

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID769/2021
File Title: WATSON & CO SUPERANNUATION PTY LTD v DIXON ADVISORY
AND SUPERANNUATION SERVICES LTD & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 23/12/2021 9:34:39 AM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



STATEMENT OF CLAIM

No. VID of 2021

Federal Court of Australia
District Registry: Victoria
Division: General

Watson & Co Superannuation Pty Ltd (ACN 601 686 828) atf Watson & Co Superannuation Fund

Applicant

Dixon Advisory and Superannuation Services Ltd (ACN 103 071 665) (& Ors according to the Schedule)

Respondents

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PART A – APPLICANT AND GROUP MEMBERS

Applicant

1. The Applicant, Watson & Co Superannuation Pty Ltd (**WCS**) at all material times:
 - (a) was and is a company incorporated according to law;
 - (b) was and is able to be sued in its corporate name and style; and

- (c) was and is the trustee of the Watson & Co Superannuation Fund (the **Watson SMSF**).

Group members

2. WCS commences this proceeding on its own behalf and on behalf of all persons who:
- (a) at any time during the period from 15 April 2011 to 23 December 2021 (the **Relevant Period**) were, within the meaning of s 761G of the *Corporations Act 2011 (Cth)* (the **Corporations Act**), retail clients of the financial advisory business carried on by Dixon Advisory and Superannuation Services Ltd (**DASS**) and described below; and
 - (b) on or after 22 December 2015, while a client of DASS, held or acquired interests in the property investment fund known as the US Masters Residential Property Fund (the **URF**, and such interests being **Relevant URF Interests**); and
 - (c) allege they suffered loss and damage in respect of their Relevant URF Interests, by reason of the matters set out in this Statement of Claim; and
 - (d) are not, as at the date of commencement of this proceeding:
 - (i) any of:
 - A. a director or officer, or a close associate (as defined by s 9 of the Corporations Act);
 - B. a related party (as defined by s 228 of the Corporations Act);
 - C. a related body corporate (as defined by s 50 of the Corporations Act); or
 - D. an associated entity (as defined by s 50AAA of the Corporations Act);
 of a Respondent; or
 - (ii) a Justice or Registrar of the Federal Court of Australia or the High Court of Australia;
- (such other persons being **Group Members**, and the Applicant and Group Members being together and severally **Claimants**).
3. As at the time of commencement of this proceeding there are seven or more Claimants.

PART B – EVANS DIXON GROUP

4. The first respondent, DASS, at all material times:
 - (a) was and is a company incorporated according to law;
 - (b) was and is able to be sued in its corporate name and style;
 - (c) was:
 - (i) at all material times up to 23 May 2016 – a wholly-owned subsidiary of ED Operations Pty Ltd (now called E&P Operations Pty Ltd) (ACN 080 207 076) (**ED Operations**); and
 - (ii) from 23 May 2016 – a wholly-owned subsidiary of Evans Dixon Limited (now called E&P Financial Group Limited (ACN 609 913 457) (**EDL**); and
 - (d) held Australian Financial Services Licence no. 231143 (the **DASS AFSL**).

5. The second respondent, EDL:
 - (a) at all material times was and is a company incorporated according to law;
 - (b) at all material times was and is able to be sued in its corporate name and style;
 - (c) was from 23 February 2018 until 11 November 2020 called Evans Dixon Limited;
 - (d) since 11 November 2020 has been and is called E&P Financial Group Limited; and
 - (e) has been from 23 May 2016, and is, the ultimate holding company of DASS.

6. The third respondent, Alan Cochrane **Dixon**:
 - (a) is a natural person;
 - (b) between 5 December 2002 and 27 August 2015 was a director of DASS;
 - (c) between 25 September 1997 and 23 January 2019 was a director of ED Operations;
 - (d) between 18 December 2015 and 2 July 2020 was a director of EDL;
 - (e) between 28 May 2015 and 1 November 2019 was a director of URF Investment Management Pty Ltd (**URF Investment**); and
 - (f) between 2013 to 2019 was a member of the DASS Investment Committee (**DASS IC**)

7. The fourth respondent, Christopher Matthew **Brown**:

- (a) is a natural person;
- (b) between 15 March 2011 and 23 July 2019 was a director of DASS;
- (c) between 18 December 2015 and 23 March 2018 was a director of EDL;
- (d) between 28 May 2015 and 27 August 2015 was a director of URF Investment; and
- (e) between 18 December 2015 to 23 March 2018 a member of the DASS IC.

Relevant Officers

8. Patrick Harry **Broughton**:

- (a) is a natural person;
- (b) between 18 December 2015 and 23 March 2018 was a director of EDL; and
- (c) was at all material times referred to below a member of the Investment Committee (**DASS IC**).

9. Alexander Gen **MacLachlan**:

- (a) is a natural person;
- (b) between 15 March 2011 and 27 August 2015, was a director of DASS;
- (c) has been, from a date known to the Respondents but not presently known to the Applicant, and is the CEO (Funds Management) of EDL;
- (d) between 27 June 2012 and 19 December 2019 was a director of Walsh & Co Investments Pty Ltd (**Walsh & Co**), now known as E&P Investments Limited (**E&P Investments**);
- (e) has been, from a date known to the Respondents but not presently known to the Applicant, and is the Chairman and CEO of Walsh & Co, now known as E&P Investments; and
- (f) between 28 May 2015 and 3 October 2021 was a director of URF Investment.

10. Nerida Catherine **Cole**:

- (a) is a natural person;

- (b) between 27 August 2015 and 20 May 2021 was a director of DASS;
- (c) has been, from a date known to the Respondents but not presently known to the Applicant, and is:
 - (i) the Managing Director and Head of Advice of DASS; and
 - (ii) the Head of Advice of EDL.

11. Lyle Fagan **Meaney**:

- (a) is a natural person;
- (b) has been since 27 August 2015 and is a director of DASS; and
- (c) has been, from a date known to the Respondents but not presently known to the Applicant, and is the Managing Director and CEO of EDL.

Evans Dixon Group – corporate structure

12. At all material times from not later than 31 July 2012 until 23 May 2016, ED Operations was the ultimate holding company of:
- (a) DASS;
 - (b) Walsh & Co; and
 - (c) URF Investment.
13. At all material times since 23 May 2016 EDL was and is the ultimate holding company of a group of companies (**ED Group**) including, *inter alia*:
- (a) ED Operations;
 - (b) DASS;
 - (c) Walsh & Co, now known as E&P Investments; and
 - (d) URF Investment.

PART C – DASS FINANCIAL ADVISORY BUSINESS

14. At all material times during the Relevant Period DASS:
- (a) carried on a business (**DASS advisory business**), *inter alia*:
 - (i) providing financial product advice and investment portfolio management services to retail clients (**Clients**), within the meaning of:
 - A. s 766B(1) of the *Corporations Act*; further or alternatively
 - B. s 12BAB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (ii) providing personal advice to Clients, within the meaning of s 766B(3) of the *Corporations Act*; and
 - (iii) dealing in financial products within the meaning of:
 - A. s 766(2) of the *Corporations Act*; further or alternatively
 - B. s 12BAA of the *ASIC Act*;
 - (b) was a “financial service provider” within the meaning of the *Corporations Act*; and
 - (c) provided the services in (a) and (b) to Clients by persons:
 - (i) employed as financial advisors by DASS or by related entities of DASS; or
 - (ii) authorised to act on its behalf;
- (DASS Advisors).**

Particulars

Sections 910A, 916A and 960 of the Corporations Act. Further particulars relating to the DASS Advisors may be provided following discovery.

15. At all material times the DASS Advisors were remunerated by, *inter alia*, periodic bonuses calculated according to:
- (a) the commissions received by DASS as a result of financial product advice provided by the DASS Advisors to Clients; and
 - (b) the profitability of DASS, including as a result of revenues from services provided by DASS to related entities in which Clients had invested.

Risk profiles and approved investments

16. At all material times DASS categorised Clients *inter alia* according to DASS's assessment of each Client's preparedness to take, or suitability for taking, financial risks in respect of the Client's investment activities (**risk profiles**).

Particulars

So far as WCS is able to say prior to discovery, the risk profiles:

- i. were described as "Cash & Income Investment Only", "Conservative", "Moderately Conservative", "Balanced", "Assertive" and "Aggressive";*
- ii. were assigned numeric values whereby:*
 - A. Risk profile "1" was characterised by a large concern with the protection of capital, a very low level of comfort for volatility and a preparedness to bear some impact of inflation eroding their income and capital to reduce risk;*
 - B. Risk profile "2" was characterised by a concern with protection of capital, priority of generating regular income over capturing capital growth and a low level of comfort for volatility.*
 - C. Risk profile "3" was characterised by a primary concern to generate a level of income above the prevailing Australian inflation rate, and a preparedness to accept a low to moderate level of volatility;*
 - D. Risk profile "4" was characterised by a primary concern to achieve a moderate level of capital growth and a moderate level of income, and preparedness to accept a moderate level of volatility; and*
 - E. Risk profile "5" was characterised by a primary concern to achieve a high level of capital growth where generating income was not a priority, and preparedness to accept a high level of volatility and possible capital losses to generate high levels of capital growth over the long term.*
 - F. Risk profile of "6" was characterised by a primary concern to achieve a very high level of growth over the long term*

where generating income is not a priority, and preparedness to accept a very high level of volatility and possible capital losses to achieve very high returns over the long term.

- G. *Risk profile of “7” was characterised by a primary concern to achieve very high level growth over the long term where generating income is not required, and a preparedness to accept very high levels of volatility and possible capital losses to achieve very high returns over the long term.*

Further particulars may be provided following discovery.

17. At all material times the range of financial products about which DASS Advisors were permitted to make purchase recommendations to Clients was:
- (a) determined by an investment committee established by DASS (**DASS Investment Committee** or **DASS IC**); and
 - (b) listed on an Approved Products List (**APL**) updated from time to time by or at the direction of the DASS IC.

Particulars

Particulars of the APLs as in place from time to time may be provided following discovery.

18. During some or all of the Relevant Period the DASS IC included:
- (a) Dixon, including during periods while Dixon was:
 - (i) a director of DASS;
 - (ii) a director of EDL;
 - (iii) a director of ED Operations; and
 - (iv) a director of URF Investment
 - (b) Broughton, including during periods while Broughton was a director of EDL; and
 - (c) Brown, including during periods while Brown was a director of EDL.

Particulars

Further particulars as to the periods of membership of members of the DASS IC may be provided following discovery.

19. From time to time during the Relevant Period the DASS IC issued directions to the DASS Advisors (**Determinations**) to the effect that the Advisors should recommend that Clients purchase specified financial products in amounts determined according to criteria set out in the Determinations.

Particulars

Further particulars as to the dates and details of Determinations will be provided following discovery.

PART D – THE URF

20. On or about 1 April 2011, companies in the ED Group established the URF.

Particulars

So far as the Applicant is able to say prior to discovery, the URF was established to provide a mechanism for Australian investors to invest in the residential property market in New York City and surrounding boroughs, and some other areas of the United States. The URF buys, renovates and leases residential dwellings.

ED Group described the URF as its “flagship” fund.

*The URF was constituted under a trust deed dated 1 April 2011 (the **Trust Deed**) and subsequently amended or reissued on 24 June 2011, 24 October 2011, 15 May 2012, 15 August 2012, 24 January 2013, 9 May 2013 and 8 December 2017.*

Copies of the Trust Deed are available upon request from the Applicant’s solicitors.

21. From on or about 15 April 2011, the URF operated as a registered managed investment scheme within the meaning of s 601EB of the *Corporations Act*.
22. The responsible entity (**RE**) of the URF was:
- (a) from 15 April 2011 to 22 June 2015 – DASS; and

(b) from 22 June 2015 – Walsh & Co, now known as E&P Investments.

23. At all material times from not later than about 15 April 2011:

- (a) the RE of the URF in its capacity as trustee of the URF controlled a United States Real Estate Investment Trust known as the US Masters Residential Property (USA) Fund (**US REIT**); and
- (b) URF Investments was the investment manager of the US REIT.

Particulars

So far as the Applicant is able to say prior to discovery, the US REIT:

- i. was established on or about 7 April 2011;*
- ii. carried on a business of investing in real estate, and in particular purchasing, renovating and letting or selling apartment or condominium-style real estate in New York ‘brownstone’ properties.*

Further particulars may be provided following discovery.

Related party interests in the URF

24. At all material times during the Relevant Period, ED Group companies were:

- (a) related bodies corporate of DASS within the meaning of s 50 of the *Corporations Act*; further or alternatively
- (b) associates of DASS within the meaning of ss 11 and 961J of the *Corporations Act*.

25. From time to time during the Relevant Period DASS and other ED Group companies (**Other Group Companies**) were parties to contracts, arrangements or understandings pursuant to which DASS or the Other Group Companies were entitled to be paid *inter alia*:

- (a) in the case of the RE of the URF from time to time – fees as RE (**Management Fees**);
- (b) stamping, structuring or handling fees in respect of URF Units, URF Notes or URF CPUs (as defined below) (**Structuring Fees**);

- (c) fees in respect of the acquisition, management, leasing or disposal of assets, or the management of debt finance for or in connection with the URF (**Investment Fees**);
 - (d) fees in connection with property development, architectural activities and property management (**Property Fees**); further or alternatively
 - (e) fees in connection with the administration of the URF or the US REIT (**Administration Fees**);
- (the said Fees being together and severally the **Related Party Payments**).

Particulars

So far as the Applicant is able to say prior to discovery, the said Fees:

- i. were paid as set out in Annexure A;*
- ii. over the Relevant Period averaged approximately:*
 - A. \$9m pa in respect of Management Fees;*
 - B. \$2m pa in respect of Investment Fees;*
 - C. \$14m pa in respect of Property Fees;*
 - D. \$6m pa in respect of Administration Fees; and*
 - E. in the premises, a total average of \$31m pa, paid from funds otherwise available for distribution to holders of URF Units, URF Notes or URF CPUs (as defined below).*

26. In the premises set out in the preceding paragraph, at all material times during the Relevant Period:
- (a) DASS and related bodies corporate of DASS (being the Other Group Companies) had a material financial interest in the URF:
 - (i) continuing to operate;
 - (ii) continuing to engage in capital-raising and property investment activity; and
 - (iii) engaging in more rather than less capital-raising and property investment activity;
 - (b) in the premises in (a), EDL as ultimate holding company of the companies referred to in (a) had a financial interest in the matters set out in (a)(i) to (iii);
 - (c) in the premises in (b), members of the DASS IC who were officers of or employed by:
 - (i) the Other Group Companies; further or alternatively
 - (ii) EDL;

had a duty to act, or interest in acting, in the best interests of the Other Group Companies or EDL (as the case may be) while discharging their functions as members of the DASS IC.

URF securities

URF Units

27. During the Relevant Period the URF from time to time raised capital funds by offering to and accepting from investors subscriptions for units in the URF (**URF Units**) including:
- (a) in or about April 2011 by way of an initial public offer (**2011 IPO**);
 - (b) in or about February 2014 by way of a non-renounceable entitlement offer;
 - (c) in or about August 2015 by way of a unit purchase plan; and
 - (d) in or about September 2016 by way of a further unit purchase plan.

Particulars

So far as the Applicant is able to say prior to discovery:

- i. the 2011 IPO sought and raised approximately \$69m: see Supplementary Product Disclosure Statement dated 20 July 2012;*
- ii. the February 2014 issue sought and raised approximately \$87.3m: see Offer Document dated 20 January 2014;*
- iii. the August 2015 issue raised approximately \$20m: see Unit Purchase Plan Offer dated 17 July 2015; and*
- iv. the September 2015 issue raised approximately \$102m: see Product Disclosure Statement for the URF dated 22 August 2016.*

*Copies of the said documents (**Unit Offer PDSs**) are available upon request from the Applicant's solicitors. Further particulars may be provided following discovery.*

28. The URF Units:
- (a) were and are financial products within the meaning of:

- (i) s 764A(1)(a) of the Corporations Act; and
 - (ii) s 12BAA of the ASIC Act;
- (b) on and from around 23 July 2012, were listed on the ASX with ASX Ticker “URF”.

URF Notes

29. During the Relevant Period the RE of the URF from time to time raised capital funds by issuing to investors unsecured notes (**URF Notes**) including:
- (a) on or about 24 December 2014 by an issue of 1.5m URF Notes (**URFHA**):
 - (i) pursuant to a Replacement Prospectus released on or about 12 December 2014;
 - (ii) at an offer price of \$100 per note;
 - (iii) raising approximately \$150m; and
 - (iv) which Notes were listed on the ASX on or about 1 January 2015 with ASX Ticker “URFHA”;

Particulars

Replacement Prospectus dated 12 December 2014.

URF ASX Announcement 19 December 2014.

Copies of the said documents are available on request from the Applicant’s solicitors.

The RE at the time of issuing the URFHA Notes was DASS.

- (b) on or about 23 October 2015 by an issue of 905,395 notes (**URFHB**):
 - (i) pursuant to a URF Notes II Prospectus dated 29 September 2015;
 - (ii) at an offer price of \$100 per note;
 - (iii) raising approximately \$90m;
 - (iv) which notes were listed on the ASX on or about 27 October 2015 with ASX Ticker “URFHB”; and

Particulars

URF Notes II Prospectus dated 29 September 2015.

URF ASX Announcement 29 October 2015.

Copies of the said documents are available on request from the Applicant's solicitors.

The RE at the time of issuing the URFHB Notes was Walsh & Co.

- (c) on or about 20 February 2017 by an issue of 1,750,000 notes (**URFHC**):
 - (i) pursuant to a URF Notes III Prospectus dated 29 September 2015 and a URF Notes III Supplementary Prospectus dated 14 February 2017;
 - (ii) at an offer price of \$100 per note;
 - (iii) raising approximately \$175m;
 - (iv) which notes were listed on the ASX on or about 23 February 2017 with ASX Ticker "URFHC";

Particulars

URF Notes III Replacement Prospectus dated 30 January 2017.

URF Notes III Supplementary Prospectus dated 14 February 2017.

Copies of the said documents are available on request from the Applicant's solicitors.

The RE at the time of issuing the URFHC Notes was Walsh & Co.

- 30. The URF Notes were and are financial products within the meaning of:
 - (a) s 764A(1)(a) of the Corporations Act; and
 - (b) s 12BAA of the ASIC Act.

Convertible Preference Units (CPUs)

- 31. On or about 22 December 2017 the RE of URF issued 1,990,707 convertible step-up preference units (**CPUs**):
 - (a) pursuant to a Product Disclosure Statement (**PDS**) dated 1 December 2017;
 - (b) at an offer price of \$100;
 - (c) raising approximately \$200m;

- (d) which CPUs were listed on the ASX on or about 28 December 2017 with ASX Ticker “URFPA”.

Particulars

A copy of the PDS is available on request from the Applicant’s solicitors.

The RE at the time of issuing the CPUs Notes was Walsh & Co.

32. The CPUs were and are an interest in a registered scheme within the meaning of s 764A(1)(b)(i) of the Corporations Act.

Features of URF Securities

33. At all material times during:

- (a) the Relevant Period; alternatively
- (b) the Relevant Period from not later than around 1 September 2015 (**Later Period**);

it was the case that URF Units, URF Notes and the CPUs (together and severally **URF Securities**):

- (i) were investments concentrating on residential real estate in the major urban areas of New York State and New Jersey in the USA;

- (ii) by reason of (i) – were:

- A. relatively undiversified; and

- B. relatively high risk;

compared to the range of investment opportunities that were then available to and reasonably appropriate for investors with the risk profiles of the Claimants (**Benchmark Portfolios**);

Particulars

So far as the Applicant is able to say prior to discovery and receipt of expert reports, Benchmark Portfolios:

- i. if they included US-based REITs at all, would have included products offered by Westfield, Mirvac, Stockland or other REITs*

with greater diversification, longer performance histories or experienced REIT fund management than the URF;

- ii. would not have included US-based REITs at more than a nominal percentage of the total value of the portfolio under management; and*
- iii. would not have included the URF.*

- (c) by reason of the matters in paragraph 25 above – were investments that incurred relatively high fees and expenses, compared to Benchmark Portfolios;
- (d) relative to Benchmark Portfolios:
 - (i) had not performed materially better;
 - (ii) were not performing materially better; and
 - (iii) were not projected to perform materially better;
 in terms of capital growth and income for investors; and
- (e) were investments which:
 - (i) by reason of the matters in paragraphs 18 and 25 above – members of the DASS IC had; and
 - (ii) by reason of the matters in paragraph 25 above – DASS had;
 an interest in recommending for investment by DASS Clients, which interest was separate from any interest of the Clients.

34. At all material times during:

- (a) the Relevant Period; alternatively
- (b) the Relevant Period from not later than around 1 September 2015 (**Later Period**);

it was the case that the URF Securities (as on issue from time to time):

- (i) were held, as to a large majority (by value), by DASS Clients;
- (ii) by reason of (i) – were materially illiquid, alternatively were subject to a relatively high **liquidity risk** compared to Benchmark Portfolios;

Particulars

By reason of the matters in (i), investors in URF Securities were unusually exposed to the risk that the circumstances in which their

financial advisor recommended them to sell their Securities would also be circumstances in which the advisor would be advising other Clients to sell (or not buy) the Securities, exacerbating the risk that the firstnamed investor would not be able to sell the Securities at all or without a capital loss. Further particulars may be provided following discovery and receipt of expert reports.

- (iii) reflected a relatively undiversified investment, compared to Benchmark Portfolios;
- (iv) were relatively highly exposed to the risks of foreign exchange (forex) movements, compared to Benchmark Portfolios (**forex risks**);
- (v) by reason of the matters in (i) to (iv) (together or severally) – were relatively high risk, compared to Benchmark Portfolios;
- (vi) by reason of the matters in paragraph 25 above – incurred relatively high fees and charges, compared to Benchmark Portfolios;
- (vii) were not performing or reasonably likely to perform better, in terms of capital growth and income for investors, relative to Benchmark Portfolios;
- (viii) were relatively highly exposed to the risk that recommendations from DASS Advisors to buy, hold or sell the Securities would be affected, as to their content or timing, by the matters referred to in:
 - A. paragraph 18 above (regarding the interests of members of the DASS IC); further or alternatively
 - B. paragraph 25 above (regarding the interests of DASS);
 (together and severally the **Conflict Risks**);
- (ix) by reason of the matters in (i) to (viii) above (together or severally) – were not investments in which it was prudent for investors with low or moderate tolerance for risks of:
 - A. loss of capital; or
 - B. foregone income;
 (**conservative or balanced investors**) to hold as more than a nominal or very small component of their portfolios.

PART E – CLAIMANTS’ URF INVESTMENTS

Claimants as Clients

35. At all times material to each of the Claimants, the Claimant engaged DASS to provide financial advice and investment portfolio management services to the Claimant (**Retainer**).

Particulars

Particulars as to the Applicant’s Retainer are set out below.

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

36. There were terms of each Retainer that or to the effect that:
- (a) the Claimant engaged DASS to provide, and DASS agreed to provide, personal financial advice (**advice**) in relation to the investments identified under the heading “*Scope of Advice*”;
 - (b) the advice was personal to the Claimant;
 - (c) the advice was sought and provided for the purposes set out under the heading “*What you want to achieve*”;
 - (d) the advice would be suitable for the said purposes, having regard to the risk profile assessed by DASS in respect of:
 - (i) the Claimant; and
 - (ii) the portfolio that was the subject of the Scope of Advice;
 - (e) DASS in assessing and monitoring the risk profile of:
 - (i) the Claimant; and
 - (ii) the portfolio that was the subject of the Scope of Advice;

would exercise the level of skill and care reasonably to be expected of a professional financial advisor engaged to provide financial advice for reward;
 - (f) DASS in:
 - (i) giving; and thereafter

(ii) monitoring the continuing appropriateness of;

advice would:

- A. exercise the level of skill and care reasonably to be expected of a professional financial advisor engaged to provide financial advice for reward; and
- B. give priority to the interests of the Claimant, wherever those interests might conflict with the interests of DASS or any third party.

Particulars

In relation to WCS:

- i. the terms set out in (a) to (d) were in writing in documents titled “Personal Statement of Advice” delivered by DASS to WCS (by its directors Melissa Jo Carfax-Foster and Richard Alan Carfax-Foster) from time to time during the Relevant Period, copies of which are available on request from WCS’s solicitors;*
- ii. the terms set out in (e) and (f) are to be implied to give business efficacy to the Retainer.*

Further particulars may be provided following discovery.

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

37. In the premises set out in the two preceding paragraphs, at all times material to each of the Claimants the Claimant was a DASS Client.

Particulars

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

38. At all material times, some or all of the Claimants were conservative or balanced investors in respect of the investments covered by each Retainer.

Particulars

So far as the Applicant is able to say prior to discovery and receipt of expert reports, the Applicant was assessed by DASS as having a risk profile of '4'. Further particulars may be provided following discovery and receipt of expert reports.

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

Claimants' investments in URF Securities

39. From time to time during the Relevant Period:

- (a) the DASS IC issued Determinations requiring DASS Advisors to recommend that Clients acquire or retain URF Securities; further or alternatively

Particulars

Further particulars may be provided following discovery.

- (b) DASS, by the DASS Advisors, in fact recommended that Claimants acquire or retain URF Securities (**URF Recommendations**).

Particulars

So far as the Applicant is able to say prior to discovery, the said recommendations were made:

- (i) *in early October 2014, by PSoA dated 29 September 2014 and email dated 1 October 2014 from DASS Advisor Courtney Mandel (**Mandel**) recommending that the Applicant acquire 100,000 URF Units at \$1.90 per unit (the **First Recommendation**). Copies of the PSoA and email are available upon request from the Applicant's solicitors;*
- (ii) *on or around a date to be confirmed in 2015, by DASS Advisor Mandel recommending that the Applicant acquire 850 URFHA at \$100 per unit and sell 4720 URF units (the **Second Recommendation**);*
- (iii) *in late August 2016, by email dated 24 August 2016 from DASS Advisor Mandel recommending that the Applicant acquire 7,692 URF Units for*

\$15,000 (the **Third Recommendation**). Copies of the email are available upon request from the Applicant's solicitors.

- (iv) on or around a date between August 2016 and May 2017, by DASS Advisor Mandel recommending that the Applicant acquire 580 URFHC (the **Fourth Recommendation**); and
- (v) on or around a date between May 2017 and May 2018, by DASS Advisor Mandel recommending that the Applicant sell 850 URFHA and acquire 850 URFPA (the **Fifth Recommendation**).

Further particulars may be provided following discovery.

Particulars relating to individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

40. The URF Recommendations were:

- (a) of their nature continuing recommendations; further or alternatively
- (b) affirmed by DASS from time to time.

Particulars

So far as the Applicant is able to say prior to discovery, the Recommendations were affirmed from time to time by Mandel during conversations with the WCS directors. Further particulars may be provided following discovery.

Particulars relating to individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

41. During:

- (a) the Relevant Period; alternatively
- (b) the Later Period;

it was the case that:

- (i) the matters set out in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors) had developed or were continuing; and

- (ii) the prices at which URF Securities were able to be realised (**Trading Prices**) declined.

Particulars

The ASX trading price history is set out at Annexure B.

42. By reason of the matters set out in paragraph 39 above, during the Relevant Period some or all of the Claimants in reliance upon the URF Recommendations:

- (a) acquired; and
 (b) despite the matters in paragraph 41 – retained;

URF Securities.

Particulars

On or around 8 October 2014 the Applicant acquired 100,000 URF Units at \$1.90 per unit.

On a date to be confirmed in 2015 the Applicant sold 4,720 URF Units and acquired 850 URFHA at \$100 per unit.

On or around 26 August 2016 the Applicant acquired 7,692 URF Units at a total purchase price of \$15,000.

On a date to be confirmed prior to May 2017 the Applicant acquired 580 URFHC.

On a date to be confirmed prior to May 2018 the Applicant sold 850 URFHA and acquired 850 URFPA.

Further particulars will be provided following discovery.

Particulars relating to individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

PART F – CONTRACT CLAIMS

43. At all material times during:
- (a) the Relevant Period; alternatively

(b) the Later Period;

URF Securities:

- (i) were not a prudent investment;
- (ii) were not suitable for conservative or balanced investors;
- (iii) were not investments that should be acquired or retained, having regard to the best interests of each Claimant.

Particulars

The Applicant refers to and repeats the particulars in paragraph 34.

44. In the premises, by:

- (a) the URF Recommendations alleged in paragraph 39 above; alternatively
- (b) the URF Recommendations alleged in paragraph 39 above so far as they were made during the Later Period;

DASS by the DASS Advisors:

- (i) failed to act in the best interests of the Claimant; further or alternatively
- (ii) failed to exercise due care and skill in giving and thereafter maintaining the said Recommendations.

45. In the premises set out in the preceding paragraph, DASS breached the Retainer with each Claimant referred to in paragraph 35 above.

46. By reason of:

- (a) the breaches alleged in the preceding paragraph, and
- (b) the matters set out in paragraph 41 above;

the Claimants referred to in paragraph 34 above suffered loss and damage.

Particulars

The Applicant suffered:

- i. *foregone income, relative to the income that would have been received if DASS had exercised due care and skill and thereby advised the Applicant's directors to cause the Applicant to invest in a portfolio with the features of a Benchmark Portfolio; and*

- ii. *foregone capital growth, relative to the capital growth that would have been achieved if DASS had exercised due care and skill and thereby advised the Applicant's directors to cause the Applicant to invest in a portfolio with the features of a Benchmark Portfolio; and*
- iii. *loss of capital.*

Further particulars of the Applicant's loss and damage will be provided following discovery and receipt of expert reports.

Particulars of loss for the individual group members will be provided following the trial of common questions or otherwise as the Court may direct.

PART G – FINANCIAL ADVISOR CONTRAVENTIONS

FOFA period – AFSL obligations

47. Each DASS Advisor was, in relation to the provision of the URF Recommendations to a Claimant:
- (a) a provider within the meaning of s 961 of the Corporations Act; and
 - (b) in the premises in (a), at all material times from 1 July 2013 (the **FOFA period**) required:
 - (i) to act in the best interests of the Claimant, within the meaning of s 961B of the *Corporations Act*;
 - (ii) only to provide the URF Recommendations if it would be reasonable to conclude that the Recommendations were appropriate to the client, within the meaning of s 961G of the *Corporations Act*; and
 - (iii) where the Advisor knew or ought reasonably to have known when giving the URF Recommendations that there was a conflict between the interests of the Claimant and the interests of DASS or an Other Group Company – to give priority to the Claimant's interests, within the meaning of s 961J of the *Corporations Act*.

Particulars

Other Group Companies were associates of DASS within the meaning of s 961J(1)(d) of the Corporations Act.

48. Further, at all material times during the FOFA period DASS was required to:

- (a) do all things necessary to ensure that the URF Recommendations were provided fairly;

Particulars

Corporations Act s 912A(1)(a).

- (b) have in place adequate arrangements for the management of conflicts of interest in relation to activities undertaken by DASS or DASS Advisors in the provision of the URF Recommendations; further or alternatively

Particulars

Corporations Act s 912A(1)(aa).

- (c) take reasonable steps to ensure that the DASS Advisors complied with the obligations set out in paragraph 47(b) above.

Particulars

Corporations Act s 912A(1)(ca).

Contraventions

URF Securities inappropriate or overweighted

49. By reason of the matters set out in paragraph 34 above, at all material times during:

- (a) the FOFA Period; alternatively
- (b) the Later Period;

it was not reasonable to conclude that the URF Recommendations were appropriate for some or all of the Claimants:

- (i) at all; alternatively
 - (ii) to the extent reflected in the Claimants' portfolios;
- within the meaning of s 961G of the *Corporations Act*.

50. In the premises set out in the preceding paragraph:

- (a) the DASS Advisors by giving the URF Recommendations contravened s 961G of the *Corporations Act*; and
- (b) DASS contravened s 961K(2) of the *Corporations Act*.

DASS Advisors – best interests

51. The URF Recommendations:

- (a) were:
 - (i) directed by the DASS IC to be made by the DASS Advisors; further or alternatively
 - (ii) made by the DASS Advisors;

for the purpose, or purposes including the purpose of enabling ED Group companies to benefit from the continuing or increased investment activities of the URF; and
- (b) were not:
 - (i) during the FOFA Period; alternatively
 - (ii) during the Later Period;

made in the best interests of the Claimants.

Particulars

So far as the Applicant is able to say prior to discovery, the said purpose in the person(s) directing or making the Recommendations is to be inferred from the circumstances that:

- i. *from 2013 to at least 2018 DASS and DASS Advisors systemically channelled the Group Members into URF Securities, such that from 2013 to 2018 the average portfolio weighting of Group Members to the URF Securities increased materially; and*

- ii. *the matters in (i) occurred despite the URF being a higher risk, higher cost and lower return investment option than the Benchmark Portfolios, as set out in paragraph 34 above.*

Further particulars may be provided following discovery and receipt of experts' reports.

52. By reason of the matters set out:

- (a) in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors); and
- (b) paragraph 51:

the DASS Advisors in making the URF Recommendations did not act in the best interests of the Claimants, within the meaning of s 961B of the *Corporations Act*.

53. In the premises set out in the preceding paragraph, DASS contravened s 961K(2) of the *Corporations Act*.

DASS Advisors – conflicts

54. By reason of the matters set out in paragraph 18 above, each of:

- (a) Dixon;
- (b) Broughton; further or alternatively
- (c) Brown;

was, while discharging his role as a member of the DASS IC, acting in a position of conflict between:

- (i) his obligation as an officer or representative of DASS to issue Determinations consistent with the obligations of DASS and the DASS Advisors to act in the best interests of Clients; and
- (ii) his obligations as a director of:
 - A. in the case of Dixon – URF Investments; and
 - B. in the case of Dixon, Broughton and Brown – EDL;
 to promote the best interests of URF Investments or EDL as the case may be;

(the **IC Conflicts**).

55. Further and in the alternative, by reason of the matters set out in paragraph 25 above DASS was, at all times during the Relevant Period, in a position of conflict between:

(a) its obligations under:

- (i) the Retainers; further or alternatively
- (ii) the *Corporations Act*;

to do all things necessary to ensure that the URF Recommendations were provided fairly (within the meaning of s 912A(1)(a)) and to have in place adequate arrangements for the management of conflicts of interest in relation to activities undertaken by DASS or DASS Advisors in the provision of the advices (within the meaning of s 912A(1)(aa)); and

(b) the interests of:

- (i) DASS; further or alternatively
- (ii) associates of DASS, being the Other Group Companies;

in generating continuing or increasing revenues from the ongoing or expanding operations of the URF;

(the **DASS Conflicts**).

56. Further and in the alternative, by reason of the matters set out in:

- (a) paragraph 15(b) above (regarding Advisors' bonuses);
- (b) paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors); and
- (c) paragraph 25 above (regarding ED Group revenues from services provided to the URF);

the DASS Advisors were at all times during the Relevant Period in a position of conflict between:

- (i) the Advisor's interest in earning bonuses as a result of profits earned by DASS, including from revenues earned from the provision of services to the URF; and
- (ii) the best interests of the Claimants;

(the **Advisor Conflicts**).

57. At all times during the Relevant Period the DASS Advisors ought reasonably to have known of:

- (a) the IC Conflicts;
- (b) the DASS Conflicts; further or alternatively
- (c) the Advisor Conflicts;

within the meaning of s 961J(1) of the *Corporations Act*.

Particulars

The DASS Advisors were aware of the following:

- i. that the range of financial products about which DASS Advisors were permitted to make purchase recommendations was determined by the DASS IC and listed on APLs;*
- ii. that from time to time the DASS IC issued the Determinations;*
- iii. the Related Party Payments; and*
- iv. the fact that they were remunerated by, inter alia, periodic bonuses which were calculated as set out in paragraphs 15(a) and (b) above.*

Further particulars may be provided following discovery and receipt of expert reports.

58. By reason of the matters set out in:

- (a) paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors); and
- (b) paragraphs 55 to 57;

the DASS Advisors in making the URF Recommendations:

- (i) did not give priority to the Claimants' interests within the meaning of s 961J(1) of the *Corporations Act*; and
- (ii) in the premises in (i) – contravened s 961J(1) of the *Corporations Act*.

59. In the premises set out in the preceding paragraph, DASS contravened s 961K(2) of the *Corporations Act*.

DASS – responsible for DASS Advisors’ conduct

60. Further and in the alternative to:

- (a) paragraph 50(b) above (regarding DASS’s contraventions in respect of appropriate advice);
- (b) paragraph 53 above (regarding DASS’s contraventions in respect of Claimants’ best interests);
- (c) paragraph 59 above (regarding DASS’s contraventions in respect of conflicts of interest);

the making of the URF Recommendations by DASS Advisors was conduct:

- (i) related to the provision of a financial service;
- (ii) on which the Claimants (as Clients) could reasonably be expected to rely; and
- (iii) on which some or all of the Claimants in fact relied, in good faith;

within the meaning of s 917A of the *Corporations Act*.

Particulars

As to reliance, the Applicant refers to and repeats the particulars under paragraph 39 above.

61. In the premises set out in the preceding paragraph, DASS is responsible for the conduct of the DASS Advisors in making the URF Recommendations, pursuant to s 917A of the *Corporations Act*.

DASS – systems failures

62. During:

- (a) the FOFA Period; alternatively
- (b) the Later Period;

DASS:

- (i) by the DASS IC, from time to time issued Determinations with the purpose or effect of causing DASS Advisors to make the URF Recommendations; further or alternatively

- (ii) had no or no adequate systems for ensuring that DASS Advisors:
 - A. acted in the best interests of the Claimant, within the meaning of s 961B of the *Corporations Act*;
 - B. only provided the URF Recommendations if it would be reasonable to conclude that the Recommendations were appropriate to the client, within the meaning of s 961G of the *Corporations Act*;
 - C. where the Advisor knew or ought reasonably to have known that there was a conflict between the interests of the Claimant and the interests of DASS or an Other Group Company – gave priority to the Claimant’s interests when giving the URF Recommendations, within the meaning of s 961J of the *Corporations Act*.

Particulars

So far as the Applicant is able to say prior to discovery, the absence of adequate systems may be inferred from the circumstance that the effects referred to in item ‘i’ of the particulars to paragraph 51 above occurred:

- i. coincident with the IC Conflicts, the DASS Conflicts and the Advisor Conflicts;*
- ii. coincident with the Determinations, further or alternatively the APLs; and*
- iii. despite the features of URF Securities described in paragraph 34 above.*

Further particulars may be provided following discovery and receipt of experts’ reports.

- 63. In the premises set out in the preceding paragraph, DASS did not:
 - (a) do all things necessary to ensure that the URF Recommendations were provided fairly within the meaning of *Corporations Act* s 912A(1)(a);
 - (b) have in place adequate arrangements for the management of conflicts of interest in relation to activities undertaken by DASS or DASS Advisors in the provision of the URF Recommendations, within the meaning of *Corporations Act* s 912A(1)(aa); further or alternatively
 - (c) take reasonable steps to ensure that the DASS Advisors complied with the obligations set out in (a) and (b) hereof, within the meaning of *Corporations Act* s 912A(1)(ca); or

- (d) take reasonable steps to ensure that the DASS Advisors complied with the obligations set out in paragraph 47(b)(i) to (iii) above.

64. In the premises set out in:

- (a) paragraph 63; alternatively
- (b) paragraph 63(d);

DASS contravened s 961L of the *Corporations Act*.

Financial advisor contraventions – Claimants’ loss and damage

65. By reason of the matters set out in:

- (a) paragraph 50(b) above (regarding DASS’s contraventions in respect of appropriate advice);
- (b) paragraph 53 above (regarding DASS’s contraventions in respect of Claimants’ best interests);
- (c) paragraph 59 above (regarding DASS’s contraventions in respect of conflicts of interest); further or alternatively
- (d) paragraph 64 above (regarding DASS’s failure to take reasonable steps in relation to DASS Advisors);

and paragraph 41 above, some or all of the Claimants suffered loss and damage.

Particulars

The Applicant refers to and repeats the particulars of loss set out under paragraph 46 above.

PART H – FIDUCIARY OBLIGATIONS

66. At all times material to each Claimant, each of:

- (a) DASS; further or alternatively
- (b) the DASS Advisor(s) of the Claimant;

was, as a provider of financial advice services to the Claimant, subject to obligations in equity:

- (i) not to act in a position of conflict between the interests of the Claimant and the interests or duties of DASS or the DASS Advisor, as the case may be (**No Conflict obligation**); and
- (ii) not to earn profits through the relationship with the Claimants:
 - A. for themselves; further or alternatively
 - B. for persons other than the Claimant or the Claimant's designates;**(No Profit obligation)**.

67. By reason of:

- (a) the IC Conflicts referred to in paragraph 54 above;
- (b) the DASS Conflicts referred to in paragraph 55 above; further or alternatively
- (c) the Advisor Conflicts referred to in paragraph 56 above;

each of:

- (i) DASS; further or alternatively
- (ii) the DASS Advisors;

by making, and thereafter maintaining and not correcting or withdrawing, the URF Recommendations breached the No Conflict obligation in respect of each Claimant.

68. Further and in the alternative, by reason of the Related Party Payments each of:

- (a) DASS; further or alternatively
- (b) the DASS Advisors;

breached the No Profit obligation in respect of each Claimant.

69. By reason of the breaches of:

- (a) the No Conflict obligation, referred to in paragraph 66(b)(i) above; further or alternatively
- (b) the No Profit obligation, referred to in paragraph 66(b)(ii) above;

(together and severally the **Fiduciary Breaches**) some or all of the Claimants suffered loss and damage.

Particulars

Had the Related Party Payments and the DASS Advisor bonus scheme referred to in paragraph 15 above been explained to the Applicant's directors, the Applicant:

- i. would not have invested in URF Securities;*
- ii. would have terminated the DASS Retainer, or instructed its DASS Advisor(s) not to invest in products offered or managed by DASS or its related entities; and*
- iii. would have invested its available funds in or in accordance with a Benchmark Portfolio;*

and thereby would not have suffered the loss and damage particularised under paragraph 46 above.

Further particulars relating to the Applicant will be provided following discovery and receipt of expert reports. Particulars of loss and damage relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

Knowing assistance

70. At all material times:

- (a) in relation to the Fiduciary Breaches by the DASS Advisors – DASS in its capacity as:
 - (i) the holder of the DASS AFSL; further or alternatively
 - (ii) the employer or principal of the DASS Advisors;
- (b) in relation to the Fiduciary Breaches by DASS and the DASS Advisors –
 - (i) Dixon and Brown as:
 - A. a director of DASS; further or alternatively
 - B. a member of the DASS IC;
 - (ii) EDL, by its directors, officers or servants Dixon, Broughton, Brown, MacLachlan, Cole and Meaney;

conducted itself or themselves:

- (1) with actual knowledge of the Fiduciary Breaches; alternatively

Particulars

DASS

So far as the Applicant is able to say prior to discovery, DASS's knowledge of the Fiduciary Breaches by the DASS Advisors is to be inferred from the circumstances that:

- i. the members of the DASS IC were officers of DASS or of the DASS-related entities that established or benefitted from the Related Party Payments;*
- ii. the DASS IC issued the Determinations requiring the DASS Advisors to recommend inter alia URF Securities;*
- iii. DASS by its directors, alternatively its officers being the members of the DASS IC, knew that DASS Clients' funds were being invested in the URF.*

Dixon and Brown

So far as the Applicant is able to say prior to discovery, the knowledge of Dixon and Brown as to the Fiduciary Breaches by DASS and the DASS Advisors is to be inferred from the circumstances in 'i' to 'iii' above, so far as they relate to Dixon and Brown.

EDL

So far as the Applicant is able to say prior to discovery, the knowledge of EDL is to be inferred from:

- A. the circumstances referred to in 'i' to 'iii' above;*
- B. in relation to Dixon, Broughton and Brown as its officers, servants or agents – the circumstances in 'i' to 'iii' above, so far as they relate to Dixon, Broughton and Brown;*
- C. in relation to McLachlan, Cole and Meaney – the circumstances that:*
 - a. each of them was a director, further or alternatively a senior executive of DASS;*
 - b. each of them was responsible for monitoring the management of funds invested on behalf of DASS Clients (in the case of McLachlan), the supervision of advisory activities by DASS (in the case of Cole), or the management of the EDL Group (in the case of Meaney);*

- c. *the Determinations were widely disseminated around DASS, including at the senior management level;*
- d. *DASS Clients' funds were invested in URF Securities, including while the Determinations were in force;*
- e. *the matters in 'd' were recorded in the books of DASS, and the subject of management reports received by the said directors from time to time;*
- f. *the Related Party Payments were a source of income for DASS, EDL or Other Group Companies throughout the Relevant Period;*
- g. *the Related Party Payments were the subject of management reports received by the said directors from time to time;*
- h. *the Related Party Payments were received by DASS, EDL or Other Group Companies during periods:*
 - 1. *while the Determinations were in force; further or alternatively*
 - 2. *while DASS Clients' funds were invested in the URF;**as recorded in the reports referred to in 'e' above.*

Further particulars may be provided following discovery.

- (2) *by wilfully shutting their eyes to the obvious Fiduciary Breaches; alternatively*

Particulars

The wilful blindness of each of the persons is to be inferred from the circumstances:

- i. *set out under paragraph (1) above; and*
- ii. *that despite the said circumstances, none of the persons took any or any adequate step to ensure that DASS Advisors ceased to advise DASS Clients to invest in URF Securities (or advised Clients to dispose of any URF Securities previously acquired) at all or without specifically disclosing to the Clients:*
 - A. *about all the Related Party Payments;*
 - B. *about the DASS IC Determinations regarding the recommendation of the URF to Clients;*

- C. *about the IC Conflict;*
- D. *about the DASS Conflict;*
- E. *about the Advisor Conflict;*
- F. *about the matters set out in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors); further or alternatively*
- G. *during the Later Period:*
 - 1. *about DASS's assessment of the reasons for the decline in the Trading Price of URF Securities from not later than about 1 September 2015;*
 - 2. *that acquiring or retaining URF Securities was a relatively high risk strategy compared to investment in the Benchmark Portfolios;*
 - 3. *that the liquidity risks associated with the URF were crystallising, in that Clients already holding URF Securities were experiencing difficulties in liquidating those holdings at all, alternatively without capital losses.*

Further particulars may be provided following discovery.

- (3) *by wilfully and recklessly failing to make such enquiries as an honest and reasonable person would make in relation to the risk of Fiduciary Breaches; alternatively*

Particulars

The said failure of each of the persons is to be inferred from the circumstances set out under paragraph (2) above. Further particulars may be provided following discovery.

- (4) *with knowledge of circumstances that would indicate the occurrence of the Fiduciary Breaches to an honest and reasonable person.*

Particulars

Each of the persons knew the circumstances set out under paragraph (1) above. The Applicant refers to and repeats the particulars set out under paragraph (1) above.

Further particulars may be provided following discovery.

71. In the premises set out in the preceding paragraph:
- (a) in relation to the Fiduciary Breaches by DASS Advisors – DASS; further or alternatively
 - (b) in relation to the Fiduciary Breaches by DASS or DASS Advisors – each of:
 - (i) Dixon;
 - (ii) Brown; further or alternatively
 - (iii) EDL, by its directors, officers or servants Dixon, Broughton, Brown, McLachlan, Cole and Meaney;

knowingly assisted the said Fiduciary Breaches.

72. In the premises set out in the preceding paragraph, each of the Claimants is entitled in equity to recover from the Respondents referred to therein the amount of the loss and damage referred to in paragraph 46 above.

PART I – MISLEADING AND DECEPTIVE CONDUCT

Representations

73. Further and in the alternative, at all material times in connection with the URF Recommendations made to each of the Claimants, DASS represented to the Claimant that or to the effect that DASS and the Claimant's DASS Advisor(s):
- (a) were acting in the Claimant's best interests;
 - (b) had taken reasonable steps to ensure, and had ensured, that there were reasonable grounds for concluding that the URF Recommendations were and remained appropriate for the Claimant;
 - (c) had disclosed all conflicts of interest and had taken reasonable care to ensure that the Claimant was specifically aware of the nature and details of any conflict that might reasonably be thought to exist;

(the **Reassurance Representations**).

Particulars

The said Representations were implied from the circumstances that:

- (a) *DASS by its DASS Advisors offered to and did provide financial advice, being the URF Recommendations;*
- (b) *DASS did not, by itself or by the DASS Advisors, take any or any adequate step to disclose to each Claimant the matters the subject of the Omissions pleaded below; and*
- (c) *during the Later Period – that the DASS Advisors continued to recommend the acquisition or retention of URF Securities despite the declining Trading Price.*

So far as the said Representations were communicated to the Applicant, they were communicated by:

- i. *emails from Mandel to the Applicant’s directors on sundry dates during the Applicant’s Retainer; and*
- ii. *the provision of PSoAs to the Applicant, recommending the purchase or retention of URF Securities.*

Further particulars may be provided following discovery.

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

74. The Reassurance Representations were, of their nature, continuing representations unless and until corrected or withdrawn.
75. Further and in the alternative to the two preceding paragraphs, at all material times in connection with the URF Recommendations made to each of the Claimants, DASS:
- (a) by itself; and
 - (b) by the DASS Advisors;
- failed to take any or any adequate step to inform the Claimant:
- (i) about all the Related Party Payments;

- (ii) about the DASS IC Determinations regarding the recommendation of the URF to Clients;
- (iii) about the IC Conflict;
- (iv) about the DASS Conflict;
- (v) about the Advisor Conflict;
- (vi) about the matters set out in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors); further or alternatively
- (vii) during the Later Period:
 - A. about DASS's assessment of the reasons for the decline in the Trading Price of URF Securities from not later than about 1 September 2015;
 - B. that acquiring or retaining URF Securities was a relatively high risk strategy compared to investment in the Benchmark Portfolios;
 - C. that the liquidity risks associated with the URF were crystallising, in that Clients already holding URF Securities were experiencing difficulties in liquidating those holdings at all, alternatively without capital losses;

(together and severally the **Omissions**).

76. The Omissions were of their nature continuing conduct, unless and until corrected or withdrawn.

77. Each of:

- (a) the Reassurance Representations; further or alternatively
- (b) the Omissions;

was conduct:

- (i) in trade or commerce;
- (ii) in relation to a financial product within the meaning of s 763A(1)(a) and s 764A(1)(a) of the *Corporations Act*, namely URF Securities;
- (iii) in relation to financial services within the meaning of:
 - A. s 766A(1)(a) and s 766B(1) of the *Corporations Act*; and
 - B. s 12BAB(1)(a) and (5) of the *ASIC Act*.

Conduct was misleading or deceptive

78. At all times material to each Claimant during:

- (a) the Relevant Period; alternatively
- (b) the Later Period;

it was the case that:

- (i) the Related Party Payments had been and continued to be made;
- (ii) the DASS IC had issued and not withdrawn Determinations regarding the recommendation of the URF to Clients;
- (iii) the IC Conflicts existed;
- (iv) the DASS Conflicts existed;
- (v) the Advisor Conflicts existed;
- (vi) the matters set out in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors) were continuing or deteriorating; further or alternatively

(vii) during the Later Period:

A. DASS had or ought reasonably to have assessed that the decline in the Trading Price of URF Securities from not later than about 1 September 2015 was due to, *inter alia*:

- (1) assessments made by institutional and other sophisticated investors regarding the matters set out in paragraph 34 above, reflecting the application of expertise not likely to be possessed by retail clients of the kind likely to seek DASS's financial advice services;
- (2) the increasing total expenses of the fund;
- (3) the increasing Loan to Value Ratio (LVR) of the fund;
- (4) the increasing liabilities; and
- (5) the decreasing net profit margin of the fund;

B. by reason of the matters:

- (1) in paragraph 34 above; and
- (2) in subparagraph (A) hereof;

acquiring or retaining URF Securities was a high risk strategy compared to investment in Benchmark Portfolios;

- C. the liquidity risks associated with the URF were crystallising, in that Clients already holding URF Securities were experiencing difficulties in liquidating those holdings at all, alternatively without capital losses.

79. In the premises set out in the preceding paragraph, during:

- (a) the Relevant Period; alternatively
(b) the Later Period;

it was the case, in relation to each Claimant, that DASS and the Claimant's DASS Advisor(s), in making or not withdrawing the Reassurance Representations:

- (i) were not acting in the Claimant's best interests;
(ii) had not taken reasonable steps to ensure there were reasonable grounds for concluding that the URF Recommendations were and remained appropriate for the Claimant;
(iii) had not:
- A. disclosed all conflicts of interest; or
B. taken reasonable care to ensure that the Claimant was specifically aware of the nature and details of any conflict that might reasonably be thought to exist.

Particulars

The conflicts were the IC Conflict, the DASS Conflict and the Advisor Conflict.

80. In the premises set out in the preceding paragraph, during:

- (a) the Relevant Period; alternatively
(b) the Later Period;

DASS by:

- (i) making, or not withdrawing or correcting the Reassurance Representations; further or alternatively
(ii) taking no or no adequate step to disclose the matters the subject of the Omissions;

engaged in conduct (**Misleading Conduct**) that was misleading or deceptive or likely to mislead or deceive the Claimants.

81. In the premises set out in paragraph 77 and the preceding paragraph, DASS contravened:
- (a) s 1041H(1) of the *Corporations Act*;
 - (b) s 12DA of the *ASIC Act*; further or alternatively
 - (c) s 18 of the *Australian Consumer Law* (the **ACL**).

Misleading conduct – loss and damage

82. In reliance upon the Misleading Conduct, during the Relevant Period some or all of the Claimants:
- (a) acquired; and
 - (b) despite the matters in paragraph 41(b)(ii) – retained;
- URF Securities.

Particulars

The Applicant refers to and repeats the particulars set out under paragraphs 42 and 69 above.

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

83. By reason of the matters set out in the preceding paragraph, the said Claimants suffered loss and damage.

Particulars

The Applicant refers to and repeats the particulars of loss set out under paragraph 46 above.

Particulars of loss for individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

EDL, Dixon and Brown – involvement in misleading conduct

84. At all material times each of:

- (a) Dixon;
- (b) Brown; further or alternatively
- (c) EDL, by its directors, officers or servants Dixon, Broughton, Brown, McLachlan, Cole and/or Meaney;

knew of:

- (i) the Related Party Payments;
- (ii) the matters giving rise to the IC Conflict;
- (iii) the matters giving rise to the DASS Conflict;
- (iv) the matters giving rise to the Advisor Conflict;
- (v) the matters set out in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors); further or alternatively
- (vi) during the Later Period – the matters set out in paragraph 78(b)(vii) above.

Particulars

So far as the Applicant is able to say prior to discovery, knowledge is to be inferred from the circumstances particularised under paragraph 70 above.

85. Each of :

- (a) Dixon;
- (b) Brown; further or alternatively
- (c) EDL, by its directors, officers or servants Dixon, Broughton, Brown, McLachlan, Cole and/or Meaney;

from time to time during the Relevant Period:

- (i) authorised or procured DASS Advisors to engage in the conduct comprising the Misleading Conduct;

Particulars

So far as the Applicant is able to say prior to discovery, the authorisation is to be inferred from:

- i. *the knowledge of Dixon, Brown and EDL particularised under paragraph 70 above; and*
- ii. *the circumstances that:*
 - A. *Determinations continued to be issued from time to time during the Relevant Period; and*
 - B. *DASS Advisors continued to make the URF Recommendations to DASS Clients during the Relevant Period.*

Further particulars may be provided following discovery.

- (ii) approved training of, and notes or scripts for, DASS Advisors that were a cause of the Misleading Conduct; further or alternatively

Particulars

So far as the Applicant is able to say prior to discovery, the said approval is to be inferred from the circumstances that:

- i. *DASS Advisors received training from DASS in relation to the delivery of advice to Clients;*
- ii. *the Determinations were issued from time to time;*
- iii. *the APLs were issued from time to time;*
- iv. *DASS Advisors were trained or expected by DASS to give effect to the Determinations and observe the APLs;*
- v. *Dixon and Brown, further or alternatively EDL by its officers who were also members of the DASS IC, was responsible for supervising the content of recommendations made by DASS Advisors to Clients.*

- (iii) approved or acquiesced in the issue or implementation of Determinations that were only likely to be effective if DASS Advisors engaged in the Misleading Conduct.

Particulars

The Applicant refers to and repeats the particulars under (ii) above.

86. In the premises set out in the two preceding paragraphs, each of:

- (a) Dixon;
- (b) Brown; further or alternatively
- (c) EDL;

counselled, procured, induced or was knowingly concerned in the Misleading Conduct within the meaning of:

- (i) s 79 of the *Corporations Act*;
- (ii) s 5(2) of the *ASIC Act* (which adopts s 79 of the *Corporations Act*); further or alternatively
- (iii) s 18 of the *ACL*.

87. In the premises set out in the preceding paragraph, each of:

- (a) Dixon;
- (b) Brown; further or alternatively
- (c) EDL;

was involved in the contraventions alleged in paragraph 81 above.

PART J – NEGLIGENCE

Duty of Care

88. Further and in the alternative to the foregoing, at all times material to each of the Claimants:

- (a) it was reasonably foreseeable to each of the Respondents that if DASS Advisors advised Clients to invest in financial products that were not appropriate for the financial position and investment objectives of the Clients then the Clients would or might suffer financial loss and damage (the **Risk of Harm**);
- (b) each of:
 - (i) DASS as:
 - A. the employer of the DASS Advisors;

- B. the employer, or person authorised to give directions to each of:
 - (1) Dixon, Broughton and Brown as members of the DASS IC; further or alternatively
 - (2) MacLachlan, Cole and Meaney;
- (ii) Dixon:
 - A. a director or senior officer of DASS; further or alternatively
 - B. a member of the DASS IC;
- (iii) Brown as:
 - A. a director or senior officer of DASS; further or alternatively
 - B. a member of the DASS IC;
- (iv) EDL as:
 - A. the ultimate holding company of DASS;
 - B. the appointor of Dixon, Broughton, Brown, MacLachlan, Cole, further or alternatively Meaney as directors of DASS;

had the authority, alternatively the practical ability to give directions to DASS Advisors as to the financial services provided to Clients;

Particulars

So far as the Applicant is able to say prior to discovery, EDL's prerogative to appoint MacLachlan, Cole and/or Meaney to the Board of DASS is to be inferred from the circumstances that each of them was a senior manager of EDL but appointed as a director of EDL's subsidiary DASS. Further particulars may be provided following discovery.

The practical ability is to be inferred from the circumstances that:

- i. the DASS Advisors were employees of DASS;*
- ii. DASS had the practice of issuing the Determinations, regulating the content of the advice given by Advisors to Clients;*
- iii. each of DASS, Dixon and (by the officers referred to above) EDL stood in the position of:*
 - A. employer or supervisor to the DASS Advisors or*
 - B. a person authorised by the internal procedures and hierarchies of DASS to give instructions to the DASS Advisors in the course of their employment.*

Further particulars may be provided following discovery.

- (c) in the premises in (b), each of the Respondents had the authority, alternatively the practical ability *inter alia* to:
 - (i) issue directions, in the form of or similar to the Determinations, to the effect that DASS Advisors:
 - A. must explain to any Client the matters set out in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors);
 - B. must caution any Client that URF Securities were not suitable for conservative or balanced investors:
 - (1) at all; alternatively
 - (2) as more than a very minor proportion of the portfolio in respect of which the DASS Advisor was providing advice or portfolio management services;
 - C. must obtain written acknowledgements from any Client investing in URF Securities:
 - (1) to the effect that the Client had received advice to the effect set out in (B); and
 - (2) that the Client, despite the said advice, specifically instructed the DASS Advisor to acquire the URF Securities, or not to dispose of URF Securities already acquired; and
 - (ii) supervise or audit, or require the supervision or auditing of DASS Advisors to ensure compliance with the direction referred to in (i) above;
- (d) in the premises in (c), each of the Respondents had control over the Risk of Harm in respect of Clients' investments in the URF;
- (e) each Claimant:
 - (i) was a retail investor;
 - (ii) was relatively inexpert in investing, compared to DASS and the DASS Advisors;
 - (iii) had approached DASS for investment advice because of, *inter alia*, the matters in (ii);
 - (iv) was relatively inexpert in investing in US real estate or US real estate investment trusts, compared to DASS and the DASS Advisors;

- (v) relied on his, her or its DASS Advisor *inter alia* to:
 - A. appropriately identify the Claimant's risk profile;
 - B. appropriately identify the prudent investment objectives of the Claimant;
 - C. exercise the skill and care reasonably to be expected of a financial advisor holding itself out as an expert provider of financial advice and portfolio management services to retail clients, including in respect of investments in Australian and US real estate investment trusts;
- (vi) was, or ought reasonably to have been known or expected by DASS and the DASS Advisors to be:
 - A. likely to act in accordance with advice given by the Claimant's DASS Advisor; and
 - B. likely not to change an investment earlier recommended by the Claimant's DASS Advisor, unless and until a DASS Advisor recommended such a change;
- (vii) would or may suffer financial loss and damage if advice given by a DASS Advisor was, or ceased to be, appropriate for the financial position and investment objectives of the Claimant; and
- (viii) was or ought reasonably to have been known or expected by DASS and the DASS Advisors to have the characteristics in (i) to (viii) above; and

Particulars

The said characteristics, so far as they related to the Applicant, were known or ought reasonably to have been recognised by DASS and the DASS Advisors from the circumstances that:

- i. the Applicant was the trustee of the Watson SMSF;*
- ii. the Applicant's directors had approached DASS seeking financial advice in relation to the Watson SMSF;*
- iii. the Applicant's directors had or ought reasonably to have been recognised by DASS as being likely to have less expertise than DASS in relation to investment and portfolio management for a SMSF.*

Further particulars may be provided following discovery.

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

- (f) in the premises in (e), the Claimant was vulnerable to any failure by his or her DASS Advisor to exercise the skill and care reasonably to be expected of a financial advisor holding itself out as an expert provider of financial advice and portfolio management services to retail clients, including in respect of investments in Australian and US real estate investment trusts.

89. In the premises set out in the preceding paragraph, at all times material to each of the Claimants each of the Respondents owed to the Claimant a duty:

- (a) to take reasonable care:
 - (i) in the case of Dixon – by himself; and
 - (ii) in the case of DASS and EDL – by their directors, officers, servants and agents;
and
- (b) to cause the DASS Advisors under the authority, management or supervision of each Respondent to take reasonable care;

to avoid the Risk of Harm to the Claimants and each of them (the said duty being in respect of each Respondent his or its **Duty of Care**).

Available precautions

90. At all material times during the Relevant Period it was reasonably foreseeable to the Respondents and each of them that the Risk of Harm to Clients (including the Claimants) was likely to be materially reduced if:

- (a) DASS Advisors, in connection with the provision of financial advice or portfolio management services to Clients considering or holding URF Securities:
 - (i) explained to the Client the matters set out in paragraph 34 above (regarding the unsuitability of URF Securities for conservative or balanced investors);
 - (ii) cautioned the Client that URF Securities were not suitable for conservative or balanced investors:

- A. at all; alternatively
 - B. as more than a very minor proportion of the Client's portfolio;
- (iii) obtained written acknowledgements from any Client acquiring or holding URF Securities to the effect that:
- A. the Client had received advice to the effect set out in (ii); and
 - B. the Client, despite the said advice, specifically instructed the DASS Advisor to acquire the URF Securities, or not to dispose of URF Securities already acquired (as the case may be); and
- (b) DASS had and implemented systems complying with appropriate Australian financial services industry practice for:
- (i) instructing DASS Advisors as to compliance with; and
 - (ii) the supervision or auditing of DASS Advisors to ensure compliance with;
- the precautions in (a) above.

Breach – negligent advice

91. During the Relevant Period, the DASS Advisors of some or all of the Claimants:
- (a) made the URF Recommendations;
 - (b) made the Reassurance Representations;
 - (c) failed to inform the Claimant of the matters the subject of the Omissions;
 - (d) failed to take any or any adequate step to caution the Claimant that URF Securities were not suitable for conservative or balanced investors:
 - (i) at all; alternatively
 - (ii) as more than a very minor proportion of the Claimant's portfolio; and
 - (e) failed to take any or any adequate step to obtain written acknowledgements from any Claimant acquiring or holding URF Securities to the effect that:
 - (i) the Claimant had received advice to the effect set out in (d); and
 - (ii) the Claimant, despite the said advice, specifically instructed the DASS Advisor to acquire the URF Securities, or not to dispose of URF Securities already acquired (as the case may be).

Particulars

Mandel made the First, the Second, the Third, the Fourth and the Fifth Recommendations to the Applicant.

Prior to making the said Recommendations, Mandel did not:

- (a) inform the Applicant of the matters the subject of the Omissions;*
- (b) caution the Applicant that URF Securities were not suitable for conservative or balanced investors; or*
- (c) obtain written acknowledgements from the Applicant.*

Further particulars relating to the Applicant will be provided following discovery.

Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

92. In the premises set out in the preceding paragraph:
- (a) the said DASS Advisors failed to take the precautions referred to in paragraph 90(a) above; and
 - (b) DASS, by the said DASS Advisors, breached the Duty of Care.
93. By reason of:
- (a) the breach alleged in the preceding paragraph (**Advice Negligence**);
 - (b) the matters set out in paragraph 42 above (regarding the Claimants' reliance); and
 - (c) the matters set out in paragraph 41 above (regarding the declining value of URF Securities);

some or all of the Claimants referred to in paragraph 91 suffered loss and damage.

Particulars

The Applicant refers to and repeats the particulars of loss and damage set out under paragraph 46 above.

94. In the premises set out in the preceding paragraph, the Advice Negligence was a factual cause of the Claimants' loss and damage.

Breach – no adequate systems

95. During the Relevant Period the Respondents took no or no adequate step to ensure that the DASS advisory business had and implemented systems complying with appropriate Australian financial services industry practice for:

- (a) instructing DASS Advisors as to compliance with; or
- (b) the supervision or auditing of DASS Advisors to ensure compliance with;

the precautions referred to in paragraph 90(a) above.

Particulars

So far as the Applicant is able to say prior to discovery, the said failures are to be inferred from:

- i. the matters set out in paragraph 88(b) above regarding the authority of each Respondent in respect of the conduct of the DASS advisory business; and*
- ii. the matters set out in paragraph 96 below regarding the absence of adequate systems.*

Further particulars may be provided following discovery and receipt of experts' reports.

96. In the premises set out in the preceding paragraph, each of the Respondents breached the Duty of Care (**Systems Negligence**).

97. By reason of the breaches referred to in the preceding paragraph, during the Relevant Period:

- (a) the DASS advisory business:
 - (i) authorised, acquiesced in, or had no adequate systems to prevent the DASS IC from issuing Determinations with the purpose or likely effect of causing DASS Advisors to:
 - A. make the URF Recommendations; further or alternatively
 - B. engage in the Misleading Conduct; and
 - (ii) had no or no adequate systems for:
 - A. instructing DASS Advisors as to compliance with; or

- B. the supervision or auditing of DASS Advisors to ensure compliance with;
the precautions referred to in paragraph 90(a) above;
- (b) the DASS Advisors:
- (i) made the URF Recommendations;
 - (ii) made the Reassurance Representations;
 - (iii) failed to take any or adequate steps to disclose the matters the subject of the Omissions; and
 - (iv) failed to take the precautions referred to in paragraph 90(a) above;
- (c) some or all of the Claimants relied upon the URF Recommendations in deciding whether to acquire or retain URF Securities; and
- (d) by reason of the matters set out in paragraph 41 above (regarding the declining value of URF Securities), the said Claimants suffered loss and damage.

Particulars

The Applicant refers to and repeats the particulars of loss and damage set out under paragraph 46 above.

Scope of liability

98. By reason of the matters set out in:
- (a) paragraph 36 above (regarding the Retainers);
 - (b) paragraph 47 and 48 above (regarding the requirements of the *Corporations Act*);
 - (c) paragraph 80 and 81 above (regarding the statutory rules as to misleading and deceptive conduct in connection with financial services);
 - (d) paragraph 88(c) (regarding the Respondents' practical control over the Risk of Harm);
 - (e) paragraph 88(e)(i) to 88(e)(vii) above (regarding the Claimants' vulnerability);
 - (f) paragraph 88(e)(viii) above (regarding the Respondents' notice of the Claimants' vulnerability); and
 - (g) paragraph 84 above (regarding the Respondents' notice of the conflicts of interest);
- it is:

- (i) conducive to the enforcement of contracts like the Retainers;
- (ii) consistent with the public policy reflected in Chapter 7 of the *Corporations Act*; further or alternatively
- (iii) consistent with public policy as reflected in:
 - A. s 1041H of the *Corporations Act*,
 - B. s 12DA of the *ASIC Act*, further or alternatively
 - C. s 18 of the *ACL*;

that the Respondents' liability in respect of the Advice Negligence or the Systems Negligence (as the case may be) should extend to liability for the Claimants' losses and damage alleged in paragraph 93, further or alternatively paragraph 97(d) above.

99. In the premises set out in the preceding paragraph, it is appropriate within the meaning of s 5D(1)(b) of the *Civil Liability Act 2002* (NSW) that the Respondents' liability in respect of the Advice Negligence or the Systems Negligence (as the case may be) should extend to liability for the Claimants' losses and damage alleged in paragraph 93, further or alternatively paragraph 97(d) above.

PART K – COMMON QUESTIONS OF LAW OR FACT

100. The questions of law or fact common to the claims of the Applicant and Group Members are:

Characteristics of URF

- (a) whether and if so at what times URF Securities had any and if so which of the characteristics referred to in paragraph 34;

Breaches of contract (Retainers)

- (b) whether terms of engagement in the form of the Retainer included the terms alleged in paragraph 36 above;
- (c) whether and if so at what times the URF Recommendations were or would have been a breach of a Retainer having the terms alleged in paragraph 36 above;

- (d) what principles ought be applied in determining:
 - (i) causation of loss; and
 - (ii) the measurement of compensable loss;
 in respect of the alleged breaches of Retainer;

Financial advisor obligations

- (e) what principles ought be applied in determining whether and if so at what times URF Recommendations were in the best interests of a retail client with a conservative or balanced risk profile, within the meaning of s 961B(1) of the *Corporations Act*;
- (f) whether and if so at what times the URF Recommendations were appropriate (within the meaning of s 961G of the *Corporations Act*) for retail clients with conservative or balanced risk profiles:
 - (i) at all; alternatively
 - (ii) as to more than a very minor portion of the investor's portfolio;
- (g) whether and if so at what times:
 - (i) the IC Conflicts existed;
 - (ii) the DASS Conflicts existed;and/or
 - (iii) the Advisor Conflicts existed;
- (h) what principles ought be applied in determining whether DASS Advisors, in making URF Recommendations, gave priority to the Client's interests within the meaning of s 961J(1) of the *Corporations Act*;
- (i) what principles ought be applied in determining:
 - (i) causation of loss; and
 - (ii) the measurement of compensable loss;
 in respect of the alleged contraventions of Chapter 7 of the *Corporations Act*;

Breaches of fiduciary obligations

- (j) whether DASS by itself or by the DASS Advisors owed any and if so which of the Fiduciary obligations;

- (k) whether any and if so what conduct alleged against DASS and the DASS Advisors constituted Fiduciary Breaches, to the extent that the Obligations were owed to any Claimant;
- (l) whether any and if so which of the Respondents knowingly assisted any and if so what Fiduciary Breaches;
- (m) what principles ought be applied in determining:
 - (i) causation of loss; and
 - (ii) the measurement of compensable loss;in respect of the alleged Fiduciary Breaches;

Misleading etc conduct

- (n) whether and if so at what times and in what respects the Misleading Conduct was misleading or deceptive or likely to mislead or deceive within the meaning of:
 - (i) s 1041H of the *Corporations Act*;
 - (ii) s 12DA of the ASIC Act; further or alternatively
 - (iii) s 18 of the ACL;
- (o) whether any and if so which of the Respondents was involved in DASS's contraventions referred to in the preceding question;
- (p) what principles ought be applied in determining:
 - (i) causation of loss; and
 - (ii) the measurement of compensable loss;in respect of the alleged Misleading Conduct;

Negligence

- (q) whether any and if so which of the Respondents owed the Duty of Care;
- (r) whether and if so how the conduct alleged would have breached the Duty of Care, to the extent that the conduct occurred in respect of any Claimant;
- (s) what principles ought be applied in determining:
 - (i) causation of loss; and
 - (ii) the measurement of compensable loss;

in respect of the alleged breaches of the Duty of Care;

PART L – RELIEF

101. The Applicant claims on its own behalf (as Trustee of the Watson SMSF) and on behalf of the Group Members the relief set out in the Originating Application.

Date: 22 December 2021



Signed by Janice Mary Saddler

Lawyer for the Applicant

This pleading was prepared by C Symons of Counsel and settled by LWL Armstrong QC.

Certificate of lawyer

I, Janice Mary Saddler, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 22 December 2021

A handwritten signature in black ink, appearing to read "Saddler", followed by a period. The signature is written in a cursive, flowing style.

Signed by Janice Mary Saddler

Lawyer for the Applicant

Schedule of Parties

Watson & Co Superannuation Pty Ltd atf Watson & Co Superannuation Fund
(ACN 601 686 828)

Applicant

AND

Dixon Advisory and Superannuation Services Ltd
(ACN 103 071 665)

First Respondent

E&P Financial Group Limited
(ACN 609 913 457)

Second Respondent

Alan Cochrane Dixon

Third Respondent

Christopher Matthew Brown

Fourth Respondent

Annexure A

Table of Expenses / Related Party Payments

	31 Dec 2013	31 Dec 2014	31 Dec 2015	31 Dec 2016	31 Dec 2017	31 Dec 2018	31 Dec 2019	31 Dec 2020	31 Dec 2021
	<i>\$(millions)</i>								
Foreign Currency	(1)	(3)	3	0	(5)	17	2	(1)	
Property Expenses	(6)	(9)	(14)	(15)	(15)	(18)	(21)	(15)	(14)
Management Fees	(4)	(8)	(14)	(20)	(14)	(5)	(5)	(4)	(9)
Professional Fees	(1)	(3)	(2)	(3)	(2)	(3)	(4)	(2)	(2)
Salary and Wages	(4)	(6)	(8)	(9)	(10)	(10)	(9)	(8)	
Office and Admin	(3)	(3)	(5)	(7)	(7)	(4)	(1)	(0)	(6)
Interest	(1)	(0)	(10)	(22)	(38)	(37)	(41)	(37)	(32)
Depreciation	-	-	-	-	-	(0)	(2)	(1)	
Other Expenses	(0)	(0)	(1)	(1)	(1)	(1)	(2)	(1)	
Total Expenses / Related Party Payments	(21)	(32)	(51)	(75)	(91)	(62)	(83)	(68)	

Annexure BShare Price History (ASX:URF)

Date	Share Price
31-Dec-12	\$1.70
31-Dec-13	\$1.86
24-Nov-14	\$2.00
25-Nov-14	\$2.00
26-Nov-14	\$2.02
28 Nov-14	\$2.01
31-Dec-14	\$2.19
24 – 28 Nov-15	\$2.17 - \$2.20
31-Dec-15	\$2.05
1-Sep-16	\$1.95
24 – 28 Nov-16	\$2.02
31-Dec-16	\$2.07
1-Sep-17	\$1.75 - \$1.76
24 – 28 Nov-17	\$1.85
31-Dec-17	\$1.85
1-Sep-18	\$1.50
24 – 28 Nov-18	\$1.35 - \$1.39
31-Dec-18	\$1.35
1-Sep-19	\$0.76
24 – 28 Nov-19	\$0.77 - \$0.78
31-Dec-19	\$0.89
1-Sep-20	\$0.23
24 – 28 Nov-20	\$0.30 - \$0.33
31-Dec-20	\$0.24
1-Sep-21	\$0.34
24 – 28 Nov-21	\$0.32
30-Nov-21	\$0.32