

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: QUD182/2020  
File Title: COLIN GRAHAM INGRAM AND JUDY GAIL TULLOCH AS TRUSTEES FOR THE INGRAM SUPERANNUATION FUND v ARDENT LEISURE LIMITED (ACN 104 529 106) & ORS  
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 8/12/2021 3:43:53 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 33  
Rule 16.32

**FIRST TO THIRD RESPONDENTS' AMENDED DEFENCE TO  
AMENDED STATEMENT OF CLAIM**

**(Filed pursuant to Order 1 of the orders of Justice Derrington dated 7 December 2021)**

No. QUD 182 of 2020

Federal Court of Australia  
District Registry: Queensland  
Division: General

**Colin Graham Ingram and Judy Gail Tulloch as trustees for the Ingram  
Superannuation Fund**

Applicants

**Ardent Leisure Limited (ACN 104 529 106)**

First Respondent

**Ardent Leisure Management Limited (ACN 079 630 676)**

Second Respondent

**Ardent Leisure Group Limited (ACN 628 881 603)**

Third Respondent

**Craig Malcolm Davidson**

Fourth Respondent

**PRELIMINARY**

- A. Headings used in this Defence are for convenience only. They do not form part of the Defence.
- B. Unless the context otherwise requires, the First, Second and Third Respondents adopt the defined terms in the Applicants' Amended Statement of Claim filed on 21 December 2020 (**Amended Statement of Claim**), but do not admit any factual

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Filed on behalf of (name & role of party)	Ardent Leisure Limited, Ardent Leisure Management Limited and Ardent Leisure Group Limited, First to third respondents		
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assertions contained in, or in any way implied by, any defined term used in the Amended Statement of Claim.

- C. This Defence responds to the Amended Statement of Claim on behalf of the First to Third Respondents (collectively referred to as **Ardent**).

**A. THE APPLICANTS AND THE GROUP**

1. In answer to paragraph 1 of the Amended Statement of Claim, Ardent:
  - (a) admits that the Applicants commenced the proceeding as a representative proceeding pursuant to Part IVA of the Federal Court of Australia Act 1979 (Cth) on their own behalf and on behalf of Group Members;
  - (b) denies that it caused any loss or damage to the Group Members by reason of the conduct pleaded in the Amended Statement of Claim; and
  - (c) otherwise does not know and therefore cannot admit the paragraph.
2. Ardent admits paragraph 2 of the Amended Statement of Claim.
3. Ardent does not know and therefore cannot admit paragraph 3 of the Amended Statement of Claim.

**B. THE RESPONDENTS**

4. Ardent admits paragraph 4 of the Amended Statement of Claim.
5. Ardent admits paragraph 5 of the Amended Statement of Claim.
6. Ardent admits paragraph 6 of the Amended Statement of Claim.
7. Ardent admits paragraph 7 of the Amended Statement of Claim.

**B.1 ALL and AMLM**

8. In answer to paragraph 8 of the Amended Statement of Claim, Ardent:
  - (a) relies on the full terms and effect of ss 111AP(1) and 674(1) of the Corporations Act and ASX Listing Rule 3.1; and
  - (b) otherwise admits the paragraph.
9. Ardent admits paragraph 9 of the Amended Statement of Claim.

10. Ardent admits paragraph 10 of the Amended Statement of Claim.
11. Ardent admits paragraph 11 of the Amended Statement of Claim.
12. Ardent admits paragraph 12 of the Amended Statement of Claim.
13. In answer to paragraph 13 of the Amended Statement of Claim, Ardent:
  - (a) says that the theme parks division accounted for between 21.3% (in FY2013) and 15.6% (in FY2016) of AAD's total revenue during the Relevant Period; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

**Particulars**

2013 Ardent Leisure Group Annual Report; 2014 Ardent Leisure Group Annual Report; 2015 Ardent Leisure Group Annual Report; and 2016 Ardent Leisure Group Annual Report.

**B.2 Safety Committees**

14. Ardent admits paragraph 14 of the Amended Statement of Claim.
15. In answer to paragraph 15 of the Amended Statement of Claim, Ardent:
  - (a) admits there was an Executive Safety Committee within Dreamworld;
  - (b) denies that the members of the Executive Safety Committee included the Dreamworld Executive Team as defined in paragraph 16 of the Amended Statement of Claim;

**Particulars**

During the Relevant Period, the members of the Executive Safety Committee included, from time to time, Craig Davidson, Michael Dodd, Troy Margetts, Andrew Fyfe, Chris Deaves, Angus Hutchings, John Paull, Neal Hedges, Alex Navarro, Bob Seow Tan, Shane Green, Paul Callander, Guy Conolan, Megan Reid, Al Mucci, Kelly Hogan, Stephen Bullard, Katrina Anderson and Mark Thompson.

- (c) says that, during the Relevant Period, the Executive Safety Committee generally met quarterly; and

(d) otherwise denies the paragraph.

16. In answer to paragraph 16 of the Amended Statement of Claim, Ardent:

(a) admits that during the Relevant Period, the following roles reported to the Chief Executive Officer (CEO) of the Theme Parks Division:

- (i) General Manager Technical Services;
- (ii) General Manager Park Operations;
- (iii) General Manager Life Sciences;
- (iv) General Manager Commercial Operations;
- (v) Executive General Manager Marketing and Sales;
- (vi) Chief Financial Officer for Dreamworld;
- (vii) General Manager People;

**Particulars**

Organisation chart as at 25 October 2016.

(b) says further that:

- (i) there was no General Manager for Safety during the Relevant Period;
- (ii) between approximately September 2013 and February 2015, a Safety Advisor reported to the CEO of the Theme Parks Division;
- (iii) in February 2015, the then Safety Advisor was promoted to the role of Safety Manager, but continued to report to the CEO of the Theme Parks Division in that role until the Safety Manager ceased his employment at Dreamworld in December 2015;
- (iv) the role of Safety Manager was filled in March 2016, and between March 2016 and September 2016, the new Safety Manager reported to the Ardent Group Safety Manager, who in turn reported to the then Company Secretary of ALL and ALML;

**Particulars**

Organisation chart as at 25 October 2016.

- (v) in September 2016, the Safety Manager began directly reporting to the CEO of the Theme Parks Division; and
- (c) otherwise denies the paragraph.

### **B.3 Officers of AAD**

17. In answer to paragraph 17 of the Amended Statement of Claim, Ardent:
- (a) admits sub-paragraphs (a), (c) and (d);
  - (b) admits that Thomas was appointed Managing Director and Chief Executive Officer of AAD on 10 March 2015, effective from 7 April 2015;
  - (c) says further that Ms Thomas' responsibilities relevantly included:
    - (i) the day-to-day management of AAD's business;
    - (ii) ensuring the development and implementation of corporate policies and procedures suitable to a listed public trust and company;
    - (iii) ensuring the development and implementation of corporate governance and risk management systems and reporting practices suitable to a listed public trust and company;
    - (iv) putting in place and monitoring observance of appropriate compliance with corporate policies and procedures and corporate governance and risk management systems and reporting practices; and

#### **Particulars**

Executive Services Agreement between Ardent and Deborah Thomas dated 7 April 2015.

- (d) otherwise does not know and therefore cannot admit the paragraph.
18. In answer to paragraph 18 of the Amended Statement of Claim, Ardent:
- (a) denies sub-paragraph (a) and says that Davis was appointed as a director of Macquarie Leisure Operations Limited (**MLOL**), not ALL, on 28 May 2008;
  - (b) says further that MLOL became ALL on 1 September 2009, at which time Davis became a director of ALL; and
  - (c) otherwise admits the paragraph.
19. Ardent admits paragraph 19 of the Amended Statement of Claim.

20. Ardent admits paragraph 20 of the Amended Statement of Claim.
21. In answer to paragraph 21 of the Amended Statement of Claim, Ardent:
- (a) denies sub-paragraph (a) and says further that Venardos was appointed a director of ALL and ALML on 23 September 2009; and
  - (b) otherwise admits the paragraph.
22. In answer to paragraph 22 of the Amended Statement of Claim, Ardent:
- (a) admits sub-paragraphs (a) and (b);
  - (b) in answer to sub-paragraph (c):
    - (i) refers to and repeats paragraphs 7, 14 and 16 above;
    - (ii) says that Davidson provided regular expenditure reports for Dreamworld to the Group Chief Executive Officer and Group Chief Financial Officer;
    - (iii) says that Davidson reported to the Ardent Group Chief Executive Officer;
    - (iv) denies that Davidson was the direct report for Mr Richard Johnson, and says that Mr Johnson reported to the Ardent Group Chief Executive Officer and Ardent Board;

### **Particulars**

- A. Organisation chart as at 25 October 2016.
- B. Executive Services Agreement between Macquarie Leisure Operations Limited and Richard Johnson dated 22 July 2009.
- (v) denies that Davidson was the direct report for Mr Angus Hutchings, and says that between the time of Davidson's appointment to the role of CEO of the Theme Parks Division and 25 October 2016, Mr Hutchings reported to the Company Secretary of Ardent;

### **Particulars**

Organisation chart as at 25 October 2016.

- (vi) admits that Davidson was the direct report for Mr Mark Thompson between approximately September 2016 and 25 October 2016;

**Particulars**

Organisation chart as at 25 October 2016.

- (vii) denies that Davidson was the direct report for Mr Andrew Fyfe, and says Mr Fyfe held the role of Attractions Manager and reported to the General Manager Park Operations;

**Particulars**

Organisation chart as at 25 October 2016.

- (viii) admits that Davidson was the direct report for each of Mr Bob Tan, Mr Chris Deaves and Mr Troy Margetts at all material times during the Relevant Period;

**Particulars**

Organisation chart as at 25 October 2016.

- (ix) says that sub-paragraphs (c)(vii) and (viii) paraphrase certain of the responsibilities set out in a Responsibility Statement signed by Davidson in March 2015 (the **Responsibility Statement**);
- (x) relies on the contents of the Responsibility Statement in full;

**Particulars**

Responsibility Statement dated March 2015.

- (xi) does not know and therefore cannot admit sub-paragraph (c)(ix);  
and

- (c) otherwise denies the paragraph.

23. In answer to paragraph 23 of the Amended Statement of Claim, Ardent:

- (a) does not know and therefore cannot admit that Davidson was an officer of ALL and ALML within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12; and



(b) otherwise admits the paragraph.

24. In answer to paragraph 24 of the Amended Statement of Claim, Ardent:

(a) refers to and repeats paragraph 23 above;

(b) admits that any information of which any of Thomas, Davis, Haslingden, Morris or Venardos became aware, or which ought reasonably to have come into their possession in the course of the performance of their respective duties as officers of ALL and ALML, was information of which each of ALL and ALML was aware (as 'aware' is defined in ASX Listing Rule 19.12); and

(c) otherwise does not know and therefore cannot admit the paragraph.

## **C. THE THUNDER RIVER RAPIDS RIDE AND ITS SAFETY**

### **C.1 The Thunder River Rapids Ride**

25. Ardent admits paragraph 25 of the Amended Statement of Claim.

26. Ardent admits paragraph 26 of the Amended Statement of Claim.

27. In answer to paragraph 27 of the Amended Statement of Claim, Ardent:

(a) denies that the TRRR was approximately 450 metres long and says that the TRRR water channel was approximately 410 meters long; and

(b) otherwise admits the paragraph.

28. Ardent admits paragraph 28 of the Amended Statement of Claim.

### **C.2 Operation of the TRRR**

29. In answer to paragraph 29 of the Amended Statement of Claim, Ardent:

(a) admits the paragraph;

(b) says that before working on the TRRR, operators were trained in and had operated all of the other rides at Dreamworld; and

(c) says further that it required a minimum of two operators, one being a Level 3 operator and one being a Level 2 operator.

### **Particulars**

TRRR Operations Procedure Manual.

30. Ardent admits paragraph 30 of the Amended Statement of Claim.
31. Ardent admits paragraph 31 of the Amended Statement of Claim.
32. In answer to paragraph 32 of the Amended Statement of Claim, Ardent:
- (a) says that:
    - (i) the TRRR Operations Procedure Manual instructed operators to shut down the TRRR using the following sequence:
      - a. Press the emergency gate button;
      - b. Press the conveyor stop button;
      - c. Press the ‘emergency’ stop button; and
      - d. Remove the isolator key;
    - (ii) the sequence for shutting down the ride pleaded above at sub-paragraph (i) was used in the event of a loss of power to one or both pumps, a raft jam, any situation where there is a risk of serious injury to guests or staff, as well as for shutting down the TRRR at the end of each day; and

**Particulars**

TRRR Operations Procedure Manual – Rapid Ride Operator.

- (b) otherwise denies the paragraph.
33. Ardent admits paragraph 33 of the Amended Statement of Claim.
34. In answer to paragraph 34 of the Amended Statement of Claim, Ardent:
- (a) says that the Emergency Stop Button was coloured as a red and yellow e-stop button; and
  - (b) otherwise admits the paragraph.
35. In answer to paragraph 35 of the Amended Statement of Claim, Ardent:
- (a) says the Operation Procedure for the TRRR provided that the “No. 1 Operator” should be advised immediately if any problem arises requiring shutdown of the ride, with that operator to ensure the ride was shut down;

**Particulars**

TRRR Operations Procedure Manual – Rapid Ride Load Operation

- (b) says a memorandum issued to TRRR operators on 12 February 2016, with the subject “TRR new buttons”, advised of changes which had been made to the controls for the TRRR, including that:

*“we have a new e-stop on the unload platform, this will stop the conveyor. Operators and load operators CAN press this ONLY in the event of an emergency, as the emergency shut down procedure must follow”;*

**Particulars**

Memorandum addressed to All Operators and Load Operators, subject: TRR New Buttons, dated 12 February 2016

- (c) says a further memorandum was issued by the attractions supervisors to TRRR operators on 18 October 2016, with the subject “Unload E-Stop” which instructed operators that:

*“The E-stop situated at (sic) unload platform must only be pressed in the event the main control panel cannot be reached when there is potential or immediate risk to either:*

*(i) Guest/Staff safety or well being*

*(ii) Ride operating conditions*

*(iii) Damage to ride equipment[.]*

*Activating this will cause the rides (sic) conveyor to stop”;*

**Particulars**

Memorandum addressed to Rapid Ride Operators and Load Operators, subject: Unload E-Stop, dated 18 October 2016

- (d) says the memoranda referred to in sub-paragraphs (b) and (c) above were not signed off or otherwise issued with the knowledge or approval of the Attractions Manager, as required;

- (e) says copies of the memoranda referred to above in sub-paragraphs (b) and (c) were located in a folder near the main operator control panel, along with the operating procedures for the TRRR;
- (f) says other than the memoranda referred to above in sub-paragraphs (b) and (c), the written procedures for the TRRR did not refer to the so-called “E-Stop” at the unload area; and
- (g) otherwise denies the paragraph.

36. In answer to paragraph 36 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraph 35 above;
- (b) in answer to sub-paragraph (a):
  - (i) says that the Emergency Stop Button took approximately 2 seconds to stop the Conveyor; and
  - (ii) otherwise admits the sub-paragraph;
- (c) in answer to sub-paragraph (b):
  - (i) says that the Conveyor Button took approximately 9 seconds to stop the Conveyor; and
  - (ii) otherwise admits the sub-paragraph; and
- (d) admits sub-paragraph (c) and says further that operators relied upon visual observations and oral communication.

### **C.3 Training and supervision**

37. In answer to paragraph 37 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraph 29 above;
- (b) says that:
  - (i) in training a Level 2 operator, the instructing operator directly supervised the trainee during the training session;
  - (ii) during the training session, the trainee was required to review and familiarise themselves with the operation procedures for the ride;

- (iii) unless a need for additional training was identified, at the end of the session, the trainee was then tasked with performing the Level 2 operator role without direct supervision; and
  - (c) otherwise admits the paragraph.
38. In answer to paragraph 38 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraph 29 above;
  - (b) says the training for a Level 3 operator on the TRRR was conducted at the ride by an instructing operator, who provided the trainee with instructions and assessed the trainee's competence in the role while the ride was in operation;
  - (c) says the training took a full day (approximately 8 hours);
  - (d) says the training included an assessment of competency regarding, amongst other things, start up and shutdown procedures;
  - (e) says that, the following day, the instructing operator would observe the trainee open and close the ride; and
  - (f) otherwise denies the paragraph.
39. In answer to paragraph 39 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 32, 37 and 38 above;
  - (b) says that training for operators included an assessment of competency regarding start up and shutdown procedures;
  - (c) says further that the emergency shutdown procedure was the same procedure used to shut down the ride at the end of each day; and
  - (d) otherwise admits the paragraph.

#### **C.4 TRRR modifications**

40. Ardent admits paragraph 40 of the Amended Statement of Claim.

40A Around the time when the TRRR was opened on 11 December 1986:

- (a) consulting engineers Binnie and Partners prepared the structural design and detailed drawings for the TRRR;
- (b) the construction of the TRRR was overseen by Mr Len Shaw, then the Engineering Services Manager for Dreamworld, who was a qualified engineer with extensive experience in the amusement industry and knowledge of the applicable laws and standards;

**Particulars**

- A. Prior to working at Dreamworld, Mr Shaw was an inspector with Work Health & Safety Queensland (WHSQ).
  - B. Mr Shaw was Chairman of the Committee for Standards Australia that wrote the first version of AS3533 in 1988.
- (c) the engineering drawings for the TRRR were provided to WHSQ and approved by the Chief Inspector of Machinery for the Division of Occupational Safety;
  - (d) the design of the TRRR was registered in accordance with applicable legislation at the time; and
  - (e) Michael Chan, an experienced WHSQ Inspector, was involved in the initial design registration of the TRRR in 1987.
41. In answer to paragraph 41 of the Amended Statement of Claim, Ardent:
- (a) admits the paragraph; and
  - (b) says further that:
    - (i) the slats were removed from the Conveyor only after the risks associated with doing so had been assessed during a trial period;
    - (ii) the Slat Removal was done at the instruction of and overseen by Mr Len Shaw; and
    - (iii) the slats remained in the same configuration between approximately 1989 or 1990 and 25 October 2016.
42. In answer to paragraph 42 of the Amended Statement of Claim, Ardent:
- (a) admits that the support railings (**Dry Dock Rails**) were installed following the removal of a large timber turntable at the unload station;

- (b) says that the installation of the Dry Dock Rails and the removal of the large timber turntable were carried out at the instruction of and overseen by Mr Len Shaw;
  - (c) denies that the Dry Dock Rails were installed in or around 2015;
  - (d) says the Dry Dock Rails were installed in or around 1990;
  - (e) says during the operation of the TRRR, the Dry Dock Rails were submerged, but when the water was removed, their primary purpose was to prevent rafts from dropping to the bottom of the channel;
  - (f) says there was a gap between the top end of the Conveyor and the edge of the Dry Dock Rails (**Gap**);
  - (g) says when measured from the first cross-member to the closest point of a plank on the Conveyor, the Gap was approximately 430mm, and when measured from the first cross-member to the exposed conveyor drive shaft, this gap was approximately 760mm;
  - (h) says that the Dry Dock Rails remained in the same position between in or around 1990 and 25 October 2016; and
  - (i) otherwise denies the paragraph.
43. In answer to paragraph 43 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 41 and 42 above;
  - (b) denies the paragraph; and
  - (c) says further that despite inspecting the TRRR on numerous occasions between the date of the Slat Removal and 25 October 2016, WHSQ did not identify the Slat Removal as a risk to the health and safety of passengers.

### **Particulars**

- A. WHSQ Inspectors visited Dreamworld on numerous occasions in the period 1990 to 2001.
- B. A group of 20 WHSQ inspectors conducted a park-wide audit of Dreamworld for 3 days starting on 18

November 2003. Four WHSQ inspectors inspected the TRRR at this time.

- C. WHSQ conducted further site visits and audits between 2003 and 25 October 2016 and did not issue any corrective notices or take any enforcement action in respect of the Slat Removal (or any other issue) on the TRRR.

44. In answer to paragraph 44 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 41 to 43, above;
  - (b) denies the paragraph; and
  - (c) says further that despite inspecting the TRRR on numerous occasions between the date of installation of the Dry Dock Rails and 25 October 2016, WHSQ did not identify the installation of the Dry Dock Rails or the creation of the Gap as posing a risk to the health and safety of passengers on the ride.

**Particulars**

The particulars to paragraph 43 above are repeated.

45. In answer to paragraph 45 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 41 and 42 above, and says that both the Slat Removal and installation of the Dry Dock Rails occurred in or around 1990, more than 10 years before Ardent acquired and commenced operation of Dreamworld;
  - (b) refers to and repeats paragraphs 43 and 44 above;
  - (c) admits that, as at 25 October 2016, no full risk assessment had been performed on the TRRR in accordance with AS3533; and
  - (d) otherwise denies the paragraph.
46. In answer to paragraph 46 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 41 to 44 above;
  - (b) denies that any risk posed to the health and safety of passengers on the TRRR posed by the Slat Removal and/or the installation of the Dry Dock



Rails were “obvious” (as pleaded in paragraphs 43 and 44 of the Amended Statement of Claim); and

- (c) otherwise admits the paragraph.

### **C.5 TRRR incidents**

47. In answer to paragraph 47 of the Amended Statement of Claim, Ardent:

- (a) admits there were incidents on the TRRR on each of the specified dates;
- (b) says on 18 January 2001, multiple empty rafts became jammed in the unload section at the top of the Conveyor during a pre-start run of the TRRR. Two empty rafts were stationary at the unload section after an operator did not open the gate to release the rafts back to the load area. Three further empty rafts came off the Conveyor and collided with the stationary rafts and the compacting effect resulted in one raft inverting (**2001 Incident**);
- (c) says further that it conducted an internal investigation into the 2001 Incident and prepared an investigation report, which concluded that:
  - (i) the start-up procedure was not adhered to, and the operator or did not follow the correct emergency response procedure;
  - (ii) contributing factors to the incident included that the attention of the operator was diverted and the second operator was sick so there were not two operators to start the ride;
  - (iii) the possibility of the same event occurring with guests on rafts was “nil” for reasons including that there would have been a second operator present and the dispatch time between rafts would have been greater;
  - (iv) at that time, there was a wooden platform in the area between the load and unload area, which protruded into the channel, presenting a potential obstruction to rafts and contributing to the rafts becoming jammed during this incident. An engineering solution was implemented shortly after the 2001 Incident, by altering the wooden platform to eliminate the potential for a raft to become jammed on the wooden platform;

**Particulars**

Incident Report No HI01/0019 - Property Damage, and Rapid Ride incident report pictures.

- (d) says that on or about 7 October 2004, as a guest was disembarking from a raft at the unload area, another raft entered the unload area and contacted the first stationary raft. The guest lost balance and fell from the raft into the water;
- (e) says further that it conducted an internal investigation into the incident on 7 October 2004 and prepared an investigation report, which included suggested corrective actions. The following engineering solutions and corrective actions were implemented:
  - (i) an e-stop button was installed in the unload area to immediately shutdown one of the pumps which circulates water through the ride;
  - (ii) a timer was installed which released rafts from the loading dock at a predetermined interval, thereby reducing the number of rafts circulating on the ride;
  - (iii) an additional raft hold gate was installed before the unload area, ensuring that an approaching raft would not contact one stationed in the unload area;
  - (iv) changes were made to the training regime for ride operators, including refresher training; and
  - (v) the procedure manual was updated and the training auditing checklists were expanded to include an assessment of rafts queuing in the unload area;

**Particulars**

Incident Report, Rapid Rides, 7 October 2004

- (f) says further that the incident on 7 October 2004 was reported to WHSQ, who also conducted an investigation into the incident. No regulatory or enforcement action was taken by WHSQ as a result of the investigation;

**Particulars**

Incident Report, Rapid Rides, 7 October 2004

- (g) says on 28 August 2005, a raft became stationary at the base of the Conveyor and a second raft stopped behind it. The rafts were then pushed onto the Conveyor by a third raft, with all three rafts travelling up the conveyor together;
- (h) says further that:
  - (i) it conducted an internal investigation into the incident on 28 August 2005 and prepared an investigation report;
  - (ii) the investigation report identified that a possible contributing factor to the incident was that the first raft had taken on excess water which may have accounted for its difficult transition onto the Conveyor and its low stance when sitting in the water, and the possibility that the location of the camera providing CCTV coverage of the Conveyor was inappropriate which compromised the ability of the operator to monitor the Conveyor effectively;

### **Particulars**

Incident Investigation Report, Rapid Ride, 28 August 2005.

- (iii) subsequent to the investigation, an engineering solution was implemented by installing an additional CCTV screen at the load area; and
- (iv) following a risk assessment at the base of the conveyor, modifications were made to the TRRR in February 2016 to monitor for stationary rafts at the base of the Conveyor and automatically shut down the Conveyor if a stationary raft was detected;
- (i) says on 30 June 2010, there was a report that a guest fell into the water whilst helping another guest out of the raft. Other rafts pushed through the stopping jack and contacted the stationary raft;

### **Particulars**

Figtree Incident Log Report

- (j) says on 16 September 2011, there was a report from a guest that a raft climbing the Conveyor had slipped down and contacted another raft at the bottom of the Conveyor;

**Particulars**

Figtree Incident Log Report

- (k) denies, with the exception of the reported incident on 16 September 2011, that any of the above incidents involved one raft making contact with another raft on the Conveyor;
  - (l) denies that any of the above incidents involved rafts colliding on the Conveyor; and
  - (m) otherwise denies the paragraph.
48. In answer to paragraph 48 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraph 47 above;
  - (b) says on 6 November 2014, two rafts containing guests collided at the top of the Conveyor after the first raft became stranded when the operator at the load area shutdown a pump, causing a drop in water level. After the rafts made contact, the Conveyor continued to move under the second raft until the Conveyor was shutdown. The operator then proceeded to manually restart the pump and conveyor without authorisation in an effort to retrieve rafts;
  - (c) says further that it conducted an internal investigation into the incident, which concluded that the operator had breached procedure. Following a disciplinary process, the operator was subsequently dismissed as a result of the 2014 Incident; and

**Particulars**

Letter to Termination of Employment to Stephen Buss dated 14 November 2014.

- (d) otherwise denies the paragraph.
49. In answer to paragraph 49 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraphs 47 and 48 above; and
  - (b) otherwise denies the paragraph.
50. In answer to paragraph 50 the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 47 to 49 above;
  - (b) says it did conduct investigations, and identify and implement corrective actions following the 2001 Incident, the other incidents referred to in sub-paragraphs 47(b) to (e) of the Amended Statement of Claim, and the 2014 Incident;
  - (c) admits that, as at 25 October 2016, no full risk assessment had been performed on the TRRR in accordance with AS3533; and
  - (d) otherwise denies the paragraph.
51. In answer to paragraph 51 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 47 to 50 above;
  - (b) says that it did conduct investigations, and identify and implement corrective actions, including engineering solutions, following the 2001 Incident, the other incidents referred to in sub-paragraphs 47(b) to (e) of the Amended Statement of Claim, and the 2014 Incident; and
  - (c) otherwise denies the paragraph.

### **C.6 JAK's safety audits**

52. Ardent admits paragraph 52 of the Amended Statement of Claim.
53. Ardent admits paragraph 53 of the Amended Statement of Claim.
54. In answer to paragraph 54 of the Amended Statement of Claim, Ardent:
- (a) admits sub-paragraph (a); and
  - (b) save to say that the recommendation pleaded in sub-paragraph (b) did not relate to the TRRR specifically, admits sub-paragraph (b).
55. In answer to paragraph 55 of the Amended Statement of Claim, Ardent:
- (a) admits sub-paragraph (a); and

- (b) save to say that the recommendations were not made in respect of the TRRR specifically, otherwise admits sub-paragraphs (b) and (c).
56. In answer to paragraph 56 of the Amended Statement of Claim, Ardent:
- (a) admits sub-paragraph (a); and
  - (b) save to say that the recommendations were not made in respect of the TRRR specifically, otherwise admits sub-paragraphs (b) and (c).
57. In answer to paragraph 57 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 52 to 56, above;
  - (b) says that the recommendations made by JAK in respect of staffing levels did not relate to the TRRR specifically; and
  - (c) otherwise admits the paragraph.

#### **C.7 DRA's safety audits**

58. In answer to paragraph 58 of the Amended Statement of Claim, Ardent:
- (a) admits the paragraph; and
  - (b) says further that:
    - (i) the Managing Director of DRA, David Randall was and is a RPEQ, a fellow of the Safety Institute of Australia and an Exemplar Global certified OHS auditor;
    - (ii) the pass standard for the National Audit Tool is set by State Government regulators in order to obtain approval to self-insure;

#### **Particulars**

Letter from DRA Safety Specialists to Angus Hutchings, dated 11 July 2012.

- (iii) the National Audit Tool was voluntarily adopted by Dreamworld as a convenient audit tool in circumstances where ALL had no intention of self-insuring and was not otherwise required or obliged to conduct an audit against this standard;

- (iv) the National Audit Tool is concerned with the formal documentation of safety management systems;
- (v) the absence of a passing score did not indicate that Dreamworld was unsafe; and
- (vi) the 2013 DRA audit concluded that:
  - (1) the physical requirements of the legislation was being met in most areas but could not be supported with records or procedures;
  - (2) the rides and attractions at Dreamworld were well maintained with competent staff, however there was no documentary evidence to support the process.

### **Particulars**

DRA Audit Report dated 4-8 February 2013, executive summary.

- 59. In answer to paragraph 59 of the Amended Statement of Claim, Ardent:
  - (a) refers to and repeats paragraph 58 above; and
  - (b) otherwise admits the paragraph.
- 60. In answer to paragraph 60 of the Amended Statement of Claim, Ardent:
  - (a) refers to and repeats paragraph 58 above; and
  - (b) otherwise admits the paragraph.
- 61. Ardent admits paragraph 61 of the Amended Statement of Claim.
- 62. In answer to paragraph 62 of the Amended Statement of Claim, Ardent:
  - (a) admits that Dreamworld employed Mr Cruz, a first year engineer, on or around 29 September 2014 and that he was tasked with conducting an internal audit of the records maintained by Dreamworld in relation to its rides by reference to Australian Standard 3533;
  - (b) says further that Mr Cruz, in accordance with instructions from his supervisor, prioritised the highest risk rides first according to the ride's classification under the applicable Australian Standard, such that rides

with a class 5 classification (being the highest risk) were audited first, followed by class 4 rides, and the lower risk rides last;

- (c) says the TRRR was a class 2 ride;
- (d) admits that by the end of the Relevant Period, Mr Cruz had not yet commenced an audit of the documentation relating to the TRRR against AS 3533; and
- (e) otherwise denies the paragraph.

### **C.8 Staff concerns**

63. In answer to paragraph 63 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraphs 47 and 48, above;
- (b) admits that Bob Tan emailed Mr Davidson, Mr Deaves, Mr Margetts and others on the Dreamworld leadership team on 13 November 2014 (the **Bob Tan Email**), referring them to the 2001 Incident on the TRRR;
- (c) says that the Bob Tan Email attached several photographs and stated:
 

*“Further to today’s Leadership meeting on the procedures breeches [sic] / deviations, below are just a peek of relevant incidents to bring home the point, if not already stressed by Craig [...] This occurred on the rapid ride several years ago, and fortunately there was no injury except for property damage. I shudder to think if there had been guests on the rafts...”*
- (d) otherwise relies on the email exchange in full;

### **Particulars**

Email from Bob Tan to Dreamworld Leadership Team on 13 November 2014, subject “Re: Ride incidents of relevance”.

- (e) says that prior to the Bob Tan Email, the 2001 Incident was discussed at a Dreamworld leadership meeting earlier on 13 November 2014, in the context of issues associated with ride operators breaching procedure; and
- (f) otherwise denies the paragraph.



64. In answer to paragraph 64 of the Amended Statement of Claim, Ardent:
- (a) admits that on 17 November 2014, Dreamworld ride operator, Mr Drisdale, sent an email with the subject “*Rapid ride, cyclone feed back*” to the email address “*Dreamworld Operations Ideas*”;
  - (b) relies upon the contents of the email in full;
  - (c) says that Mr Drisdale did not have any relevant engineering or OHS qualifications; and
  - (d) otherwise admits the paragraph.
65. In answer to paragraph 65 of the Amended Statement of Claim, Ardent:
- (a) admits that at or around 3:11pm on 6 May 2016, a Dreamworld Attractions Supervisor, Mr Jason Johns, sent Mr John Lossie, a Senior Maintenance Technician in the Engineering Department an email with the subject “*Thunder River Rapids*”;
  - (b) relies upon the contents of the email in full;

**Particulars**

Email from Jason Johns to John Lossie on 6 May 2016 at around 3:11pm.

- (c) says further, Mr Lossie responded on the same day saying: “*I’ll look into what would be required for this to be a one push button*”; and

**Particulars**

Email from John Lossie to Jason Johns on 6 May 2016 at around 3:18pm.

- (d) otherwise denies the paragraph.

66. In answer to paragraph 66 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 32, 56 and 63 to 65 above;
  - (b) in answer to sub-paragraph (b), says that the allegations pleaded in paragraphs 63 to 65 do not relate to staffing levels for the TRRR; and

- (c) otherwise admits the paragraph.

### **C.9 Hazard identification and risk assessment**

67. In answer to paragraph 67 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 45 and 50 above;
  - (b) admits that, as at 25 October 2016, no full risk assessment had been performed on the TRRR in accordance with AS3533; and
  - (c) otherwise denies the paragraph.

### **C.10 Engineering response to risks**

68. In answer to paragraph 68 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 46, 51 and 57 above; and
  - (b) otherwise admits the paragraph.

### **C.11 Record keeping**

69. In answer to paragraph 69 of the Amended Statement of Claim, Ardent:
- (a) says at the time when it acquired Dreamworld, the TRRR had been in operation for over 16 years;
  - (b) says that it kept the records in respect of the TRRR provided to it by the previous owners of Dreamworld;
  - (c) says further that it kept records of tests, inspections, maintenance, commissioning and alterations carried out on the TRRR since it acquired Dreamworld; and
  - (d) otherwise admits the paragraph.

### **C.12 Regulatory Contraventions**

70. Ardent admits paragraph 70 of the Amended Statement of Claim.
71. Ardent admits paragraph 71 of the Amended Statement of Claim.
72. Ardent admits paragraph 72 of the Amended Statement of Claim.

73. Ardent admits paragraph 73 of the Amended Statement of Claim.
74. Ardent admits paragraph 74 of the Amended Statement of Claim.
75. Ardent admits paragraph 75 of the Amended Statement of Claim.
76. Ardent admits paragraph 76 of the Amended Statement of Claim.
77. In answer to paragraph 77 of the Amended Statement of Claim. Ardent:
- (a) does not know and therefore cannot admit sub-paragraph (c) and says further that s 242A of the WHSR came into effect on 1 May 2019; and
  - (b) otherwise admits the paragraph.
78. Ardent does not know and therefore cannot admit paragraph 78 in the Amended Statement of Claim.
79. In answer to paragraph 79 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 70 to 78 above;
  - (b) admits that the TRRR was operated in contravention of the WHSA to the extent (and only to the extent) admitted in paragraphs 71, 72 and 73 above;
  - (c) says the contraventions admitted in sub-paragraph (b) above occurred on or before 25 October 2016; and
  - (d) otherwise does not know and therefore cannot admit the paragraph.

### **C.13 Australian Standards**

80. Ardent does not plead to paragraph 80 of the Amended Statement of Claim as this paragraph contains no allegation against it.
81. In answer to paragraph 81 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 41 to 44 and 47 and 48 above;
  - (b) admits that, as at 25 October 2016, no full risk assessment had been performed on the TRRR in accordance with AS3533; and
  - (c) otherwise denies the paragraph.

82. Ardent does not plead to paragraph 82 of the Amended Statement of Claim as this paragraph contains no allegations against it.
83. Ardent does not know and therefore cannot admit paragraph 83 of the Amended Statement of Claim.
84. Ardent does not plead to paragraph 84 of the Amended Statement of Claim as this paragraph contains no allegations against it.
85. In answer to paragraph 85 of the Amended Statement of Claim, Ardent:
- (a) admits there was a Gap between the end of the Conveyor and the Dry Dock Rails, as pleaded above in paragraph 42; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.
86. In answer to paragraph 86 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 80 to 85 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

#### **C.14 International Standards**

87. Ardent does not plead to paragraph 87 of the Amended Statement of Claim as this paragraph contains no allegations against it.
88. Ardent does not plead to paragraph 88 of the Amended Statement of Claim as this paragraph contains no allegations against it.
89. Ardent does not know and therefore cannot admit paragraph 89 of the Amended Statement of Claim.
90. In answer to paragraph 90 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 87 to 89, above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.

#### **C.15 Registration**

91. Ardent admits paragraph 91 of the Amended Statement of Claim.
92. Ardent admits paragraph 92 of the Amended Statement of Claim.

93. In answer to paragraph 93 of the Amended Statement of Claim, Ardent:
- (a) admits the paragraph; and
  - (b) says it was granted a further extension by WHSQ until 1 December 2016.

**Particulars**

Email from Yvan Contreras to Mark Thompson on 5 October 2016 at or around 1:37pm.

94. In answer to paragraph 94 of the Amended Statement of Claim, Ardent:
- (a) says Mr Polley was engaged in August 2016 to carry out the annual inspection of the Class 2 rides (being 13 rides in total) at Dreamworld, since the inspection of the smaller rides had already been completed;

**Particulars**

A. Email from Mark Thompson to Michael Chan on 29 September 2016 at or around 3:05pm.

B. Memorandum prepared by Tom Polley, subject: “2016 Annual Mechanical and Structural Inspections of Class 2 Amusement Devices”.

- (b) says that Mr Polley was a Registered Professional Engineer in Queensland (**RPEQ**) and held himself out as having extensive experience in the amusement park industry; and
  - (c) otherwise denies the paragraph.
95. In answer to paragraph 95 of the Amended Statement of Claim, Ardent:

- (a) admits Mr Thompson, on behalf of ALL, emailed WHSQ on 29 September 2016;
- (b) says that the email stated, as was the case, that the inspection of the TRRR had been completed; and

**Particulars**

Email from Mark Thompson to Michael Chan on 29 September 2016

(c) otherwise denies the paragraph.

96. In answer to paragraph 96 of the Amended Statement of Claim, Ardent:

(a) says that Mr Polley inspected the TRRR on 22 and 29 September 2016;

(b) says that Mr Polley issued a certificate in respect of the TRRR dated 17 October 2016;

### **Particulars**

#### Rapid Ride 2016 Annual Mechanical and Structure Inspection Certificate/ Report

(c) relies upon the contents of the certificate referred to in sub-paragraph (b) above in full;

(d) says that Mr Polley certified the TRRR on 17 October 2016; and

(e) otherwise denies the paragraph.

97. In answer to paragraph 97 of the Amended Statement of Claim, Ardent:

(a) refers to and repeats paragraphs 94 to 96 above;

(b) admits sub-paragraph (c);

(c) says that Mr Polley held himself out as being a ‘competent person’; and

(d) otherwise does not know and therefore cannot admit the paragraph.

98. In answer to paragraph 98 of the Amended Statement of Claim, Ardent:

(a) refers to and repeats paragraph 97 above; and

(b) otherwise does not know and therefore cannot admit the paragraph.

## **D. THE DREAMWORLD TRAGEDY**

### **D.1 The Incident**

99. In answer to paragraph 99 of the Amended Statement of Claim, Ardent:

(a) says that the passenger referred to as “Ebony Goodchild” is known as Ebony Turner;

- (b) says further that passengers Ebony Turner and Kieran Low were aged 12 and 10 years old respectively at the time of the Incident; and
- (c) otherwise admits the paragraph.

## **D.2 Events following the Incident**

- 100. Save to say Dreamworld issued press statements about the Incident at approximately 4.45pm and 8pm on 25 October 2016, Ardent otherwise admits paragraph 100 of the Amended Statement of Claim.
- 101. Ardent admits paragraph 101 of the Amended Statement of Claim.
- 102. In answer to paragraph 102 of the Amended Statement of Claim, Ardent:
  - (a) admits that the price of AAD stapled securities declined on 25 and 26 October 2016;
  - (b) admits that Dreamworld was closed for 45 days and reopened on 10 December 2016;
  - (c) admits that AAD recognised a statutory loss of \$49.4 million for the half year ending 31 December 2016;
  - (d) admits that the price of AAD stapled securities declined on 23 February 2017; and
  - (e) otherwise denies the paragraph.
- 103. In answer to paragraph 103 of the Amended Statement of Claim, Ardent:
  - (a) admits that the AAD 2017 Annual Report stated that it had completed a multi-tiered mechanical and operational safety review following the Incident;
  - (b) admits sub-paragraphs (b), (d) and (f);
  - (c) save to say that the new acting CEO of Dreamworld was only appointed on 2 July 2018, otherwise admits sub-paragraph (c); and
  - (d) otherwise does not know and therefore cannot admit the paragraph.

## E. CONTRAVENTIONS

### E.1 Misleading or Deceptive Conduct

104. In answer to paragraph 104 of the Amended Statement of Claim, Ardent:

- (a) says that a statement to the effect of the Website Safety Statement was published on Dreamworld’s website from 12 April 2013 until on or about 7 January 2015 at the following URL:  
<https://www.dreamworld.com.au/Rides/Maintenance/>;
- (b) says that, once in Dreamworld’s website, in order to view the Website Safety Statement, consumers had to click on a page entitled “Rides” and a further page entitled “Maintenance”; and
- (c) otherwise denies the paragraph.

105. In answer to paragraph 105 of the Amended Statement of Claim, Ardent:

- (a) admits the paragraph;
- (b) says further that the Annual Report Safety Statement was published as part of Ardent’s Corporate Governance Statements in its Annual Reports, which included a total of 8 principles and, with the exception of the 2013 Annual Report, was published as a separate annexure to the Annual Report;

#### **Particulars**

The statement appears on page 10 of 141 in the 2013 Annual Report; page 139 of 154, in a separate annexure of the 2014 Annual Report; page 141 of 154 in a separate annexure of the 2015 Annual Report; and page 152 of 155 in a separate annexure of the 2016 Annual Report.

- (c) says further that the aspect of principle 7 which is said in paragraph 105 of the Amended Statement of Claim to constitute the Annual Report Safety Statement was published under the heading: “Safety, Sustainability and Environment Committee”, being the committee which the Applicants otherwise refer to as the “AAD Safety Committee”; and



- (d) relies on the content of the Corporate Governance Statements in each of its Annual Reports in full.
106. In answer to paragraph 106 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 104 and 105 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.
107. In answer to paragraph 107 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 104 to 106 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.
108. In answer to paragraph 108 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 104 to 107 above; and
  - (b) otherwise does not know and therefore cannot admit the paragraph.
109. In answer to paragraph 109 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 14 and 15 and 29 to 98 above; and
  - (b) otherwise denies the paragraph.
110. In answer to paragraph 110 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 14 and 15 and 29 to 98 above; and
  - (b) otherwise denies the paragraph.
111. In answer to paragraph 111 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 14 and 15 and 29 to 98 above; and
  - (b) otherwise denies the paragraph.
112. In answer to paragraph 112 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 14 and 15 and 29 to 98 above; and
  - (b) otherwise denies the paragraph.
113. In answer to paragraph 113 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraphs 104 to 112 above; and
- (b) denies the paragraph.

## **E.2 Continuous Disclosure Contravention**

114. In answer to paragraph 114 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraphs 29 to 98 above; and
- (b) denies the paragraph.

115. In answer to paragraph 115 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraph 114 above;
- (b) says that if the “Incident Information” referred to in paragraph 114(a) existed (which is denied), it would be in the nature of an opinion or opinions; and
- (c) otherwise denies the paragraph.

116. In answer to paragraph 116 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraph 114 above;
- (b) says that if the “Incident Impact Information” referred to in paragraph 114(b) existed (which is denied), it would be in the nature of an opinion or opinions; and
- (c) otherwise denies the paragraph.

117. In answer to paragraph 117 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraphs 114 to 116 above; and
- (b) admits that the Incident Information and the Incident Impact Information were not generally available within the meaning of section 676 of the Corporations Act as at and from the commencement of the Relevant Period and says further that the Incident Information and the Incident Impact Information did not exist at and from the commencement of the Relevant Period, as pleaded at paragraph 114 above, and so was not information for the purposes of section 676 of the Corporations Act.

118. In answer to paragraph 118 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 114 to 117 above; and
  - (b) denies the paragraph.
119. In answer to paragraph 119 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 114 to 118 above;
  - (b) says that if the Incident Information and the Incident Impact Information existed (which is denied) and Ardent was aware of it (which is also denied):
    - (i) the information comprised matters of supposition or was insufficiently definite to warrant disclosure; and
    - (ii) a reasonable person would not expect the information to be disclosed; and
  - (c) otherwise denies the paragraph.
120. In answer to paragraph 120 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 114 to 119 above; and
  - (b) denies the paragraph.
121. In answer to paragraph 121 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 114 to 119 above;
  - (b) admits that Ardent did not notify the ASX of the Incident Information or the Incident Impact Information but does not thereby admit that the Incident Information or the Incident Impact Information existed, that Ardent was aware of it or that Ardent was obliged to notify the ASX of either the Incident Information or the Incident Impact Information; and
  - (c) otherwise denies the paragraph.
122. In answer to paragraph 122 of the Amended Statement of Claim, Ardent:
- (a) refers to and repeats paragraphs 114 to 121 above; and

- (b) denies the paragraph.

### **E.3 Continuing Nature of the Contraventions**

123. In answer to paragraph 123 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraphs 104 to 121 above; and
- (b) denies the paragraph.

## **F. CONTRAVENING CONDUCT OF DAVIDSON**

124. Ardent does not plead to paragraph 124 of the Amended Statement of Claim as this paragraph contains no allegation against it.

125. Ardent does not plead to paragraph 125 of the Amended Statement of Claim as this paragraph contains no allegation against it.

126. Ardent does not plead to paragraph 126 of the Amended Statement of Claim as this paragraph contains no allegation against it.

127. Ardent does not plead to paragraph 127 of the Amended Statement of Claim as this paragraph contains no allegation against it.

128. Ardent does not plead to paragraph 128 of the Amended Statement of Claim as this paragraph contains no allegation against it.

129. Ardent does not plead to paragraph 129 of the Amended Statement of Claim as this paragraph contains no allegation against it.

## **G. CONTRAVENING CONDUCT CAUSED LOSS**

### **G.1 Market based causation**

130. In answer to paragraph 130 of the Amended Statement of Claim, Ardent:

- (a) admits sub-paragraphs (a) and (b);
- (b) does not know and therefore cannot admit sub-paragraph (c);
- (c) refers to and repeats paragraphs 104 to 121 above; and
- (d) otherwise denies the paragraph.

131. Ardent denies paragraph 131 of the Amended Statement of Claim.

**G.2 Reliance**

132. In answer to paragraph 132 of the Amended Statement of Claim, Ardent:

- (a) refers to and repeats paragraphs 104 to 121 above; and
- (b) otherwise denies the paragraph.

**G.3 Loss or Damage suffered by the Applicants and Group Members**

133. Ardent denies paragraph 133 of the Amended Statement of Claim.

**H. LIABILITY OF ALG**

134. Ardent admits paragraph 134 of the Amended Statement of Claim.

135. Ardent admits paragraph 135 of the Amended Statement of Claim.

136. Ardent admits paragraph 136 of the Amended Statement of Claim.

137. Ardent denies paragraph 137 of the Amended Statement of Claim.

Date: ~~5 March~~ 7 December 2021



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Signed by Michael Gibson Mills  
Lawyer for the First, Second and Third  
Respondents

This pleading was prepared by Quinn Emanuel Urquhart & Sullivan, LLP and settled by Nicholas Owens SC and Kate Lindeman of Counsel.

**Certificate of lawyer**

I Michael Gibson Mills certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~5 March~~ 7 December 2021



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Signed by Michael Gibson Mills  
Lawyer for the First, Second and Third  
Respondents