iii) otherwise denies the paragraph; and
- (b) in response to paragraph 34(b) of the CLS:
- (i) refers to and repeats paragraphs 16, 20 and 32(b) above; and
  - (ii) otherwise denies the paragraph.

35 The Third Defendant admits paragraph 35 of the CLS.

36 As to paragraph 36 of the CLS, the Third Defendant:

- (a) in response to paragraph 36(a) of the CLS says that it was a term of the Suncorp Financial Distribution Agreement that “the Issuers will pay commission to SFS on the Products in accordance with the commission rates applicable for each of the Products (**“Commission Schedule”**)”;

#### **Particulars**

Suncorp Financial Distribution Agreement, cl 7.1(a)

- (b) in response to paragraph 36(b) of the CLS says that it was a term of the Suncorp Financial Distribution Agreement that “the Issuers authorise SFS to include in the CAR Agreement provision for the payment to the Distributor of commission or other remuneration (**“Commission”**)”;

#### **Particulars**

Suncorp Financial Distribution Agreement, cl 7.1(b)

- (c) in response to paragraph 36(c) of the CLS says that it was a term of the Suncorp Financial Distribution Agreement that “the Issuers will notify SFS from time to time of the Commission in the Commission Schedule for each of the Products”;

### **Particulars**

Suncorp Financial Distribution Agreement, cl 7.1(c)

- (d) in response to paragraph 36(d) of the CLS says that it was a term of the Suncorp Financial Distribution Agreement that “without limiting clause 7.1, SFS must ensure that:
  - (i) the Commission payable under each CAR Agreement is in accordance with the Commission Schedule applicable at the time the CAR Agreement is entered into; and
  - (ii) each CAR Agreement authorises SFS to vary Commission rates in a manner consistent with the relevant Issuer’s procedures for variation of commission rates”;

### **Particulars**

Suncorp Financial Distribution Agreement, cl 7.1(d)

- (e) in response to paragraph 36(e) says that it was a term of the Suncorp Financial Distribution Agreement that “as between the Issuers and SFS, the Issuers are solely responsible for payment of Commission to SFS for Distributors. SFS must however provide all details the Issuer needs, in respect of each Distributor each month, to:
  - (i) calculate the Commission due to the Distributor;
  - (ii) generate the recipient created tax invoice in respect of the Commission (where applicable);
  - (iii) pay the Commission in accordance with the Distributor’s instructions”;and

### **Particulars**

Suncorp Financial Distribution Agreement, cl 7.1(e)

- (f) otherwise denies the paragraph.

37 In response to paragraph 37 of the CLS, the Third Defendant:

- (a) admits paragraph 37(a);



- (b) refers to and relies upon the terms of the Distribution Agreement between SPSL, Suncorp Life and Standard Pacific for their full force and effect and otherwise denies paragraph 37(b).

38 In response to paragraph 38 of the CLS, the Third Defendant:

- (a) refers to paragraphs 20 and 27 above; and
- (b) denies the paragraph.

#### **Particulars**

Corporations Act, ss 1528(1), 1528(2) and 1528(4)  
Corporations Regulations, regs 7.7A.16 and 7.7A.16F

39 In response to paragraph 39 of the CLS, the Third Defendant:

- (a) refers to and repeats paragraphs 16 and 38 above; and
- (b) denies the paragraph.

#### **D. Super Simplification program**

40 The Third Defendant does not admit to paragraph 40 of the CLS as this paragraph contains no allegations against him.

41 The Third Defendant does not admit to paragraph 41 of the CLS as this paragraph contains no allegations against him.

42 The Third Defendant does not admit to paragraph 42 of the CLS as this paragraph contains no allegations against him.

43 The Third Defendant does not admit to paragraph 43 of the CLS as this paragraph contains no allegations against him.

44 The Third Defendant does not admit to paragraph 44 of the CLS as this paragraph contains no allegations against him.

45 The Third Defendant does not admit to paragraph 45 of the CLS as this paragraph contains no allegations against him.

**E. Contraventions**

46 In the premises of paragraphs 1 to 45 above, the Third Defendant denies paragraphs 46 to 51 of the CLS to the extent that those paragraphs contain allegations against him.

47 [Not used]

48 [Not used]

49 [Not used]

50 [Not used]

51 [Not used]

**F. Loss or Damage**

52 In the premises of paragraphs 1 to 51 above, the Third Defendant denies paragraph 52 of the CLS.

**Particulars in respect of denial of paragraph 56 of the CLS**

If, which is denied, SPSL has misapplied any assets of the Master Trust by deducting funds in breach of a Statutory Covenant (as alleged in paragraphs 49, 50 and 51 of the CLS), then SPSL is obliged to make good the assets of the Master Trust, and the appropriate relief is an order that it do so. Upon the assets of the Master Trust being made good, no loss or damage will have been suffered by the Plaintiff or by any Group Member who remains a member of the Master Trust and there is no loss or damage to be recovered under s 55 of the SIS Act.

Further, if, which is denied, Suncorp is liable under s 55 of the SIS Act to compensate the Plaintiff or any of the Group Members for any loss or damage alleged in the CLS, any such compensation must be effected by payment into the relevant person's superannuation balance. No payment can (or, alternatively, should) be ordered which would effect a *de facto* release of preserved benefits inconsistent with the scheme established by the Superannuation Industry (Supervision) Regulations 1994 (Cth) including by the payment of sums to any third party litigation funder.

53 In the premises of paragraphs 1 to 52 above, the Third Defendant denies paragraph 53 of the CLS.

54 The Third Defendant does not plead to paragraph 54 as this paragraph contains no allegations against him.

55 The Third Defendant does not plead to paragraph 55 as this paragraph contains no allegations against him.

56 In the premises of paragraphs 1 to 52 above, the Third Defendant denies paragraph 56 of the CLS to the extent that the paragraph contains allegations against him.

57 To the extent that the allegations in paragraph 57 of the CLS relate to the Third Defendant, he denies the paragraph.

58 In response to paragraph 58 of the CLS, the Third Defendant:

- (a) admits that he executed the Distribution Agreements; and
- (b) otherwise denies the paragraph.

59 In response to paragraph 59 of the CLS, the Third Defendant:

- (a) admits that he participated in authorising the execution of the Distribution Agreements;

#### **Particulars**

Product Issue and Distribution Agreement between SPSL, SLSL and SFS (SUN.1505.0002.0041)

Product Issue and Distribution Agreement between SPSL, SLSL and Guardian Limited (SUN.1505.0002.0007)

Product Issue and Distribution Agreement between SPSL, SLSL and Standard Pacific Consulting Limited (SUN.1505.0002.0077)

- (b) admits that he executed the Distribution Agreements; and

#### **Particulars**

Product Issue and Distribution Agreement between SPSL, SLSL and SFS (SUN.1505.0002.0041)

Product Issue and Distribution Agreement between SPSL, SLSL and Guardian Limited (SUN.1505.0002.0007)

Product Issue and Distribution Agreement between SPSL, SLSL and Standard Pacific Consulting Limited (SUN.1505.0002.0077)

(c) otherwise denies the paragraph.

60 In response to paragraph 60 of the CLS, the Third Defendant refers to and repeats his response to paragraph 52 above, and otherwise denies the paragraph.

61 To the extent that the allegations in paragraph 61 of the CLS relate to the Third Defendant, he denies the paragraph and otherwise does not admit the paragraph.

62 To the extent that the allegations in paragraph 62 of the CLS relate to the Third Defendant, he denies the paragraph and otherwise does not admit the paragraph.

**H. Relief claimed**

63 In response to paragraph 63 of the CLS, the Third Defendant denies that the Plaintiff is entitled, for himself or on behalf of each of the Group Members, to the relief set out in the Summons.

**Section 310(2) of the SIS Act**

64 If, which is denied, the Third Defendant has any liability to the Plaintiff as pleaded, he ought in all the circumstances of the case fairly be excused within the meaning of s 310 of the SIS Act and seeks relief, wholly or in part, from any liability under that section.

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

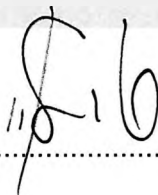
Nil.

**E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION; WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN APPROPRIATE TIME**

The Third Defendant is willing to participate in mediation at an appropriate time.

**SIGNATURE**

Signature of solicitor



A handwritten signature in black ink, appearing to read 'MS 16', written over a horizontal dotted line.

Name

Moira Leonie Saville

Solicitor for

Sean Carroll, the Third Defendant

Date

13 September 2019