



Statement of cross-claim

No VID 434 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

Cheryl Whittenbury

Applicant

Vocation Limited

(ACN 166 631 330)

Respondent

Vocation Limited

(ACN 166 631 330)

Cross-claimant

The Partners of Johnson Winter & Slattery

Cross-respondent

If, which is denied, the Respondent/Cross-claimant is liable to the Applicant (or any of the Group Members) as alleged in the originating application and the statement of claim, then, solely for the purposes of this cross-claim, the Respondent/Cross-claimant pleads against the Cross-respondent as follows.

1. The Cross-claimant (**Vocation**) is a company registered under the *Corporations Act* 2001 (Cth) (**Corporations Act**).
2. The Cross-respondent (**JWS**), between 6 November 2013 and 27 October 2014, carried on business as a partnership of solicitors, with its principal place of business in Adelaide.

Filed on behalf of: Vocation Limited, the Respondent and Cross-claimant

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3. For the purpose only of this cross-claim, Vocation repeats the allegations in the Statement of Claim.

2013 Prospectus Conduct

4. From 6 November 2013, Vocation retained JWS to advise Vocation in relation to an initial public offering of shares in Vocation, including in relation to the preparation of the prospectus issued by Vocation on 18 November 2013 (*Initial Prospectus*) and the replacement prospectus issued on 27 November 2013 (*Replacement Prospectus*).
5. It was an implied term of the retainer pleaded in paragraph 4 that JWS would exercise reasonable care and skill in providing advice to Vocation.
6. In addition to the contractual duty of care pleaded at paragraph 5 above, JWS owed Vocation a tortious duty to exercise reasonable care and skill in giving advice concerning Vocation's disclosure obligations under ss. 710, 728(1)(a) and (b) of the Corporations Act.
7. On or around the dates of the Initial Prospectus and the Replacement Prospectus, JWS:
 - (a) advised Vocation that the Initial Prospectus and the Replacement Prospectus contained all of the information necessary under s. 710 of the Corporation Act;
 - (b) did not advise Vocation that the Initial Prospectus and the Replacement Prospectus would contravene ss. 728(1)(a) and (b) of the Corporations Act.

Prospectus Contraventions

8. By reason of the matters pleaded at paragraphs 74 to 85 of the Statement of Claim (which are denied, but are repeated solely for the purpose of this cross-claim):
 - (a) by giving the advice pleaded in paragraph 7(a) above and omitting to give the advice pleaded in 7(b) above, JWS breached:
 - (i) the term of its retainer pleaded at paragraph 5 above;
 - (ii) the duty of care pleaded at paragraph 6 above;
 - (b) But for the breaches pleaded in paragraph 8(a) above, Vocation would have disclosed the matters alleged by the Applicant to give rise to contraventions of ss. 710, 728(1)(a) and (b) of the Corporations Act.

- (c) Vocation has suffered loss and damage by virtue of the breach pleaded in paragraph 8(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member (as defined in the Statement of Claim) arising from a contravention by Vocation of ss. 710, 728(1)(a) and (b) of the Corporations Act by issuing the Replacement Prospectus and any liability of Vocation to the Applicant or a Group Member arising from a Prospectus Representation (as defined in the Statement of Claim).

9. JWS's conduct in:
 - (a) giving the advice pleaded in paragraph (a) above;
 - (b) omitting to give the advice pleaded in paragraph (b) above,
 was conduct in trade or commerce.
10. By virtue of the matters pleaded at paragraphs 74 to 85 of the Statement of Claim (which are denied, but are repeated solely for the purpose of this cross-claim):
 - (a) by giving the advice pleaded in paragraph 7(a) and omitting to give the advice pleaded in paragraph 7(b) above, JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law (the ***Australian Consumer Law***) in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
 - (b) But for the contraventions pleaded in paragraph 10(a) above, Vocation would have disclosed the matters alleged by the Applicant to give rise to contraventions of ss. 710, 728(1)(a) and (b) of the Corporations Act.
 - (c) Vocation has suffered loss and damage caused by JWS's contraventions of s. 18 of the Australian Consumer Law pleaded in paragraph 10(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from a contravention by Vocation of ss. 710, 728(1)(a) and (b) of the Corporations Act by issuing the Replacement Prospectus and any liability of Vocation to the Applicant or a Group Member arising from a Prospectus Representation.

2014 Conduct

11. In or around late July or early August 2014, Vocation retained JWS to advise Vocation in relation to Vocation's disclosure obligations under Listing Rule 3.1 and s. 674 of the Corporations Act.
12. It was an implied term of the retainer pleaded in the previous paragraph that JWS would exercise reasonable care and skill in providing advice to Vocation.
13. On or around 11 August 2014, JWS advised Vocation that Vocation was not obliged to disclose to ASX:
 - (a) the fact that the Department of Education and Early Childhood Development (**Department**) was undertaking audits of BAWM Pty Ltd (**BAWM**) and Aspin Pty Ltd (**Aspin**) in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (b) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (c) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.

Particulars

The advice was oral and was given by James Rozsa and/or Byron Koster (of JWS) to Mark Hutchinson (of Vocation).

14. On 21 August 2014, JWS advised Vocation that Vocation was not obliged to disclose to ASX:
 - (a) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (b) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.

Particulars

Email from James Rozsa to Mark Hutchinson sent at 3.08 pm on 21 August 2014.

Email from Byron Koster to Mark Hutchinson sent at 4.04 pm on 21 August 2014.

Email from Byron Koster to Mark Hutchinson sent at 7.10 pm on 21 August 2014.

15. On 22 August 2014, JWS advised Vocation that Vocation was not obliged to disclose to ASX:
- (a) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (b) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.

Particulars

The advice was oral and was given by Byron Koster to the Board of Vocation during their Board meeting which commenced at around 11 am on 22 August 2014.

16. On 24 August 2014, JWS advised Vocation that Vocation was not obliged to disclose to ASX:
- (a) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (b) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.

Particulars

Email from Byron Koster to Mark Hutchinson and others sent at 4.55 pm on 24 August 2014.

17. On 25 August 2014, JWS advised Vocation that Vocation was not obliged to disclose to ASX:
- (a) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (b) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.

Particulars

The advice was oral and was given by Byron Koster and James Rozsa to the Board of Vocation during their Board meeting on 25 August 2014.

18. On 25 August 2014, JWS:
- (a) advised Vocation on the content of an ASX announcement to be made by Vocation in order to respond to press speculation and drafted the wording of that ASX announcement;
 - (b) did not advise that the ASX announcement was liable to be regarded as misleading or deceptive.

Particulars

Email from James Rozsa to Mark Hutchinson and others sent at 9.29 am on 25 August 2014.

Email from James Rozsa to Mark Hutchinson and others sent at 9.35 am on 25 August 2014.

Email from James Rozsa to Mark Hutchinson and others sent at 9.57 am on 25 August 2014.

19. On 26 August 2014, JWS advised Vocation that Vocation was not obliged to make any further disclosure to ASX concerning:
- (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (b) the Department's withholding of payments from BAWM;
 - (c) the Department's withholding of payments from Aspin.

Particulars

The advice was oral and was given by Byron Koster and James Rozsa to the Board of Vocation during their Board meeting on 26 August 2014.

20. On 28 August 2014, a partner of JWS (Byron Koster) attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX concerning:
- (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (b) the Department's withholding of payments from BAWM;
 - (c) the Department's withholding of payments from Aspin.

21. On 5 September 2014, two partners of JWS (James Rozsa and Byron Koster) attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX concerning:
 - (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (b) the Department's withholding of payments from BAWM;
 - (c) the Department's withholding of payments from Aspin.
22. On 7 September 2014, a partner of JWS (James Rozsa) attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX concerning:
 - (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (b) the Department's withholding of payments from BAWM;
 - (c) the Department's withholding of payments from Aspin.
23. On 8 September 2014, a partner of JWS (James Rozsa) attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX concerning:
 - (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (b) the Department's withholding of payments from BAWM;
 - (c) the Department's withholding of payments from Aspin.
24. Between on or around 5 September 2014 to on or around 8 September 2014, JWS:
 - (a) advised Vocation on the content of an ASX announcement to be made by Vocation in order to announce a share placement and drafted the wording of that ASX announcement;
 - (b) did not advise that the ASX announcement was liable to be regarded as misleading or deceptive.

Particulars

Email from James Rozsa to Mark Hutchinson and Manvinder Grewal, copied to Byron Koster and Sophia Bobeff, sent at 6.01pm on 5 September 2014.

Email from Mark Hutchinson to John Dawkins and James Rosza, copied to Siobhan Weaver and others, sent at 8.04am on 7 September 2014.

Email from Sophia Bobeff to Siobhan Weaver, copied to Mark Hutchinson and others, sent at 4.54pm on 7 September 2014.

Email from Sophia Bobeff to Siobhan Weaver, copied to mark Hutchinson and others, sent at 3.29pm on 8 September 2014.

25. On 18 September 2014, JWS:
- (a) advised Vocation on the content of an ASX announcement to be made by Vocation in order to respond to press speculation;
 - (b) did not advise that the ASX announcement was liable to be regarded as misleading or deceptive.

Particulars

Email from Byron Koster to Manvinder Grewal sent at 10.05am on 18 September 2014.

Email from Byron Koster to Doug Halley, copied to Michelle Tredenick and others, sent at 1.48pm on 18 September 2014.

Email from Byron Koster to Mark Hutchinson, copied to John Dawkins and others, set at 2.29pm on 18 September 2014.

26. On 19 September 2014, JWS advised Vocation that Vocation was not obliged to make any further disclosure to ASX concerning:
- (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (b) the Department's withholding of payments from BAWM;
 - (c) the Department's withholding of payments from Aspin.

Particulars

Email from Byron Koster to Mark Hutchinson sent at 8.07 am on 19 September 2014 .

27. On 22 September 2014, JWS advised Vocation that Vocation was not obliged to make any further disclosure to ASX concerning:

- (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
- (b) the Department's withholding of payments from BAWM;
- (c) the Department's withholding of payments from Aspin.

Particulars

Email from Byron Koster to Siobhan Weaver, copied to Mark Hutchinson and others, sent at 9.10 am on 22 September 2014.

28. Between on or around 21 October 2014 to 27 October 2014, JWS:
- (a) advised Vocation on the content of an ASX announcement to be made by Vocation if a settlement was reached with the Department;
 - (b) advised Vocation on the content of an ASX announcement to be made by Vocation after settlement was reached with the Department on 27 October 2014;
 - (c) reviewed and drafted the wording of the 27 October Announcement (as defined in the Statement of Claim);
 - (d) did not advise that the 27 October Announcement was liable to be regarded as misleading or deceptive, nor that the 27 October Announcement omitted information that Vocation was required to disclose to ASX.

Particulars

Email from Byron Koster to Mark Hutchinson, copied to James Rosza and Naomi Philp, sent at 8.44pm on 21 October 2014.

Email from Byron Koster to Mark Hutchinson and Ali Turtle, copied to James Rosza, sent at 3.55pm on 24 October 2014.

Email from Byron Koster to John Hurst and Mark Hutchinson, copied to James Rosza and others, sent at 7.00pm on 25 October 2014.

Email from Mark Hutchinson to Byron Koster, copied to John Hurst and others, sent at 5.54pm on 26 October 2014, in response to email from Byron Koster sent at 5.54pm.

29. Between on or around late July or early August 2014 and 25 August 2014, JWS did not advise Vocation that Vocation was obliged to make disclosure to ASX concerning:

- (a) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (b) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.
30. Between 26 August 2014 and 27 October 2014, JWS did not advise Vocation that Vocation was obliged to make further disclosure (beyond that made in its ASX announcements of 25 August 2014, 10 and 18 September 2014 and 27 October 2014) to ASX concerning:
- (a) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (b) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.
31. In addition to the contractual duty of care pleaded at paragraph 12 above, JWS owed Vocation a tortious duty to exercise reasonable care and skill in giving advice concerning Vocation's disclosure obligations under Listing Rule 3.1 and s. 674 of the Corporations Act.

2014 breaches

32. By virtue of the matters pleaded at paragraphs 86 to 97 and 104 to 114 of the Statement of Claim (which are denied, but are repeated solely for the purpose of this cross-claim):
- (a) by:
 - (i) giving the advice pleaded in paragraphs 13, 14, 15, 16, 17, 19, 24 and 27 above; and
 - (ii) omitting to give the advice pleaded in paragraphs 20, 21, 22, 23, 29 and 30 above,

JWS breached:

 - (iii) the term of its retainer pleaded at paragraph 12 above;
 - (iv) the duty of care pleaded at paragraph 31 above.
 - (b) But for the breaches pleaded in paragraph 32(a) above, Vocation would have disclosed prior to 25 August 2014:

- (v) the fact that the Department was undertaking audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts;
 - (vi) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (vii) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.
- (c) But for the breaches pleaded in paragraph 32(a) above, Vocation would have disclosed prior to 27 October 2014:
- (viii) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (ix) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.
- (d) Vocation has suffered loss and damage by virtue of the breaches pleaded in paragraph 32(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member caused by Vocation's failure to disclose any of the matters referred to in paragraphs 32(b) and 32(c) above.

33. The conduct of JWS in:

- (a) giving the advice pleaded in paragraphs 13, 14, 15, 16, 17, 19, 24 and 27 above; and
- (b) omitting to give the advice pleaded in paragraphs 20, 21, 22, 23, 29 and 30 above,

was conduct in trade or commerce.

34. By virtue of the matters pleaded at paragraphs 86 to 97 and 104 to 114 of the Statement of Claim (which are denied, but repeated solely for the purpose of this cross-claim):

- (a) by:

- (i) giving the advice pleaded in paragraphs 13, 14, 15, 16, 17, 19, 24 and 27 above; and
- (ii) omitting to give the advice pleaded in paragraphs 20, 21, 22, 23, 28 and 29 above,

JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law.

- (b) But for the breaches pleaded in paragraph 32(a) above, Vocation would have disclosed prior to 27 October 2014:
 - (i) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;
 - (ii) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.
- (c) Vocation has suffered loss and damage caused by JWS's contraventions of s. 18 of the Australian Consumer Law pleaded in paragraph 34(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Plaintiff or a group member caused by Vocation's failure to disclose any of the matters referred to in paragraphs (b) and (c).

25 August 2014 ASX announcement breach

- 35. By virtue of the matters pleaded at paragraphs 49 and 104 to 114 of the Statement of Claim (which are denied, but repeated solely for the purpose of this cross-claim):
 - (a) by giving the advice pleaded in paragraph 18(a) and omitting to give the advice pleaded in paragraph 18(b) above, JWS breached:
 - (i) the term of its retainer pleaded at paragraph 12 above;
 - (ii) the duty of care pleaded at paragraph 31 above.
 - (b) But for the breaches pleaded in paragraph 35(a) above, Vocation would not have made the ASX announcement of 25 August 2014 in the form in which it was made.
 - (c) Vocation has suffered loss and damage by virtue of the breaches pleaded in paragraph 35(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the August Representations contained in the 25 August Announcement (as defined in the Statement of Claim).

36. JWS's conduct in:

- (a) giving the advice pleaded in paragraph 18(a);
- (b) omitting to give the advice pleaded in paragraph 18(b) above,

was conduct in trade or commerce.

37. By virtue of the matters pleaded at paragraphs 49 and 104 to 114 of the Statement of Claim (which are denied, but are repeated solely for the purpose of this cross-claim):

- (a) by giving the advice pleaded in paragraph 18(a) and omitting to give the advice pleaded in paragraph 18(b) above, JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law.
- (b) But for the breaches pleaded in paragraph 37(a) above, Vocation would not have made the ASX announcement of 25 August 2014 in the form in which it was made.
- (c) Vocation has suffered loss and damage caused by JWS's contraventions of s. 18 of the Australian Consumer Law pleaded in paragraph 37(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the August Representations contained in the 25 August Announcement.

10 September 2014 ASX announcement breach

38. By virtue of the matters pleaded at paragraphs 50, 51, 57 and 104 to 114 of the Statement of Claim (which are denied, but repeated solely for the purpose of this cross-claim):

- (a) by giving the advice pleaded in paragraph 24(a) and omitting to give the advice pleaded in paragraph 24(b) above, JWS breached:
 - (i) the term of its retainer pleaded at paragraph 12 above;
 - (ii) the duty of care pleaded at paragraph 31 above.

- (b) But for the breaches pleaded in paragraph 38(a) above, Vocation would not have made the ASX announcement of 10 September 2014 in the form in which it was made.
- (c) Vocation has suffered loss and damage by virtue of the breaches pleaded in paragraph 38(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the September Representations contained in the 10 September Announcement (as defined in the Statement of Claim).

39. JWS's conduct in:

- (a) giving the advice pleaded in paragraph 24(a);
- (b) omitting to give the advice pleaded in paragraph 24(b) above,

was conduct in trade or commerce.

40. By virtue of the matters pleaded at paragraphs 50, 51, 57 and 104 to 114 of the Statement of Claim (which are denied, but are repeated solely for the purpose of this cross-claim):

- (a) by giving the advice pleaded in paragraph 24(a) and omitting to give the advice pleaded in paragraph 24(b) above, JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law.
- (b) But for the breaches pleaded in paragraph 40(a) above, Vocation would not have made the ASX announcement of 25 August 2014 in the form in which it was made.
- (c) Vocation has suffered loss and damage caused by JWS's contraventions of s. 18 of the Australian Consumer Law pleaded in paragraph 40(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the September Representations contained in the 10 September Announcement.

18 September 2014 ASX announcement breach

41. By virtue of the matters pleaded at paragraphs 56 to 57 and 104 to 114 of the Statement of Claim (which are denied, but repeated solely for the purpose of this cross-claim):
- (a) by giving the advice pleaded in paragraph 25(a) and omitting to give the advice pleaded in paragraph 25(b) above, JWS breached:
 - (i) the term of its retainer pleaded at paragraph 12 above;
 - (ii) the duty of care pleaded at paragraph 31 above.
 - (b) But for the breaches pleaded in paragraph 41(a) above, Vocation would not have made the ASX announcement of 10 September 2014 in the form in which it was made.
 - (c) Vocation has suffered loss and damage by virtue of the breaches pleaded in paragraph 41(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the September Representations contained in the 18 September Announcement (as defined in the Statement of Claim).

42. JWS's conduct in:
- (a) giving the advice pleaded in paragraph 25(a);
 - (b) omitting to give the advice pleaded in paragraph 25(b) above,
- was conduct in trade or commerce.
43. By virtue of the matters pleaded at paragraphs 56 to 57 and 104 to 114 of the Statement of Claim (which are denied, but are repeated solely for the purpose of this cross-claim):
- (a) by giving the advice pleaded in paragraph 25(a) and omitting to give the advice pleaded in paragraph 25(b) above, JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law.
 - (b) But for the breaches pleaded in paragraph 43(a) above, Vocation would not have made the ASX announcement of 25 August 2014 in the form in which it was made.

- (c) Vocation has suffered loss and damage caused by JWS's contraventions of s. 18 of the Australian Consumer Law pleaded in paragraph 43(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the September Representations contained in the 18 September Announcement.

27 October 2014 ASX announcement breach

44. By virtue of the matters pleaded at paragraphs 60 to 62 and 98 to 121 of the Statement of Claim (which are denied, but repeated solely for the purpose of this cross-claim):
- (a) by giving the advice pleaded in paragraph 28(a) and omitting to give the advice pleaded in paragraph 28(d) above, JWS breached:
 - (i) the term of its retainer pleaded at paragraph 12 above;
 - (ii) the duty of care pleaded at paragraph 31 above.
 - (b) But for the breaches pleaded in paragraph 44(a) above, Vocation would not have made the ASX announcement of 27 October 2014 in the form in which it was made.
 - (c) Vocation has suffered loss and damage by virtue of the breaches pleaded in paragraph 44(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the October Representations contained in the 27 October Announcement (as defined in the Statement of Claim).

45. JWS's conduct in:
- (a) giving the advice pleaded in paragraph 28(a);
 - (b) omitting to give the advice pleaded in paragraph 28(d) above,
- was conduct in trade or commerce.
46. By virtue of the matters pleaded at paragraphs 60 to 62 and 98 to 121 of the Statement of Claim (which are denied, but are repeated solely for the purpose of this cross-claim):

- (a) by giving the advice pleaded in paragraph 28(a) and omitting to give the advice pleaded in paragraph 28(d) above, JWS engaged in misleading or deceptive conduct (or conduct likely to mislead or deceive) in contravention of s. 18 of the Australian Consumer Law.
- (b) But for the breaches pleaded in paragraph 46(a) above, Vocation would not have made the ASX announcement of 27 October 2014 in the form in which it was made.
- (c) Vocation has suffered loss and damage caused by JWS's contraventions of s. 18 of the Australian Consumer Law pleaded in paragraph 46(a) above.

Particulars

Vocation's loss and damage includes any liability of Vocation to the Applicant or a Group Member arising from any of the October Representations contained in the 27 October Announcement.

AND THE CROSS-CLAIMANT CLAIMS:

- A. Damages
- B. Damages pursuant to s. 236 of the Australian Consumer Law
- C. Interest
- D. Costs

Date 13 October 2015



Signed by Richard Glenn Harris
Lawyer for the Cross-claimant

This pleading was prepared by Allens and settled by Stuart Lawrance of counsel.

Certificate of lawyer

I Richard Glenn Harris certify to the Court that, in relation to the statement of cross-claim filed on behalf of the Cross-Claimant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 13 October 2015



Signed by Richard Glenn Harris
Lawyer for the Cross-claimant