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Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
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File Title:	JAMES BONHAM AS TRUSTEE FOR AUCHAM SUPER FUND v ILUKA RESOURCES LTD ABN 34 008 675 018
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos".

Dated: 9/07/2020 1:02:29 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 17
Rule 8.05(1)(a)

FURTHER AMENDED STATEMENT OF CLAIM

No. NSD576 of 2018

Federal Court of Australia
District Registry: New South Wales
Division: General

James Bonham atf the Aucham Super Fund

Applicant

Iluka Resources Limited ABN 34 008 675 018

Respondent

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Filed on behalf of:

Jim Bonham atf Aucham Super Fund, Applicant

Prepared by:

ACAShine Lawyers

Tel:

(02) 9216 9898/754 7270

Fax

(02) 9216 9850/9267 5650

Email

craig.allsopp@acalawyerscallsopp@shine.com.au

Address for service:

Level 3, 44 Martin Place, 299 Elizabeth Street, Sydney NSW 2000

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NOTE AS TO TERMINOLOGY

In this further amended statement of claim, the following conventions are used in referring to financial results:

- (a) FY 2011 and FY 2012 (by way of example) refer to the financial years of the respondent (**ILU**) (being calendar years) ended 31 December 2011 and 31 December 2012;
- (b) 1H 2012 and 2H 2012 (by way of example) refer to the first and second half of FY 2012 (i.e. the six month period ended 30 June 2012 and the six month period ended 31 December 2012, etc); and
- (c) 1Q 2012 and 2Q 2012 (by way of example) refer to the first and second quarters of FY 2012 (i.e. the first three month period ended 31 March 2012 and the second three month period 30 June 2012, etc).

References to subparagraphs include their chapeau and, unless otherwise indicated, references to paragraphs include all of their subparagraphs.

A. INTRODUCTION

A.1 The Applicant and the Group Members

1. The Applicant:

- (a) purchased ordinary shares in the respondent (**ILU Securities**) on the financial market operated by the Australian Securities Exchange Limited (**ASX**);

Particulars

Details of the particular transactions are set out below.

Date	Number of securities	Average price per security	Amount paid (\$) excluding GST and brokerage	Brokerage (\$)	GST (\$)	Amount paid (\$) (including brokerage)
14 May 2012	2150	\$13.68	\$29,412.00	\$82.88	\$8.29	\$29,503.17

- (b) commences this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**) on behalf of himself and all persons who or which:
 - (i) acquired an interest in ILU Securities during the period from 12 April 2012 to 8.26 am (AEST) on 9 July 2012 (**Relevant Period**);

(ii) he alleges suffered loss or damage by reason of the conduct of ILU pleaded in this Further Amended Statement of Claim; and

(iii) are not any of the following:

- (A) a related party (as defined by section 228 of the *Corporations Act 2001* (Cth)) (**Corporations Act**) of ILU;
- (B) a related body corporate (as defined by section 50 of the Corporations Act) of ILU;
- (C) an associated entity (as defined by section 50AAA of the Corporations Act) of ILU; or
- (D) an officer or a close associate (as defined by section 9 of the Corporations Act) of ILU,

(Group Members).

2. Immediately prior to the commencement of this proceeding, seven or more persons have claims against ILU within the meaning of section 33C of the FCAA.

A.2 The respondent (ILU)

3. ILU is and at all material times was:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
- (b) a corporation included in the official list of the financial market operated by ASX and whose Securities are ED securities for the purposes of section 111AE of the Corporations Act;
- (c) subject to and bound by the Listing Rules of the ASX (**Listing Rules**);
- (d) a listed disclosing entity within the meaning of section 111AL(1) of the Corporations Act;
- (e) a trading corporation within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
- (f) a corporation within the meaning of the *Competition and Consumer Act 2010* (Cth).

A.3 Application of section 674(2) of the Corporations Act to ILU

4. At all material times, Rule 3.1 of the Listing Rules:
 - (a) bound ILU; and
 - (b) provided that once an entity is, or becomes aware of, any information concerning the entity that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in Listing Rule 3.1A apply, tell the ASX that information immediately.
5. At all material times, Rule 19.12 of the Listing Rules provided that an entity becomes aware of information if an officer of the entity has, or ought reasonably to have come into possession of the information in the course of the performance of their duties as an officer of that entity.
6. At all material times, section 674(2) of the Corporations Act applied to ILU by reason of:
 - (a) the matters alleged in paragraph 4; and
 - (b) sections 111AP(1) and/or 674(1) of the Corporations Act.

B. ILU – COMPANY BACKGROUND AND OFFICERS

7. ILU is and was during the Relevant Period:
 - (a) the world's largest producer of zircon, a mineral with a wide variety of applications, particularly in the construction industry;
 - (b) a producer of titanium dioxide products, including rutile and synthetic rutile, which are used as a pigment (paints), in the production of titanium, and in welding.
- 7A. From February 2012 and at all relevant times during and until the end of the Relevant Period:
 - (a) ILU's Board of Directors (Board) was comprised of:
 - (i) George John Pizzey (Chairman and Director, known as John);
 - (ii) David Alexander Robb (Managing Director and CEO);
 - (iii) Gavin Rezos (Director);
 - (iv) Jennifer Anne Seabrook (Director);

- (v) Stephen John Turner (Director); and
 - (vi) Wayne Geoffrey Osborn (Director);
- (b) ILU's "Leadership Team", ~~which reported directly to the Board of Directors~~, was comprised of;
- (i) until 1 June 2012 Alan Tate (Chief Financial Officer and Head of Strategy and Planning from May 2008 before moving to corporate development and strategic planning activities from 1 June 2012);
 - (ii) Cameron Wilson (Chief Legal Counsel and Head of Corporate Acquisitions; Company Secretary; and General Manager, Corporate Services);
 - (iii) Victor Hugo (General Manager, Product and Technical Development);
 - (iv) Hans Umlauff (General Manager, ~~SA Project Development~~, and General Manager NSW Development & Project Management Standards);
 - (v) Robert Porter (General Manager, Investor Relations and Corporate Affairs);
 - (vi) Simon Green (General Manager, Finance and Risk; and from 1 June 2012 Chief Financial Officer);
 - (vii) Matthew Blackwell (~~President and General Manager – US region, USA~~);
 - (viii) Steve Wickham (~~Chief Operating Officer~~ General Manager Australian Operations);
 - (ix) Doug Warden (~~Head of~~ General Manager Exploration and Resource Development); ~~and~~
 - (x) Chris Cobb (General Manager, Sales and Marketing); and
 - (xi) Mr Robb (Managing Director and CEO);
- (c) the individuals in 7A(b)(i)-(v) and (vii)-(x) above formally reported to Mr Robb, the Managing Director and CEO of ILU; and
- (d) Mr Green formally reported to Mr Tate.

7B. From February 2012 and at all relevant times during and until the end of the Relevant Period:

- (a) Barry Murphy was employed by ILU in the role of "Corporate Planning and Industry Analysis Manager, Planning and Industry Manager"; and
- (b) Simon Hay was employed by ILU in the role of "~~Vice President~~ Sales and Marketing, Asia Pacific Manager China".

7C. Not used.

- 7D. Each of the persons identified in paragraphs 7A and, further and in the alternative, paragraph 7B was, during the Relevant Period, an “officer” of ILU within the meaning of section 9 of the Corporations Act and for the purpose of the use of that word in the definition of “aware” in Listing Rule 19.12.

Particulars

(a) *Pursuant to the definition of ‘officer’ which in s 9 of the Corporations Act (which applies to the Listing Rules by operation of Listing Rule 19.3);*

- (i) *each of ILU’s directors are taken to be officers of the company;*
- (ii) *each member of the Leadership Team is an officer of ILU due to the fact that they each are persons (within the meaning of the s 9 definition):*
 - A. *who make, or participate in making, decisions that affect the whole, or a substantial part, of the business of ILU; or*
 - B. *who have the capacity to affect significantly ILU’s financial standing; and/or*
 - C. *in accordance with whose instructions or wishes the directors of the ILU are accustomed to act*

(b) *It may be inferred from the senior roles occupied by each of Mr_Murphy and Mr Hay that they are officers of ILU because they are persons:*

- A. *who make, or participate in making, decisions that affect the whole, or a substantial part, of the business of ILU; and/or*
- B. *who have the capacity to affect significantly ILU’s financial standing.*

- 7E. By reason of the matters pleaded in paragraphs 7A and 7B, any information of which each of the persons identified in paragraph 7A and further, or in the alternative, paragraph 7B was aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of ILU, was information of which ILU was “aware” for the purpose of the Listing Rules, in particular Listing Rules 3.1 and 19.12.

C. THE 9 JULY 2012 CORRECTIVE SALES UPDATE

8. On 9 July 2012, ILU lodged with the ASX and publicly released an announcement entitled “*Forecast Sales Volumes – Update*” (9 July 2012 Sales Update).

9. By the 9 July 2012 Sales Update ILU announced that:
- (a) a marked deterioration in major regional economies, more pessimistic official forward outlooks and commentary, and the absence of anticipated or effective policy responses since the company's previous disclosure in May, had a flow on impact on mineral sands customer confidence levels and future business performance expectations, which was likely to influence sales volumes materially over the remainder of 2012;
 - (b) zircon sales for FY 2012 were expected to be between 200 and 300 kt;
 - (c) 1H 2012 zircon sales were 87kt;
 - (d) rutile sales for FY 2012 were expected to be between 140 and 200 kt;
 - (e) 1H 2012 rutile sales were 85kt;
 - (f) synthetic rutile sales for FY 2012 were expected to be between 170 and 220kt;
 - (g) 1H 2012 synthetic rutile sales were 101kt;
 - (h) due to uncertainty associated with economic and business conditions, sales forecasts over extended periods could not be made with an appropriate degree of confidence; and
 - (i) its market strategy of changing sales contract periods from multi-year or annual arrangements to much shorter periods – quarterly or spot in the case of zircon and six-monthly, quarterly or spot in the case of titanium dioxide products – resulted, in times of global and regional economic uncertainty and turmoil with weakened business confidence levels, in volatility in sales levels from period to period.
10. Following the release of the 9 July 2012 Sales Update, the price of ILU Securities fell from a closing price of \$11.70 on 6 July 2012, to a closing price of \$8.88 on 9 July 2012.
11. The FY 2012 sales figures ultimately were:
- (a) zircon – 213.8kt;
 - (b) rutile – 105.5kt;

- (c) synthetic rutile – 169.6kt.

D. RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES OF ILU LEADING UP TO THE 9 JULY 2012 SALES UPDATE

D.1 The February Report and Earnings Guidance

- 12. On 23 February 2012, ILU published and lodged with the ASX documents entitled:
 - (a) Appendix 4E – Preliminary Final Report for the Year Ended 31 December 2011;
 - (b) Full Year Results to 31 December 2011;
 - (c) 2011 Full Year Results Presentation Slide Pack,(collectively, the **February Report**).
- 13. The February Report included express statements by ILU (**February Express Statements**) that:
 - (a) mineral sands revenue was the largest component of ILU's FY 2011 revenue, comprising \$1,536.7 million or 94% of its total revenue of \$1,631.4 million;
 - (b) mineral sands revenue was made up of sales of zircon, rutile, synthetic rutile and ilmenite in the following quantities for FY 2011:
 - (i) zircon – 514.5kt (with 601kt produced);
 - (ii) rutile – 265.9kt (with 281.3kt produced);
 - (iii) synthetic rutile – 257.7kt (with 285.7kt produced);
 - (iv) saleable ilmenite – 570.90kt (with 459.7kt produced);
 - (c) mineral sands revenue had increased by 75.7% compared with the previous corresponding period, due mainly to significantly higher prices for all zircon, rutile and synthetic rutile (referred to as "**Z/R/SR**"), together with an increase in the proportion of zircon in the Z/R/SR sales mix;
 - (d) zircon production represented 51.5% of mineral sands production;
 - (e) the unit revenue per tonne of Z/R/SR sold in FY 2011 was \$1,480/t;

- (f) the weighted average prices at the end of 2011 were:
 - (i) for zircon – US\$2,400/t;
 - (ii) for rutile – US\$1,340/t;
 - (iii) for synthetic rutile – \$US\$1,075/t; and
 - (g) ILU expected:
 - (i) the first quarter 2012 zircon weighted average prices to be approximately US\$2,500/t;
 - (ii) the 1H 2012 rutile weighted average prices to be approximately US\$2,400/t;
 - (iii) the 1H 2012 synthetic rutile weighted average prices to be approximately US\$2,050/t.
14. The February Report included implied statements by ILU (**February Implied Statements**) that:
- (a) the sale of zircon comprised at least \$760 million or 50% of ILU's FY 2011 mineral sands revenue; and
 - (b) in the first quarter of 2012 100t of zircon would contribute as much as \$240 to \$250 million to ILU's mineral sands revenue.

Particulars

- A. *The statement in paragraph (a) was implied by the combination of the matters pleaded in paragraph 13(a), (b)(i) and (e), in that the FY 2011 zircon sales pleaded in 13(b)(i) multiplied by the unit revenue per tonne pleaded in 13(e) implies a \$ value of zircon sales for FY 2011, which when compared to the mineral sands revenue pleaded in paragraph 13(a) implies a percentage of revenue attributable to zircon sales;*
 - B. *The statement in paragraph (b) was implied by the combination of the matters pleaded in paragraphs 13(f)(i) and 13(g)(i), in that those prices multiplied by 100 t equals \$240 to \$250 million.*
15. On 23 February 2012, ILU also published and lodged with the ASX a document entitled Key Physical and Financial Parameters 2012 – 2014 (**February Earnings Guidance**).
16. The February Earnings Guidance included express statements by ILU (**February Express Guidance Statements**) that:

- (a) ILU expected production for FY 2012 to be:
 - (i) zircon: ~ 500kt;
 - (ii) rutile: ~ 225kt;
 - (iii) synthetic rutile: ~ 310kt;
 - (iv) saleable ilmenite: ~ 350kt;
- (b) forecast 2012 sales volumes:
 - (i) for zircon, dependent on global demand levels and phasing, could be ~ 10% lower than production for FY 2012; and
 - (ii) for rutile and ~~zircon~~synthetic rutile, were expected to be in line with production for FY 2012.
- (c) ILU did not undertake to update regularly, in part or whole, the information in the February Earnings Guidance, but could be expected to comment on any material variations.

17. The February Earnings Guidance included implied statements by ILU (**February Implied Guidance Statements**) that:

- (a) ILU was able, from the information available to it, to provide a reasonably reliable guide as to its revenue for the FY2012; and
- (b) ILU expected sales for FY 2012 to be:
 - (i) of zircon ~ 450kt;
 - (ii) of rutile ~ 225kt;
 - (iii) of synthetic rutile ~ 310kt;
 - (iv) of saleable ilmenite ~ 350kt.

Particulars

- A. *The statement in paragraph (a) was implied by the combination of the February Express Statements, together with the February Implied Statements and the February Express Guidance Statements*

B. The statement in paragraph (b) was implied by the combination of the matters pleaded in subparagraphs 16(a) and (b).

18. On 27 March 2012, ILU published and lodged with the ASX its Annual Report for 2011 (**2011 Annual Report**).
19. The 2011 Annual Report repeated the February Express Statements and the February Implied Statements.

Particulars

The repetition is to be implied from:

- A. p 12 of the Annual Report, in which it is said that in the opinion of the Directors of ILU, likely developments in and expected results of the operations of the group have been disclosed; and*
- B. the absence of any other relevant disclosure between the publication of the February Earnings Guidance and the 2011 Annual Report.*

D.2 The March 2012 Quarterly Report

20. On 12 April 2012, ILU published and lodged with the ASX documents entitled:
 - (a) Quarterly Production Report dated 31 March 2012; and
 - (b) Amended and Re-Issued Quarterly Production Report dated March 2012 (which included three lines of text at the top of page 6 which had been omitted in the Quarterly Production Report dated 31 March 2012),(collectively, the **March 2012 Quarterly Report**).
21. The March 2012 Quarterly Report included express statements by ILU (**April Express Statements**) that:
 - (a) 1Q 2012 production of Z/R/SR was lower than the corresponding quarter in 2011;
 - (b) production of Z/R/SR and ilmenite for 1Q 2012 were in the following quantities:
 - (i) zircon – 115.7kt (compared with 1Q 2011: 141.8kt);
 - (ii) rutile – 50.7kt (compared with 1Q 2011: 63.9kt);
 - (iii) synthetic rutile – 50.6kt (compared with 1Q 2011: 78.5kt);
 - (iv) upgradable ilmenite – 72.4kt (compared with 1Q 2011: 38.3kt); and

- (v) saleable ilmenite – 123.6kt (compared with 1Q 2011: 109.5kt);
- (c) mineral sands sales revenue for 1Q 2012 was \$196.3 million (compared with 1Q 2011: \$226.3 million);
- (d) lower sales revenue, despite higher product prices, reflected the expected slow start to zircon sales in 2012, as well as phasing of the shipment schedule for high grade titanium dioxide products;
- (e) ILU expected a soft quarter or two of zircon demand associated with:
 - (i) the impact of global economic conditions on customer confidence;
 - (ii) the effect of measures by the Chinese Government to control inflation and temper speculative activity in some parts of the Chinese property market;
 - (iii) the timing of the Chinese New Year;
 - (iv) the need for a destocking period, especially for ceramics manufacturers;
 - (v) the fact that some customers did not ~~reactive~~reactivate their plants until February and in the case of some ceramic manufacturers in China, plants remained closed through part or all of March;
- (f) it would be some time for a clear view on overall 2012 zircon demand and the phasing of that demand to emerge; and
- (g) ILU was continuing to experience strong demand for its high grade titanium dioxide products.

D.2.1 ILU's actual and constructive knowledge as at 12 April 2012

22. As at 12 April 2012 ILU was 'aware' within the meaning of rule 19.12 of the ASX Listing Rules of each of the following matters:

- (a) the actual sales figures for 1Q 2012 for Z/R/SR;

Particulars

(i) *ILU was actually aware of this information for at least the following reasons:*

*A. By email dated 5 April 2012 [ILU.021.016.2848], Robert Porter, ILU's General Manager, Investor Relations and Corporate Affairs, sent the March "Day 0" report (**Day 0 Report**) to Carly Smith,*

Manager, Corporate Affairs which contained monthly and year to date Z/R/SR sales figures to the end of March 2012 [ILU.021.016.2850]. This had earlier, on 30 March 2012, been circulated among the Leadership Team including Mr Robb.

B. Year to date sales figures were provided to Alan Tate, ILU's -Chief Financial Officer and Head of Strategy and Planning, in the March 2012 Performance report [ILU.021.063.3585] (**Draft March Performance Report**), under cover email dated 12 April 2012 [ILU.021.063.3584].

C. ~~Both~~In addition to Mr Robb's awareness, both Mr Porter and Mr Tate were each members of ILU's Leadership Team and as such it may be inferred (from this and their positions in the organisation) that they were officers of ILU at the time that they received this information such that their "awareness" may be attributed to ILU pursuant to ASX Rule 19.12.

(ii) Moreover, the ~~board of ILU~~Board ought to have been aware of this information (if it was not actually aware of it), which was available to it on enquiry, prior to publicly releasing the March 2012 Quarterly Report as ILU's continuous disclosure obligations required the ~~b~~Board to make all necessary and reasonable enquiries into the state of its business prior to making a public announcement.

(a1) the historical and current prices charged by ILU for zircon and titanium dioxide;

(a2) that the price charged by ILU for zircon had increased from approximately US\$1,000 per tonne towards the end of 2010 to approximately US\$2,500 per tonne by the end of 2011;

Particulars

Report of Tim Murray dated 21 February 2020 (**Murray Report**), para 68 citing ILU.021.006.4313 at 0029 (this document was shared between Mr Porter, Mr Tate and Mr Murphy on 24 January 2012: see ILU.021.006.4312), ILU.021.026.1216 at .1217 (this document was sent by Mr Cobb to the Leadership Team on 24 January 2012: see ILU.021.026.1215) and ILU.018.001.2602 0001 at 0008 (a duplicate of this document was sent to Mr Hugo and Mr Cobb on 29 March 2012, Mr Murphy on 30 March 2012 and Mr Tate on 2 April 2012: see ILU.021.022.3652 (email) and ILU.021.022.3653 (duplicate)).

(a3) that the price charged by ILU for titanium dioxide had increased:

(i) for rutile – from a weighted average price of approximately US\$550 per tonne in 2010 to US\$1,340 per tonne by the end of 2011 (the actual price at the end of 2011 being approximately US\$2,500); and

- (ii) for synthetic rutile – from a weighted average price of approximately US\$450 per tonne in 2010 to US\$880 per tonne by the end of 2011;

Particulars

Report of David Rochester dated 2 March 2020 (**Rochester Report**) at para 93 citing BON.003.001.0065 at .0067 (which document was released to the ASX on 23 February 2012). For the actual price of rutile referred to in (a3)(i), see ILU.021.026.1216 at .1217 (this document was sent by Cobb to the Leadership Team on 24 January 2012: see ILU.021.026.1215).

- (a4) that the OECD composite lead indicator (**OECD CLI**):

- (i) was the best predictor of a downturn in zircon demand;
- (ii) typically predicted a downturn in zircon demand with a 5-6 month lag;
- (iii) had in May 2011 signalled a downturn in zircon demand from 4Q 2011 which had eventuated as predicted; and
- (iv) prior to 12 April 2012 had not recovered;

Particulars

ILU.020.076.6992 0001 at 0004 and 0008. Further and in the alternative, those with responsibility for managing ILU's business and approving market guidance could not reasonably have done so without knowing or enquiring as to what the most reliable lead indicators were and having regard to them, and in this regard ILU ought to have been aware of the OECD CLI. This information was available to ILU's officers on enquiry.

- (a5) that the China Statistical Bureau's data for Monthly Floor Stock Sold (**MFSS**) showed that growth in MFSS had begun to decline in September 2011 and in February 2012 the growth rate was -16%;

Particulars

Murray Report, paras 45-46. As with the OECD CLI, regardless of ILU's actual knowledge in respect of the MFSS, those with responsibility for managing ILU's business and approving market guidance could not reasonably have done so without knowing what the most reliable lead indicators were and having regard to them, and in this regard ILU ought to have been aware of the MFSS. This information was available to ILU's officers on enquiry.

- (a6) that ILU's total inventory of zircon was approximately 225kt, which was three times higher than ILU's total inventory at the end of 1Q 2011;

Particulars

Murray Report, para 62, citing ILU.021.018.1474 at .0022 and ILU.017.001.0509 (this document was circulated between Mr Green, Mr Porter, Mr Tate and Mr Robb on 5 March 2012). Further and in the alternative, those with responsibility for managing ILU's business and approving market guidance could not reasonably have done so without having regard to current inventory levels. This information was available to ILU's officers on enquiry.

- (a7) that in China, ILU's zircon inventories were approximately 101.2kt, which was equal to approximately 50% of ILU's zircon sales to China in 2011;

Particulars

Murray Report, para 62, citing ILU.021.018.1474 at .0023. Further and in the alternative, as with sub-para (a6), those with responsibility for managing ILU's business and approving market guidance could not reasonably have done so without having regard to current inventory levels. This information was available to ILU's officers on enquiry.

- (a8) that ILU was not in a position to set the market price for zircon and stood to lose market share to competitors who reduced their price to meet demand;

Particulars

Murray Report, para 69, citing the example of Rio Tinto's Richard's Bay mine; ILU.017.006.5493. This fact arose, as Mr Murray explains, from the fact that the zircon market had become oversupplied at the end of 2011, which was: (a) a fact which those with responsibility for managing ILU's business and approving market guidance had to have had regard to in order to have a reasonable basis for approving ILU's guidance (if they were not actually aware of it); and (b) was information available to ILU's officers on enquiry (e.g. as noted in Murray at para 62, from the fact of inventory being built up significantly).

- (b) that generally consumer confidence and economic conditions were subdued and that an expected "pick-up" in the zircon market in Q41Q2012 had not materialised and was not expected to materialise in 2012 to bring demand back to 2011 levels;

Particulars

ILU was actually aware of this for at least the following reasons:

- (i) *it noted in the March 2012 Quarterly Report that global economic conditions were impacting customer confidence resulting in soft market conditions;*
- (ii) *the Sales & Marketing Leadership Team Report for February 2012 [ILU.021.032.2596], which was circulated to ILU's Managing Director and "Leadership Team" on 16 March 2012 [ILU.021.032.2596] noted continuing depressed market conditions ([ILU.021.032.2595 at .2604]);*

(iii) *the Draft March Performance Report provided to Mr Tate on 12 April 2012 noted that the expected “pick-up” in the zircon market in Q4-1Q2012 had not materialised; and*

(iv) senior ILU sales and marketing staff noted in December 2011 that there was no way that sales could return to pre-drop level by the end of 2012: ILU.021.001.1273 (which email chain included Mr Hugo and Mr Cobb on 30-31 December 2011). See also Murray Report, paras 35, 37, 100-101 as to why, had ILU’s officers made enquiries as to the prospects of a pick-up (if they did not in fact do so), they would have been confronted with indicators to the contrary, including the OECD CLI and MFSS data pleaded above.

(c) that the actual sales figures for 1Q 2012 for Z/R/SR, and in particular the actual sales figures for 1Q 2012 for zircon, had been significantly lower than ILU had budgeted for during 1Q 2012;

Particulars

The Applicant repeats the particulars to subparagraph 22(a) above and says that ~~ILU~~ILU was actually aware of this information as each of the Day 0 Report and the Draft March Performance Report contained (in addition to outward sales figures) comparisons of those figures against budget. –For 1Q 2012, ILU had budgeted for Z/R/SR sales of 48kt, 30kt and 29kt respectively, for a total of 106kt. ILU’s actual sales in 1Q 2012 for Z/R/SR were 23kt, 18kt and 33kt respectively, for a total of 74kt. –[ILU.021.063.3585 at 3587].

(d) the contracts ILU had going forward for the sales of Z/R/SR;

(e) ~~that the Chinese market accounted for approximately 40% of ILU’s zircon sales;~~[not used]

Particulars (22(d) and 22(e))

ILU ought to have been aware of these matters because its officers, particularly those responsible for oversight of its budget forecasts, ought reasonably to have come into possession of this information in the ordinary course of their duties.

(e1) that, for zircon:

(i) ILU’s budgeted sales to its existing key Chinese customers in 2012 would be around 34% of 2011 sales to those same customers; and

(ii) with new key Chinese customers identified to date added to existing key Chinese customers, ILU’s total budgeted sales to all its key Chinese customers in 2012 would be around 47% of 2011 sales to key Chinese customers;

Particulars

Murray Report, paras 57-59, ILU.018.003.9271 and ILU.021.046.4210.

(e2) that, for titanium dioxide:

- (i) by November 2011, ILU's pigment customers had signalled their intentions to reduce production;
- (ii) by March 2012, ILU's pigment customers were flagging the possibility of continued production cuts in 2H 2012;
- (iii) in or about November 2011 a key customer of ILU, Huntsman Tioxide, had declined tonnage and cut chloride production on costs / pricing grounds;
- (iv) in or about November 2011 ILU's key customer Tronox indicated that it was purchasing Exxaro and its existing ore contracts allowed Tronox the flexibility to move to their Exxaro supply once the purchase was complete; and
- (v) ILU's key customer Kronos would likely cancel its orders from ILU if chlorine slag became available;

Particulars

Rochester Report, paras 107, 114(c) citing ILU.027.002.0379 0001 at 0021 (sent to Mr Cobb and Melanie Beer, Mr Robb's assistant, "for David's review" on 18 October 2011: ILU.027.002.0378) and ILU.021.033.0330 (received by Mr Cobb on 17 March 2012).

- (f) many ILU clients (in particular, ceramics manufacturers) in China were increasingly turning to cheaper Indonesian imports of zircon;

Particulars

As explained in the Murray Report at paras 73 and 83-86, as early as September 2011 ILU staff were aware that substitution and thrifting was increasing substantially and represented a serious threat to ILU's sales (ILU.021.001.4493; ILU.021.012.5836 0001 at 0010), and ILU ought to have been aware that marginal mines in Indonesia became increasingly viable as zircon prices increased throughout 2011. In January and February 2011 ILU sold 80kt and Indonesia 10kt; in those same months in 2012 ILU sold 0kt and Indonesia at least 19kt: BON.008.003.0001. Those with responsibility for managing ILU's business and approving market guidance could not reasonably

have done so without having regard to statistics such as these, which were available to ILU's officers on enquiry.

- (g) China's construction industry remained in distress and there was a material risk that this would reduce demand for ILU's zircon and titanium dioxide products throughout 2012;

Particulars

- (i) Murray Report, paras 41, 43, 47-49, 52, 54, 55, 81, 105-107. In particular, ILU ought to have been aware that by 12 April 2012 both MFSS and OECD CLI data indicated that Chinese demand for zircon was unlikely to recover from levels experienced in 1Q 2012 and would decline year on year from 2011 sales; key lead indicators for the global economy and the Chinese construction sector remained negative; tile and ceramic inventories were high, evident in the level of ILU inventory in Chinese 'bonded warehouses'; the MFSS data suggested a downturn similar to that experienced during the GFC; there was no lead indicator to suggest a Chinese recovery; there was no sign of a likely restocking event; and there was a downturn in Chinese property sales.
- (ii) Rochester Report, paras 124, 134. In particular, the Sales & Marketing Leadership Team Report for November 2011 noted that "all pigment producers are reporting an increasing softness in demand in Q4 driven by reduced imports into China and the industrial slowdown in Europe" [ILU.021.026.6328 at .6337]; and 17 March 2012 email from Rob Hudson, Sales & Marketing Manager: "What I hear on the pigment market is bleak" [ILU.021.033.0330 (received by Cobb on 17 March 2012)].
- (h) customers in its Asian (in particular Chinese) and/or European markets were increasingly relying on "thrifting" and substitution to replace zircon in ceramic tile products; and/or to reduce their purchases of titanium dioxide products;

Particulars

- (i) Murray Report, paras 74-76. On 19-20 December 2011 Simon Hay led a team which reported within ILU on the demand impacts of substitution and thrifting, concluding that Chinese tile producers would reduce zircon consumption by 40-60% [ILU.021.001.2060 at 0002 (see also a further version: ILU.021.034.8443) – Mr Hugo, Mr Cobb and Mr Hay were sent each version on 23/30 December 2011]. ILU report dated 23 December 2011 noting an expected hit to sales of approximately 53-159kt [ILU.020.076.6992 0001 at 0018]. ILU report dated 15 January 2012 noting that some Asian ceramics producers (China, Vietnam, Malaysia) had reduced zircon use by 80-90% [ILU.021.002.3395 (discussed in the email chain between Mr Porter, Mr Murphy, Mr Hugo, Mr Cobb and others on 16 March 2012)], and a further ILU update dated 29 March 2012 noting tile producer demand for zircon would fall by 33-50% [ILU.018.001.2602 at 0003 (a duplicate of this document was sent to Mr Hugo and Mr Cobb on 29 March 2012, Murphy on 30 March 2012 and Mr Tate on 2 April 2012: see ILU.021.022.3652 and ILU.021.022.3653)].

(ii) Rochester Report, paras 124, 134. In particular, the Sales & Marketing Leadership Team Report for November 2011 noted that “all pigment producers are reporting an increasing softness in demand in Q4 driven by reduced imports into China and the industrial slowdown in Europe” [ILU.021.026.6328 at .6337]. The report noted DuPont’s refusal to accept ILU’s HGO pricing and Huntsman Tioxide’s intention to reduce purchases from ILU in 1H 2012 by increasing its focus on sulphate production; and 17 March 2012 email from Rob Hudson, Sales & Marketing Manager: “What I hear on the pigment market is bleak” [ILU.021.033.0330 (received by Cobb on 17 March 2012)].

- (i) thrifting and substitution had the potential to reduce zircon demand in China by up to 33-50%, and that this reduction in demand was likely to be permanent and irreversible;

Further Particulars (22(f) - 22(i))

ILU was actually aware of these matters as:

- (i) *Under cover of an email dated 23 February 2012 [ILU.021.016.7928], Mr Porter sent to Craig Haskins of UBS two reports by J Capital Research dated 25 and 27 January 2013 respectively [ILU.021.016.7929 and ILU.021.016.7950]. Those reports referred to conclusions to the above effect drawn by the author of the reports based on research which included interviews with ILU’s Chinese and European customers and Chinese customs officials.*
- (ii) *On 29 March 2012 Brad Langston of Samlyn Capital sent to Mr Robb and to Mr Porter, and on 30 March 2012 Ida Ma (ILU, Corporate Development, Sales and Marketing) sent to Mr Murphy, a further report of J Capital Research drawing similar conclusions concerning ILU’s markets: [ILU.021.016.3135 / ILU.021.002.7467]. This report was dated 28 March 2012 and entitled “Iluka (ILU.ASX) Inventories Growing”- [ILU.021.002.7470].*
- (iii) *On or about 29 March 2012, ILU’s marketing team gave a presentation entitled “Zircon Substitution Updates – Technological routes and practices” to ILU’s marketing team”. [ILU.018.001.2602][ILU.018.001.2602 (a duplicate of this document was sent to Mr Hugo and Mr Cobb on 29 March 2012, Mr Murphy on 30 March 2012 and Mr Tate on 2 April 2012: see ILU.021.022.3652 and ILU.021.022.3653)] That presentation noted (inter alia) that tile manufacturers were using substitution to reduce zircon usage “in response to high prices” and that some Chinese tile producers were claiming a 33-50% reduction in zircon usage as a result of new techniques which it noted likely to have an “irreversible impact” [ILU.018.001.2602_0022].*
- (iv) *Members of the marketing team included Mr Cobb and Mr Hay.*
- (v) *The applicant repeats the matters pleaded and particularised in paragraphs 7A to 7E above and says that each of Mr Robb, Mr Porter, Mr*

Murphy and Mr Cobb were at all relevant times officers of ILU such that their “awareness” ~~may be~~ attributed to ILU pursuant to ASX Rule 19.12.

(vi) The applicant repeats the Particulars to 22(h) above in relation to the reduction of zircon demand in Asia (in particular China) by 33-50%.

- (i1) that ILU’s budget for 2012 had not been amended to address the matters pleaded in sub-paragraphs 22(f)-(i) above;

Particulars

ILU’s final budget ~~commentary~~ submission to the Leadership Team of 15 March 2012 [ILU.021.024.5398] does not address directly matters pleaded in sub-paragraphs 22(f)-(i) above and, to the best of the Applicant’s knowledge based on the materials discovered at the date of this further amended statement of claim, was not amended to take account of these matters prior to 12 April 2012. Further, in his email of 23 February 2012, Mr Porter dismissed the attached J Capital reports as “Garbage”: [ILU.021.016.7928]. Cf. ILU.021.016.3135, being an email chain between Mr Cobb and Mr Porter dated 30 March 2012 in which Mr Cobb wrote of J Capital “in fact they have overstated our sales in Q1 and underestimated the stocks we are building” and Mr Porter acknowledged that they “seem to have honed into things” in their latest report. ILU was “aware” of its budgets from time to time as they were prepared and/or known, or ought to have been known, by its officers, in particular ILU’s Board and members of ILU’s Leadership Team such as (without limitation) Mr Tate, Mr Porter and Mr Cobb. ~~Amended or further particulars may be provided after receipt of further discovery from ILU~~ In December 2011 Robert Hudson, Sales and Marketing Manager Americas and Western Europe, said in a group email to senior ILU staff (including Mr Hay, Mr Hugo and Mr Cobb) that “we cannot expect to rise back to pre-drop sales levels by end 2012”: Murray Report, para 101, citing ILU.021.001.1273.

- (j) that ILU’s marketing strategy of changing sales contract periods from periods from multi-year or annual arrangements to much shorter periods could result, in times of global and regional economic uncertainty and turmoil with weakened confidence levels, in volatility in sales levels from period to period;

Particulars

ILU ought to have been aware of this because it is a matter of common sense that, in times of weakened demand, shorter period sales contracts would lead to uncertainty of future sales outcomes as such arrangements allow customers to delay or defer orders due (inter alia) to: (i) the absence of upward price and limited supply pressures; and (ii) weaker end user demand. As such, ILU’s officers, particularly those responsible for oversight of its budget forecasts, ought reasonably to have come into possession of this information in the ordinary course of their duties.

See also, generally, Murray Report, paras 68-69; and Rochester Report, para 114(d).

- (k) that in order to meet its zircon and titanium dioxide point estimates of sales as conveyed in the February Earnings Guidance, it would need to achieve a substantial turn around in its zircon and titanium dioxide sales performance for the remainder of 2012; ~~and~~

Particulars

The applicant repeats the particulars to subparagraphs 22(a) and 22(c) above and says that, in light of those matters, ILU ought to have been aware of this because its officers, particularly those responsible for oversight of its budget forecasts, ought reasonably to have come into possession of this information in the ordinary course of their duties.

- (l) that the point estimates of sales provided in the February Earnings Guidance were likely to be unreliable;

Particulars

ILU ought to have been aware of this due to at least the matters pleaded and particularised in subparagraphs 22(a) to (k) above. See also Murray Report, paras 94, 99; and Rochester Report, paras 109, 114(f), 115.

- (m) that a reasonably-based forecast of ILU's expected sales for each of its products in FY2012 was in the order of and no more than as follows:

zircon: approximately 238kt–295kt;

rutile: approximately 197kt;

synthetic rutile: approximately 250kt,

(12 April Proper Guidance Information).

Particulars

*ILU was 'aware' of the 12 April Proper Guidance Information for the reasons set out in the Murray and Rochester Reports, as well as the Addendum dated 30 March 2020 to the Murray Report (**Murray Addendum**), culminating in the conclusions given in the Murray Addendum, para 6 and the Rochester Report, para 116.*

D.2.2 The April Representations

23. By the March 2012 Quarterly Report ILU impliedly represented (**April Implied Representations**) that:

- (a) ILU expected to achieve in FY 2012:
- (i) zircon sales of ~ 450kt (**April Zircon Forecast**);
 - (ii) rutile sales of ~ 225kt and synthetic rutile sales of ~ 310kt (**April Titanium Dioxide Forecast**); and
 - (iii) saleable ilmenite sales of ~ 350kt,
- (collectively, the **April Forecast Representation**);
- (b) ILU had reasonable grounds to make the April Forecast Representation (**April Reasonable Grounds Representation**);
- (c) there was no information known to ILU which created a material risk that the February Express Guidance Statements and the February Implied Guidance Statements were no longer reliable (**April No Known Adverse -Developments Representation**);
- (d) ILU was still able, despite the concerns expressed by the April Express Statements, to provide reliable forecasts of future revenue (**April Ability to Forecast Representation**); and
- (e) ILU had a reasonable basis for providing point estimates of sales for mineral sands products rather than a broad range going forward (**April Predictable Market Representation**).

Particulars

The representations were implied in circumstances in which:

- (i) *ILU was subject to obligations imposed by Listing Rules 3.1 and section 674(2) of the Corporations Act;*
- (ii) *ILU made the April Express Statements;*
- (iii) *ILU made the April Express Statements in documents released to the market by means of the ASX company announcements platform and ILU knew or ought to have known that investors and potential investors in its securities may rely upon the statements and forecasts in those documents in making decisions about whether to acquire or retain its securities;*
- (iv) *ILU was aware of the actual sales figures for 1Q2012;*

- (v) *ILU was aware of the contracts it had going forward, as at 12 April 2012; and*
- (vi) *no express statements were made in the March 2012 Quarterly Report, despite the nature and purpose of that document, to the effect that:*
 - A. *the February Express Guidance Statements and the February Implied Guidance Statements were no longer reliable; and/or*
 - B. *ILU did not feel able to provide reliable forecasts of future revenue given the economic conditions.*

D.2.3 The April Material Information

24. In the premises of the matters pleaded and particularised in paragraph 22 above, as at 12 April 2012, ILU was ~~aware that~~ 'aware' within the meaning of Listing Rule 19.12:

(1a) of the 12 April Proper Guidance Information;

(a) further or in the alternative, that it did not have reasonable grounds to make the April Forecast Representation (**April No Reasonable Grounds Information**);

(b) further or in the alternative, that there was information known to ILU which created a material risk that the February Express Guidance Statements and the February Implied Guidance Statements were no longer reliable (**April Known Adverse Developments Information**);

(c) in the alternative to 24(1a), and further or in the alternative to 24(a) and 24(b), that it was no longer able to provide reliable forecasts of future revenue (**April Inability to Forecast Information**); and/or

(d) in the alternative to 24(1a), and further or in the alternative to 24(a), 24(b) and 24(c), that it did not have a reasonable basis for providing point estimates of sales for mineral sands products rather than a broad range going forward, and the provision and/or maintenance by ILU of point estimates for sales of Z/R/SR had the potential to mislead the market as to the reliability of the basis of ILU's ability to give sales and earnings guidance going forward (**April Unpredictable Market Information**);

(separately or in combination, the **April Material Information**).

Particulars

- (i) *The applicant repeats the matters pleaded and particularised in subparagraphs ~~22(a) to 22(f)~~ 22(a) to (m) above and says that, by no later than 12 April 2012:*
 - A. *by reason of the matters pleaded and particularised in subparagraphs 22(a) to ~~22(f)~~(m) (alone or in combination), Iluka ILU was aware of the April No Reasonable Grounds Information;*
 - B. *further and in the alternative, by reason of the matters pleaded and particularised in subparagraphs 22(a), 22(a4)-(a6), 22(a8), 22(b), 22(e1)-(e2), 22(f), 22(g), 22(h), 22(i), and 22(i1) (alone or in combination), ILU was aware of the April Known Adverse Developments Information;*
 - C. *further and in the alternative, by reason of the matters pleaded and particularised in subparagraphs 22(d) and 22(j) (alone or together, and/or in combination with the matters pleaded and particularised in subparagraphs 22(a4)-(a5), 22(a8), 22(b), 22(d), ~~22(e), 22(e1)-(e2), 22(f), 22(g), 22(h) and 22(i)~~), Iluka ILU was aware of the April Inability to Forecast Information and/or the April Unpredictable Market Information.*
- (ii) *~~Further particulars may be provided after receipt of further discovery from ILU. For the 12 April Proper Guidance Information, see the Murray Addendum, para 6 and the Rochester Report, para 116.~~*

D.3 The May Earnings Guidance

- 25. On 8 May 2012, ILU published and lodged with the ASX documents entitled:
 - (a) Key Physical and Financial Parameters – Update; and
 - (b) Key Physical and Financial Parameters Iluka 2012 – May Update,(collectively, the **May Earnings Guidance**).
- 26. The May Earnings Guidance included express statements (**May Express Statements**) that:
 - (a) ILU had previously stated on several occasions that it expected a soft quarter or two of zircon demand associated with the impact of global economic conditions on customer confidence and business conditions in various markets, together with the effect of various government policy measures globally and the need for a destocking period, especially for ceramics manufacturers;

- (b) ILU had also previously stated that it expected it would take some time for a clear view on overall 2012 zircon demand and the phasing of that demand to emerge;
- (c) after a low first quarter, zircon sales volumes improved in April;
- (d) while there was some evidence of improved economic traction in major economies such as the US and China, contra-indicators also exist and large eurozone countries are exhibiting increased weakness in the face of prevailing austerity measures and that the global economic outlook therefore remained far from clear;
- (e) ILU had decided to reduce its zircon production in 2012 from the previously advised ~ 500kt to ~430kt;
- (f) ILU now forecast its zircon sales for FY2012 to be ~400 kt compared with the previous forecast of ~450kt (**May Zircon Forecast**);
- (g) there was no change to guidance for titanium dioxide production and sales (**May Titanium Dioxide Forecast**);
- (h) ILU expected Z/R/SR sales volumes to be approximately one third/two thirds weighted between the first half and second half of 2012; and
- (i) based on the revised zircon sales and assuming current pricing ILU's total revenue mix was expected to be approximately 50-55 per cent titanium dioxide with the remainder zircon and by-products.

D.3.1 ILU's actual and constructive knowledge as at 8 May 2012 (and/or 17 May 2012)

27. Further, and in the alternative to the matters pleaded and particularised in paragraphs 22 and 24 above, as at 8 May 2012 (and further or in the alternative, for sub-paragraphs (c)-(p) below, as at 17 May 2012), ILU was 'aware' within the meaning of rule 19.12 of the ASX Listing Rules of each of the following matters:

- (a) the actual sales figures for 1Q 2012 and for April 2012 for Z/R/SR;
- (a1) that the OECD CLI had been below 100 (a negative indicator) since August 2011 and remained throughout 2012;
- (a2) that the China Statistical Bureau's data published on 13 April 2012 (of which ILU was or ought to have been aware as at 8 May 2012) and on 11 May 2012

(of which ILU was or ought to have been aware as at 17 May 2012) showed that growth in MFSS was at a rate of -16% and -15% respectively;

- (b) that zircon sales had been significantly lower than ILU's budgeted sales for 1Q 2012;
- (c) that the market for zircon remained challenging;
- (d) that the pigment season (affecting its titanium dioxide products) was quiet with customers reconsidering their 2H production schedules;
- (e) that chloride substitution by sulphate was occurring in its European titanium dioxide market where the paint season had commenced slowly and production reductions in Q3-3Q 2012 were anticipated;
- (f) that there were difficult market conditions ahead in the Chinese titanium sponge market, where producers were replacing rutile with other products;
- (g) of the contracts it had going forward for the sales of Z/R/SR;
- (h) that zircon sales fell a further 1kt behind budget in April 2012 with year to date zircon sales 15kt behind budget;
- (i) that generally consumer confidence and economic conditions were subdued;

Particulars 27(a)-27(i)

- (i) *ILU was actually aware of each of the matters pleaded in paragraphs 27(a)-27(i) as they were discernible from at least the following documents:*

- A. Presentation entitled 2012 Q2 Marketing Functional Review [ILU.021.018.1474 at _0010, _0011, _0012, _0025, _0026] sent from Melanie Beer (personal assistant to Mr Robb, and specifically sent at his request) to Mr Tate and Mr Porter (amongst others) under cover of an email dated 3 May 2012 [ILU.021.018.1473].*
- B. April "Day 0" report sent from Mr Green (General Manager, Finance and Risk) to members of ILU's Leadership Team on 1 May 2012: ~~ILU.042021.015~~ 9210.*
- C. Draft April 2012 Performance Report provided to Mr Green (General Manager, Finance and Risk) on 8 May 2012 [ILU.021.048.7179; ILU.021.048.7180 at .7185].*
- D. "Submission to the Board of Directors – Updated Group 2012 Outlook" (~~Iluka~~ILU F4+8 Budget) —[ILU.021.052.8445; ~~ILU.021.052.8445~~017.005.5994; ILU.017.005.5988] provided to*

the board of ILU Board on 5 May 2012. A document containing minor amendments (ILU.021.052.8445 and 8446) was circulated on 7 May 2012 to Mr Robb and others before the ILU Board meeting at 2pm that day. The amended document is likely to have been provided to the Board by the time of that Board meeting.

E. "Zircon: What may we expect in the next 12 to 18 months in terms of Supply / Demand", presentation by Lincoln Ying, President & General Manager of Matrix dated May 2012, emailed by Mr Hay to officers (including, without limitation, Chris Cobb) of ILU on 17 May 2012 at approximately 8.05am. -[ILU.017.005.0048 and 0049].

(ii) *The applicant repeats the matters pleaded and particularised paragraphs 7A to 7E above and says that each of Mr Robb, Mr Tate, Mr Green and Mr Hay were at all relevant times officers of ILU such their "awareness" ~~may be~~ attributed to ILU pursuant to ASX Rule 19.12.*

(iii) For paragraph 27(a1) and (a2), see the Murray Report at paras 47-48. For both the OECD CLI and the MFSS, regardless of ILU's actual knowledge in respect of them, those with responsibility for managing ILU's business and approving market guidance could not reasonably have done so without knowing what the most reliable lead indicators were and having regard to them, and in this regard ILU ought to have been aware of the OECD CLI and MFSS. This information was available to ILU's officers on enquiry.

- (j) many ILU clients (in particular ceramics manufacturers) in China were increasingly turning to cheaper Indonesian imports of zircon;
- (k) China's construction industry remained in distress and there was a material risk that this would reduce demand for ILU's zircon and titanium dioxide products in 2012;
- (l) that customers in its Chinese and/or European markets were increasingly relying on "thrifting" and substitution to replace zircon in ceramic tile products; and/or to reduce their purchases of titanium dioxide products;
- (m) that thrifting and substitution had the potential to reduce zircon demand in China by up to 33-50%, and that this reduction in demand was likely to be permanent and irreversible;

Particulars (27(j)-27(m))

- (i) *The applicant repeats the particulars subjoined to subparagraph 22(i) above.*
- (ii) *Further, representatives of ILU attended a zircon industry conference at Ruidow on 6-8 May 2012. The ILU attendees included but may not be limited to Mr Hay.*

(iii) *During the keynote presentation at the conference (by Matrix) [ILU.017.005.0049], the following views were conveyed:*

- A. after a good recovery from the 2009 recession (in 2010), 2011 was a “transition year” for China in which it had experienced a “change in zircon demand trend”. A similar transition was occurring in South America, India and parts of Eastern Europe;*
- B. global demand for zircon could see a drop of 250kt in 2012;*
- C. due to concern of supply shortage in late 2010/early 2011 and zircon price increases, the ceramic tiles manufacturers changed processes (i.e. by thrifting and substitution) and significantly reduced zircon demand;*
- D. the estimated reduction in total zircon demand in ceramic tiles was approximately 30% or more;*
- E. in early 2011, the Chinese government implemented housing policies designed to curb a perceived real estate bubble. Such policies significantly reduced activity in the ~~sector~~ residential sector and thus tile and zircon demand;*
- F. Indonesian supply to China had increased by 50% since 2010.*

(iv) *The Applicant repeats the matters pleaded and particularised paragraph 7B above and says that Mr Hay was an officer of ILU such that his knowledge is ILU’s knowledge. -Alternatively, the information in the Ruidow conference presentation was information which ought reasonably to have come into the possession of officers of ILU, prior to ILU providing an updated trading outlook to the market on 8 May 2012.*

(v) *Further and in the alternative to particular (iv), Mr Hay emailed this presentation to officers of ILU (including, without limitation, Mr Cobb) on 17 May 2012. -[ILU.017.005.0048].*

(vi) Murray Report, paras 77 and 104, noting in particular that at the Ruidow conference the General Manager of Matrix, one of ILU’s top 3 Chinese zircon clients, said that ceramic manufacturers’ demand for zircon in China had declined by 30% or more due to substitution and/or thrifting in 2012 (ILU.017.005.0049 at 0053).

(vii) Rochester Report, paras 98-102.

- (n) that ILU’s marketing strategy of changing sales contract periods from periods from multi-year or annual arrangements to much shorter periods could result, in times of global and regional economic uncertainty and turmoil with weakened confidence levels, in volatility in sales levels from period to period;~~and~~
- (o) that the point estimates of sales provided in the February Earnings Guidance were likely to be unreliable;~~and~~

Particulars 27(n) and 27(o)

ILU ought to have known of these matters by reason of the matters pleaded and particularised in paragraph 22 and subparagraphs 27(a)-27(m) above.

- (p) in order to achieve its May Zircon Forecast, and May Titanium Dioxide Forecast, ILU would need to achieve a dramatic and rapid turn-around in sales performance for the remainder of 2012-; and

Particulars

ILU ought to have been aware of this as this conclusion was self-evident from a careful examination of the ILU F4+8 Budget provided to the ~~board of directors~~ Board on 5 May 2012 (on which the forecasts were based) (see ILU.017.005.5988, ILU.017.005.5989, ILU.017.005.5991, ILU.017.005.5994, ILU.021.052.8445 ~~and ILU.021.052.8446~~). Amongst other things, the revised budget:

- A. assumed a rapid improvement in ILU's zircon and titanium dioxide markets in 1H 2012, despite negative variances to budget to date;*
- B. estimated forecast zircon sales in 2H 2012 which were higher than the actual results achieved in 2H 2010 and 2011; and*
- C. maintained budget synthetic rutile sales notwithstanding a negative 29% budget variance as at May 2012.*

~~(ii) Further particulars may be provided on service of expert evidence.~~

- (q) that a reasonably-based forecast of ILU's expected sales of each of its products for FY2012 was in the order of and no more than as follows:

zircon: approximately 238kt–295kt;

rutile: approximately 185kt;

synthetic rutile: approximately 242kt.

(8 May Proper Guidance Information).

Particulars

ILU was 'aware' of the 8 May Proper Guidance Information for the reasons set out in the Murray and Rochester Reports, as well as the Murray Addendum, culminating in the conclusions given in the Murray Addendum, para 6 and the Rochester Report, para 116.

D.3.2 The May Representations

28. By the May Earnings Guidance ILU expressly represented that:

- (a) ILU expected to achieve the May Zircon Forecast;
- (b) ILU expected to achieve the May Titanium Dioxide Forecast; and
- (c) ILU expected Z/R/SR sales volumes to be approximately one third/two thirds weighted between the first half and second half of 2012,

(together, the **May Forecast Representation**).

Particulars

The applicant relies on the full text of the May Earnings Guidance, including (without limitation) the following from the document styled “Key Physical and Financial Parameters – Update”:

“Iluka now forecasts its zircon sales for the full year to be ~400 thousand tonnes compared with the previously forecast ~450 thousand tonnes.

...

There is no change to guidance for titanium dioxide production and sales from that issued at the beginning of the year, with market conditions and sales forecasts in line with expectations.”

29. By the May Earnings Guidance ILU impliedly represented that:

- (a) ILU had reasonable grounds to make the May Zircon Forecast and the May Titanium Dioxide Forecast (**May Reasonable Grounds Representation**);
- (b) there was no information known to ILU which created a material risk that the May Zircon Forecast and the May Titanium Dioxide Forecast were not reliable (**May No Known Adverse Developments Representation**);
- (c) ILU had a reasonable basis for providing reliable forecasts of future sales and/or revenue (**May Ability to Forecast Representation**); and
- (d) ILU had a reasonable basis for providing point estimates of sales for mineral sands products rather than a broad range going forward (**May Predictable Market Representation**).

Particulars

The representations were implied in circumstances in which:

- A. *ILU was subject to obligations imposed by Listing Rules 3.1 and section 674(2) of the Corporations Act; and sections 1041H(1) and 1041H(2)(b) of the Corporations Act and section 12DA(1) of the ASIC Act;*
- B. *ILU made the May Express Statements and the May Zircon Forecast—Representation, May Titanium Dioxide Forecast Representation and the May Half Yearly Weighted Sales Forecast Representation;*
- C. *ILU made the May Express Statements, the Zircon Forecast Representation, the May Titanium Dioxide Forecast Representation and the May Half Yearly Weighted Sales Forecast Representation in documents released to the market by means of the ASX company announcements platform and ILU knew or ought to have known that investors and potential investors in its securities may rely upon the statements and forecasts in those documents in making decisions about whether to acquire or retain its securities;*
- D. *the market was aware that ILU was aware of the matters pleaded in subparagraphs 26(a) and 26(c) (though the market was not aware of the content of ILU's knowledge).*

D.3.2 The May Material Information

30. As at 8 May 2012 (further or in the alternative, 17 May 2012), ILU was aware that 'aware' within the meaning of Listing Rule 19.12:

(1a) of the 8 May Proper Guidance Information;

- (a) further or in the alternative, that it did not have reasonable grounds to make the May Forecast Representation (**May No Reasonable Grounds Information**);
- (b) further or in the alternative, that there was information known to ILU which created a material risk that the May Zircon Forecast and the May Titanium Dioxide Forecast were not reliable (**May Known Adverse Developments Information**);
- (c) in the alternative to 30(1a), and further or in the alternative to 30(a) and 30(b), that it no longer had a reasonable basis for providing reliable forecasts of future sales and/or revenue (**May Inability to Forecast Information**); and/or
- (d) in the alternative to 30(1a), and further or in the alternative to 30(a) and 30(b), that it did not have a reasonable basis for providing point estimates of sales for

mineral sands products rather than a broad range going forward, and the provision and/or maintenance by ILU of point estimates for sales of Z/R/SR had the potential to mislead the market as to the reliability of the basis of ILU's ability to give sales and earnings guidance going forward (**May Unpredictable Market Information**),

(each being **May Material Information**).

Particulars

(i) *The applicant repeats:*

A. *the matters pleaded and particularised in subparagraphs 22(a) to ~~22(f)~~(m) and the particulars subjoined to paragraph 24 above; and*

B. *the matters pleaded and particularised in subparagraphs 27(a) to ~~27(p)~~(q) and says further and in the alternative– to the matters identified in particular A that by no later than 8 May 2012:*

I. *by reason of the matters pleaded and particularised in subparagraphs 22(a) to ~~22(f)~~(m) and the matters pleaded and particularised in subparagraphs 27(a) and ~~27(p)~~(q) (alone or in combination), ~~Huka~~ILU was aware of the May Known Adverse Developments Information and/or the May No Reasonable Grounds Information;*

II. *further and in the alternative, by reason of the matters pleaded and particularised in subparagraphs 22(a), 22(a4)-(a6), 22(a8), 22(b), 22(e1)-(e2), 22(f), 22(g), 22(h), 22(i), 22(i1), and 27(a) to 27(m) (inclusive) and 27(q) (alone or in combination), ~~Huka~~ILU was aware of the May Known Adverse Developments Information;*

III. *further and in the alternative, by reason of the matters pleaded and particularised in subparagraphs 22(d), 22(j), 27(a1)-(a2), 27(g) and 27(n) (alone or together, and/or in combination with some or all of the matters pleaded and particularised in subparagraphs 22(b), 22(d), 22(e), 22(f), 22(g), 22(h) 22(i)), 27(c), 27(d), 27(e), 27(f), 27(i), 27(j), 27(k), 27(l) and/or 27(m), ~~Huka~~ILU was aware of the May Inability to Forecast Information and/or the May Unpredictable Market Information.*

(ii) *~~Further particulars may be provided after receipt of further discovery from ILU. For the 8 May Proper Guidance Information, see the Murray Addendum, para 6 and the Rochester Report, para 116.~~*

D.4 The 16 May BAML Presentation

31. On 16 May 2012, the Managing Director of ILU, Mr David Robb, gave a presentation to the Bank of America Merrill Lynch Global Metals, Mining and Steel Conference in

Miami, Florida, USA and a copy of his presentation was published and lodged with the ASX on that day (**16 May BAML Presentation**).

32. By the 16 May BAML Presentation ILU expressly repeated the May Forecast Representation.

Particulars

16 May BAML Presentation, pp 6, 10, 11, 27.

33. By the 16 May BAML Presentation ILU impliedly repeated ~~the~~:
- (a) the May Reasonable Grounds Representation;
 - (b) the May No Known Adverse Developments Representation;
 - (c) the May Ability to Forecast Representation; and
 - (d) the May Predictable Market Representation.

Particulars

The representations were implied in the circumstances:

- A. *where the May Forecast Representation was made;*
- B. *in the particulars to ~~sub-paragraph 2929(d)~~;*
- C. *where no express statements were made in the 16 May BAML Presentation, to the effect that:*
 - I. *there were no longer reasonable grounds to support the May Zircon Forecast Representation or the May Titanium Dioxide Forecast Representation;*
 - II. *the May Zircon Forecast Representation and the May Titanium Dioxide Forecast Representation were no longer reliable;*
 - III. *that ILU did not feel able to provide reliable forecasts of future revenue given the economic conditions; and/or*
 - IV. *that ILU did not have a reasonable basis for providing point estimates.*

D.5 The 23 May AGM Presentation and following

34. On 23 May 2012, the Chairman of ILU, Mr John Pizzey and the Managing Director of ILU, Mr David Robb, addressed the Annual General Meeting of Shareholders held in

Perth, Western Australia and a copy of both their speeches were published and lodged with the ASX on that day (**23 May AGM Presentation**).

35. The 23 May AGM Presentation included express statements (**AGM Express Statements**) that:

- (a) risks remain on the global economic scene and ILU's business is not immune from slowing -global economic growth or further shocks to major economies;
- (b) ILU had a strong industry position in its two main products – number one globally in zircon and with a major position in the high grade titanium products of rutile and synthetic rutile;
- (c) the directors were disappointed with recent share price weakness, but in the context of the strength of the company and the company's articulated approach this was an over-reaction;
- (d) the path of economic growth and the effects of business confidence swings and technological change on both demand and supply are notoriously difficult to predict with precision;
- (e) ILU knew that demand is often more volatile than supply, particularly small, direct supplied markets with global product flows – like mineral sands;
- (f) since late 2011 ILU had stated that it expected a soft quarter or two of zircon demand with the factors contributing to this being global economic setting; efforts by the Chinese authorities to limit speculative activity in parts of the Chinese property market; and generally low global business and consumer confidence levels;
- (g) while ILU does not disclose sales until its June quarter report, revenues in 1Q 2012 reflected that 'soft quarter' in terms of zircon sales;
- (h) some shipment timing issues for titanium dioxide products meant that a substantial part of product produced in the first quarter was not shipped;
- (i) while there was some evidence of improved economic traction in major economies such as the US and China, European demand remained subdued and could deteriorate if sovereign debt issues in the EU overwhelmed attempts to rectify them;

- (j) European customer zircon sand stocks were almost exhausted which should mean they required replenishment;
 - (k) lower pricing would not generate additional demand;
 - (l) major customers' inventory holdings are low and we are seeing bulk order interest resuming;
 - (m) there existed challenging global conditions and resultant uncertainties about demand for ILU's products;
 - (n) ILU expected a material increase in earnings and free cash flow in 2012; and
 - (o) ILU expected a strongly second half weighted profile of ILU's sales volumes.
36. By the 23 May AGM Presentation ILU impliedly repeated:
- (a) the May Reasonable Grounds Representation;
 - (b) the May No Known Adverse Developments Representation;
 - (c) the May Ability to Forecast Representation; and
 - (d) the May Predictable Market Representation.

Particulars

The representations were implied in the circumstances:

- A. *particularised at ~~sub-paragraph 2929(d)~~;*
- B. *where the AGM Express Statements were made; and*
- C. *where no express statements were made at the AGM or in the 23 May AGM Presentation, to the effect that:*
 - I. *there were no longer reasonable grounds to support the May Zircon Forecast Representation -or the May Titanium Dioxide Forecast Representation;*
 - II. *the May Zircon Forecast Representation and the May Titanium Dioxide Forecast Representation were no longer reliable; and*
 - III. *that ILU did not feel able to provide reliable forecasts of future revenue given the economic conditions; and/or*
 - IV. *that ILU did not have a reasonable basis for providing point estimates.*

36A. As at 23 May 2012, ILU was 'aware' within the meaning of Listing Rule 19.12:

- (a) of the matters pleaded in paragraphs 22 and 27 above;
- (b) that 10kt of sales of rutile (4kt to Aoli and 6kt of container sales) ought not to have been included in its guidance from this time because:
 - (i) Aoli (to whom ILU had budgeted 10kt of rutile sales) was, as a matter of common sense, more likely than not to have prioritised selling its own product over ILU's, it had lower cost options and it had recently complained of a contaminated shipment from ILU, reinforcing the likelihood that it would not source further supply from ILU; and
 - (ii) as to the 6kt of container sales, ILU had not secured sales contracts and there was a weakening market where ongoing low levels of actual monthly sales were much lower than 2011 sales;
- (c) that 12kt of sales of synthetic rutile (to Cristal) ought not to have been included in its guidance from this time as its discussions were described internally as "tentative" and that it could not be assumed the sales would go ahead promptly; and
- (d) that a reasonably-based forecast of ILU's expected sales of each of its products for 2012 was in the order of and no more than as follows:

zircon: approximately 238kt–295kt;

rutile: approximately 175kt;

synthetic rutile: approximately 230kt.

(23 May Proper Guidance Information).

Particulars

Rochester Report, paras 170(c), 183-184, 219(a), 227, 229.

ILU was 'aware' of the 23 May Proper Guidance Information for the reasons set out in the Murray and Rochester Reports, as well as the Murray Addendum, culminating in the conclusions given in the Murray Addendum, para 6 and the Rochester Report, para 116.

36B. As at 16 June 2012, ILU was 'aware' within the meaning of Listing Rule 19.12:

- (a) of the matters pleaded in paragraphs 22, 27 and 36A above;
- (b) that 12kt of sales of rutile (5kt to Timet and 7kt of container sales) ought not to have been included in its guidance from this time because the Timet contract was not signed and rutile was available to Timet from other suppliers at cheaper prices and, for container sales, ILU had not secured sales contracts and there was a weakening market where ongoing low levels of actual monthly sales were much lower than 2011 sales;
- (c) that 20kt of sales of synthetic rutile (10kt to Tronox and 10kt to Huntsman-Tioxide) ought not to have been included in its guidance from this time;
- (i) in the case of Tronox to account for sales tonnage which ILU had been planning for but (as noted in an email from Mr Hudson to Mr Cobb) had been lost following finalisation of the Tronox merger; and
- (ii) in the case of Huntsman-Tioxide because the sales had not been agreed, it was carrying surplus stocks and it had made a strategic decision to cut surplus stocks; and
- (d) that a reasonably-based forecast of its expected sales for each of its products in FY2012 was in the order or and no more than as follows:
- zircon: approximately 238kt–295kt;
- rutile: approximately 163kt;
- synthetic rutile: approximately 210kt;

(16 June Proper Guidance Information).

Particulars

Rochester Report, paras 170(d), 185-187, 219(b), 227, 229. The email referred to in sub-para (c)(i) is ILU.017.008.8128 at 8129.

ILU was 'aware' of the 16 June Proper Guidance Information for the reasons set out in the Murray and Rochester Reports, as well as the Murray Addendum, culminating in the conclusions given in the Murray Addendum, para 6 and the Rochester Report, para 116.

E. ILU'S CONTINUOUS DISCLOSURE CONTRAVENTIONS

E.1 April Material Information contraventions

37. The April Material Information was at all times from 12 April 2012 to 7 May 2012 (inclusive) information concerning ILU:
- (a) of which ILU was aware, within the meaning of Listing Rule 19.12;
 - (b) that was not generally available within the meaning of section 676 of the Corporations Act; and
 - (c) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of ~~the respondent's securities~~ ILU Securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act.
38. In the premises, from 12 April 2012 to 7 May 2012 (inclusive), ILU was obliged pursuant to ASX Listing Rule 3.1 to inform the ASX immediately of the April Material Information.
39. In contravention of ASX Listing Rule 3.1, and section 674(2) of the Corporations Act ILU did not inform the ASX of the April Material Information immediately as it became aware of it (**April Disclosure Contravention**).

E.2 May Material Information contraventions

40. The May Material Information was at all times from 8 May 2012 (further or in the alternative, 17 May 2012) until ~~the end of the Relevant Period~~ 22 May 2012 (inclusive) information concerning ILU:
- (a) of which ILU was aware, within the meaning of Listing Rule 19.12;
 - (b) that was not generally available within the meaning of section 676 of the Corporations Act; and
 - (c) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of ~~the respondent's securities~~ ILU Securities within the meaning of ASX listing Rule 3.1 and section 677 of the Corporations Act.

41. In the premises, from 8 May 2012 (further or in the alternative, 17 May 2012) and ~~throughout the Relevant Period, until 22 May 2012 (inclusive)~~, ILU was obliged pursuant to ASX Listing Rule 3.1 to inform the ASX immediately of the May Material Information.
42. In contravention of ASX Listing Rule 3.1, and section 674(2) of the Corporations Act ILU did not inform the ASX of the May Material Information immediately as it became aware of it (**First May Disclosure Contravention**).

E.3 Subsequent disclosure contraventions

42A. The 23 May Proper Guidance Information was at all times from 23 May 2012 to 15 June 2012 (inclusive) information concerning ILU:

- (a) of which ILU was aware, within the meaning of Listing Rule 19.12;
- (b) that was not generally available within the meaning of section 676 of the Corporations Act; and
- (c) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of ILU Securities within the meaning of Listing Rule 3.1 and section 677 of the Corporations Act.

42B. In the premises, from 23 May 2012 and until 15 June 2012 (inclusive), ILU was obliged pursuant to ASX Listing Rule 3.1 to inform the ASX immediately of the 23 May Proper Guidance Information.

42C. In contravention of ASX Listing Rule 3.1 and section 674(2) of the Corporations Act ILU did not inform the ASX of the 23 May Proper Guidance Information immediately as it became aware of it (**Second May Disclosure Contravention**).

42D. The 16 June Proper Guidance Information was at all times from 16 June 2012 until the end of the Relevant Period information concerning ILU:

- (a) of which ILU was aware, within the meaning of Listing Rule 19.12;
- (b) that was not generally available within the meaning of section 676 of the Corporations Act; and
- (c) which a reasonable person would expect, if it was generally available, to have a material effect on the price or value of ILU Securities within the meaning of Listing Rule 3.1 and section 677 of the Corporations Act.

42E. In the premises, from 16 June 2012 and until the end of the Relevant Period ILU was obliged pursuant to Listing Rule 3.1 to inform the ASX immediately of the 16 June Proper Guidance Information.

42F. In contravention of Listing Rule 3.1 and section 674(2) of the Corporations Act ILU did not inform the ASX of the 16 June Proper Guidance Information immediately as it became aware of it (**June Disclosure Contravention**).

F. MISLEADING OR DECEPTIVE CONDUCT

F.1 The April Reasonable Grounds Representation Contravention

43. The April Reasonable Grounds Representation was a continuing representation from 12 April 2012 to 7 May 2012 (inclusive).

44. By making the April Reasonable Grounds Representation, ILU engaged in conduct:

- (a) in relation to financial products (being ILU Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
 - (i) section 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
 - (ii) section 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic); and/or
 - (iii) section 28 of the *Fair Trading Act 1987* (NSW);
 - (iv) section 26 of the *Fair Trading Act 1989* (Qld);
 - (v) section 19 of the *Fair Trading Act 2010* (WA);
 - (vi) section 14 of the *Fair Trading Act 1987* (SA);
 - (vii) section 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT); and/or

(viii) section 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT),

(individually or together the **Australian Consumer Law**).

45. The April Reasonable Grounds Representation was, from 12 April 2012 to 7 May 2012 (inclusive), misleading or deceptive, or likely to mislead or deceive.

Particulars

(a) *The Applicant repeats the matters pleaded in sub-paragraphs 24(1a) and (a) above and the particulars referable to ~~that~~ those subparagraphs.*

(b) *The Applicant further relies on:*

(i) *section 12BB(1) of the ASIC Act;*

(ii) *section 769C of the Corporations Act; and/or*

(iii) *section 4 of the Australian Consumer Law.*

46. In the premises, by making the April Reasonable Grounds Representation, ILU engaged in conduct in contravention of:

(a) section 1041H(1) of the Corporations Act;

(b) section 12DA(1) of the ASIC Act; and/or

(c) section 18 of the Australian Consumer Law,

(April Reasonable Grounds Representation Contravention).

F.2 The April No Known Adverse Developments Representation Contravention

47. The April No Known Adverse Developments Representation was a continuing representation from 12 April 2012 to 7 May 2012 (inclusive).

48. By making the April No Known Adverse Developments Representation, ILU engaged in conduct:

(a) in relation to financial products (being ILU Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or

- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
49. The April No Known Adverse Developments Representation was, from 12 April 2012 to 7 May 2012 (inclusive):
- (a) in so far as it was a representation as to a present matter or present matters, misleading or deceptive, or likely to mislead or deceive;
 - (b) in so far as it was a representation as to a future matter or future matters, made without reasonable basis.

Particulars

- (i) *The Applicant repeats the matters pleaded in sub-paragraph 24(b) above and the particulars referable to that subparagraph.*
 - (ii) *In so far as the April No Known Adverse Developments Representation was a representation as to a future matter or future matters the Applicant relies on:*
 - A. section 12BB(1) of the ASIC Act;*
 - B. section 769C of the Corporations Act; and/or*
 - C. section 4 of the Australian Consumer Law.*
50. In the premises, by making the April No Known Adverse Developments Representation, ILU engaged in conduct in contravention of:
- (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or
 - (c) section 18 of the Australian Consumer Law,
- (April No Known Adverse Developments Representation Contravention).**

F.3 The April Ability to Forecast Representation Contravention

51. The April Ability to Forecast Representation was a continuing representation ~~throughout the Relevant Period~~ from 12 April 2012 to 7 May 2012 (inclusive).

52. By making the April Ability to Forecast Guidance Representation, ILU engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
53. The April Ability to Forecast Representation was, from 12 April 2012 to 7 May 2012 (inclusive):
- (a) in so far as it was a representation as to a present matter or present matters, misleading or deceptive, or likely to mislead or deceive;
 - (b) in so far as it was a representation as to a future matter or future matters, made without reasonable basis.

Particulars

- (i) *The Applicant repeats the matters pleaded in sub-paragraph 24(c) above and the particulars referable to that subparagraph.*
 - (ii) *In so far as the April Ability to Forecast Representation was a representation as to a future matter or future matters the Applicant relies on:*
 - A. section 12BB(1) of the ASIC Act;*
 - B. section 769C of the Corporations Act; and/or*
 - C. section 4 of the Australian Consumer Law.*
54. In the premises, by making the April Ability to Forecast Representation, ILU engaged in conduct in contravention of:
- (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or
 - (c) section 18 of the Australian Consumer Law,

(April Ability to Forecast Representation Contravention).

F.4 The April Predictable Market Representation Contravention

55. The April Predictable Market Representation was a continuing representation 12 April 2012 to 7 May 2012 (inclusive).
56. By making the April Predictable Market Representation ILU engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
57. The April Predictable Market Representation was, from 12 April 2012 to 7 May 2012 (inclusive):
- (a) in so far as it was a representation as to a present matter or present matters, misleading or deceptive, or likely to mislead or deceive;
 - (b) in so far as it was a representation as to a future matter or future matters, made without reasonable basis.

Particulars

- (i) *The Applicant repeats the matters pleaded in sub-paragraph 24(d) above and the particulars referable to that subparagraph.*
 - (ii) *In so far as the April Predictable Market Representation was a representation as to a future matter or future matters the Applicant relies on:*
 - A. section 12BB(1) of the ASIC Act;*
 - B. section 769C of the Corporations Act; and/or*
 - C. section 4 of the Australian Consumer Law.*
58. In the premises, by making the April Predictable Market Representation, ILU engaged in conduct in contravention of:
- (a) section 1041H(1) of the Corporations Act;

- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

(April Predictable Market Representation Contravention).

F.5 The May Reasonable Grounds Representation Contravention

59. The May Reasonable Grounds Representation was a continuing representation from 8 May 2012 until the end of the Relevant Period.
60. By making the May Reasonable Grounds Representation, ILU engaged in conduct:
 - (a) in relation to financial products (being ILU Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
61. The May Reasonable Grounds Representation was, from 8 May 2012 (further or in the alternative, 17 May 2012) to the end of the Relevant Period, misleading or deceptive, or likely to mislead or deceive.

Particulars

- (a) *The Applicant repeats the matters pleaded in sub-paragraphs 30(1a) and (a) above and the particulars referable to ~~that~~ those subparagraphs.*
 - (b) *The Applicant further relies on:*
 - (i) *section 12BB(1) of the ASIC Act;*
 - (ii) *section 769C of the Corporations Act; and/or*
 - (iii) *section 4 of the Australian Consumer Law.*
62. In the premises, by making the Reasonable Grounds Representation, ILU engaged in conduct in contravention of:
 - (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or

- (c) section 18 of the Australian Consumer Law,

(May Reasonable Grounds Representation Contravention).

F.6 The May No Known Adverse Developments Representation Contravention

63. The May No Known Adverse Developments Representation was a continuing representation from 8 May 2012 until the end of the Relevant Period.
64. By making the May No Known Adverse Developments Representation, ILU engaged in conduct:
- (a) in relation to financial products (being ILU Securities), within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
65. The May No Known Adverse Developments Representation was, from 8 May 2012 (further or in the alternative, 17 May 2012) to the end of the Relevant Period:
- (a) in so far as it was a representation as to a present matter or present matters, misleading or deceptive, or likely to mislead or deceive;
 - (b) in so far as it was a representation as to a future matter or future matters, made without reasonable basis.

Particulars

- (i) *The Applicant repeats the matters pleaded in sub-paragraph 30(b) above and the particulars referable to that subparagraph.*
- (ii) *In so far as the May No Known Adverse Developments Representation was a representation as to a future matter or future matters the Applicant relies on:*
 - A. section 12BB(1) of the ASIC Act;*
 - B. section 769C of the Corporations Act; and/or*
 - C. section 4 of the Australian Consumer Law.*

66. In the premises, by making the May No Known Adverse Developments Representation, ILU engaged in conduct in contravention of:
- (a) section 1041H(1) of the Corporations Act;
 - (b) section 12DA(1) of the ASIC Act; and/or
 - (c) section 18 of the Australian Consumer Law,

(May No Known Adverse Developments Representation Contravention).

F.7 The May Ability to Forecast Representation Contravention

67. The May Ability to Forecast Representation was a continuing representation from 8 May 2012 until the end of the Relevant Period.
68. By making the May Ability to Forecast Guidance Representation, ILU engaged in conduct:
- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
 - (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
 - (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.
69. The May Ability to Forecast Representation was, from 8 May 2012 (further or in the alternative, 17 May 2012) to the end of the Relevant Period:
- (a) in so far as it was a representation as to a present matter or present matters, misleading or deceptive, or likely to mislead or deceive;
 - (b) in so far as it was a representation as to a future matter or future matters, made without reasonable basis.

Particulars

- (i) *The Applicant repeats the matters pleaded in sub-paragraph 30(c) above and the particulars referable to that subparagraph.*
- (ii) *In so far as the May Ability to Forecast Representation was a representation as to a future matter or future matters the Applicant relies on:*

- A. section 12BB(1) of the ASIC Act;*
- B. section 769C of the Corporations Act; and/or*
- C. section 4 of the Australian Consumer Law.*

70. In the premises, by making the May Ability to Forecast Representation, ILU engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

(May Ability to Forecast Representation Contravention).

F.8 The May Predictable Market Representation Contravention

71. The May Predictable Market Representation was a continuing representation from 8 May 2012 until the end of the Relevant Period.

72. By making the May Predictable Market Representation ILU engaged in conduct:

- (a) in relation to financial products, within the meaning of subsections 1041H(1) and 1041H(2)(b) of the Corporations Act;
- (b) in trade or commerce, in relation to financial services within the meaning of section 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of section 4 of the Australian Consumer Law.

73. The May Predictable Market Representation was, from 8 May 2012 (further or in the alternative, 17 May 2012) to the end of the Relevant Period:

- (a) in so far as it was a representation as to a present matter or present matters, misleading or deceptive, or likely to mislead or deceive;
- (b) in so far as it was a representation as to a future matter or future matters, made without reasonable basis.

Particulars

- (i) *The Applicant repeats the matters pleaded in sub-paragraph 30(d) above and the particulars referable to that subparagraph.*
- (ii) *In so far as the May Predictable Market Representation was a representation as to a future matter or future matters the Applicant relies on:*
 - A. *section 12BB(1) of the ASIC Act;*
 - B. *section 769C of the Corporations Act; and/or*
 - C. *section 4 of the Australian Consumer Law.*

74. In the premises, by making the May Predictable Market Representation, ILU engaged in conduct in contravention of:

- (a) section 1041H(1) of the Corporations Act;
- (b) section 12DA(1) of the ASIC Act; and/or
- (c) section 18 of the Australian Consumer Law,

(May Predictable Market Representation Contravention).

G. CAUSATION, LOSS AND DAMAGE

G.1 Contraventions caused loss to the Applicant and the Group Members

75. During the Relevant Period, the Applicant and Group Members acquired an interest in ILU Securities:

- (a) in a market regulated by, inter alia, sections 674(2) and 1041H of the Corporations Act, Rules 3.1, 4.3A and 4.3D of the Listing Rules, section 12DA of the ASIC Act, and section 4 of the Australian Consumer Law;
- (b) where the price or value of ILU Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) and 1041H of the Corporations Act, Rules 3.1, 4.3A and 4.3D of the Listing Rules, and by the conduct by ILU alleged in this further amended statement of claim to be in contravention of section 12DA of the ASIC Act and section 4 of the Australian Consumer Law;

- (c) in a market to which the representations alleged in this further amended statement of claim had been made being representations that a reasonable person would expect to have a material effect on the price or value of ILU Securities;
- (d) further or alternatively to paragraph (c), in a market to which the material information alleged in this further amended statement of claim had not been disclosed and which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of ILU Securities;
- (e) in which falls in the price of ILU Securities on and after 9 July 2012 were a result of release of information to the market which had not been previously revealed because of:
 - (i) the April Disclosure Contravention;
 - (ii) the April Reasonable Grounds Representation Contravention;
 - (iii) the April No Known Adverse Developments Representation Contravention;
 - (iv) the April Ability to Forecast Representation Contravention;
 - (v) the April Predictable Market Representation Contravention
 - (vi) the First May Disclosure Contravention;
 - (viA) the Second May Disclosure Contravention;
 - (viB) the June Disclosure Contravention;
 - (vii) the May Reasonable Grounds Representation Contravention;
 - (viii) the May No Known Adverse Developments Representation Contravention;
 - (ix) the May Ability to Forecast Representation Contravention;
 - (x) the May Predictable Market Representation Contravention;

(each a **Market Contravention**), or any one or combination of them.

76. During the Relevant Period, the Market Contraventions (or any one or combination of them) caused the market price for ILU Securities to be substantially greater than:

- (a) their true value; and/or
 - (b) the market price that would have prevailed but for the Market Contraventions (or any of them).
77. Further, or in the alternative to paragraphs 75 to 76, in the decision to acquire an interest in ILU Securities, the Applicant relied directly on each or one or more of:
- (a) the May Reasonable Grounds Representation;
 - (b) the May No Known Adverse Developments Representation;
 - (c) the May Ability to Forecast Representation;
 - (d) the May Predictable Market Representation,
78. Further, or in the alternative to paragraphs 75 to 77, in the decision to acquire an interest in ILU Securities, some Group Members relied directly on each or one or more of:
- (a) the April Reasonable Grounds Representation;
 - (b) the April No Known Adverse Developments Representation;
 - (c) the April Ability to Forecast Representation;
 - (d) the April Predictable Market Representation
 - (e) the May Reasonable Grounds Representation;
 - (f) the May No Known Adverse Developments Representation;
 - (g) the May Ability to Forecast Representation;
 - (h) the May Predictable Market Representation,
- (each a **Contravening Representation**).

Particulars

The identity of all those Group Members which or who relied directly on any or all of the Contravening Representations are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group

Member's claims; those instructions will be obtained (and particulars of the identity of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

G.2 Loss or damage suffered by the Applicant and Group Members

79. The Applicant and Group Members have suffered loss and damage by and resulting from the Market Contraventions (or any one or combination of them).

Particulars

- (i) *The loss suffered by the Applicant will be calculated by reference to:*
 - A. *the difference between the price at which he acquired his interest in ILU Securities during the Relevant Period and the true value of that interest; or*
 - B. *the difference between the price at which he acquired an interest in ILU Securities and the market price that would have prevailed had the -Market Contraventions not occurred; or*
 - C. *alternatively, the days during the Relevant Period where the traded price of ILU Securities fell as a result of the disclosure information which had not previously been disclosed because of the Market Contraventions, the quantum of that fall; or*
 - D. *alternatively, the days after the Relevant Period when the traded price of ILU Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Market Contraventions, the quantum of that fall.*
- (ii) *~~Further particulars in relation to the Applicant's losses will be provided after the service of opinion evidence in chief. The Applicant relies on the expert analysis of Greg Houston in his reports dated 6 March 2020 and 14 May 2020 (Houston Reports).~~*
- (iii) *Particulars of the losses of Group Members will be provided, following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

80. Further, or alternatively, to paragraph 79, the Applicant and some Group Members, being the Group Members who relied directly on any Contravening Representations, which for the reasons pleaded in paragraphs 46, 50, 54, 58, 62, 66, 70 and/or 74 constituted contravening conduct (being respectively the April Reasonable Grounds Representation Contravention, the April No Known Adverse Developments Representation Contravention, the April Ability to Forecast Representation Contravention, the April Predictable Market Representation Contravention, the May

Reasonable Grounds Representation Contravention, the May No Known Adverse Developments Representation Contravention~~and/or~~, the May Ability to Forecast Representation Contravention and/or the May Predictable Market Representation Contravention (**Reliance Specific Contraventions**)):


- (a) relied directly upon such Contravening Representation(s) in making a decision whether to purchase ILU Securities at the prevailing market price at the time of purchase; and
- (b) were persons who suffered loss or damage by or resulting from the Reliance Specific Contraventions.

Particulars

- (i) *The loss suffered by the Applicant will be calculated by reference to:*
 - A. *the difference between the price at which he acquired his interest in ILU Securities during the Relevant Period and the true value of that interest; or*
 - B. *the difference between the price at which he acquired an interest in ILU Securities and the market price that would have prevailed had the -Reliance Specific Contraventions not occurred; or*
 - C. *alternatively, the days during the Relevant Period where the traded price of ILU Securities fell as a result of the disclosure information which had not previously been disclosed because of the Reliance Specific Contraventions, the quantum of that fall; or*
 - D. *alternatively, the days after the Relevant Period when the traded price of ILU Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Reliance Specific Contraventions, the quantum of that fall.*
- (ii) ~~Further particulars in relation to the Applicant's losses will be provided after the service of opinion evidence in chief.~~ The Applicant relies on the Houston Reports.
- (iii) *Particulars of the losses of Group Members will be provided, following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

The pleadings in this proceeding have been prepared by Guy Donnellan and Caspar Conde of counsel with the assistance of Shine Lawyers.~~This amended pleading was prepared by Gaspar Conde and settled by Guy Donnellan, both of counsel.~~

Dated: ~~8 June 2018~~ 9 July 2020


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Craig Allsopp

Solicitor for the Applicant

GLOSSARY

In this document, unless the context otherwise requires, the following definitions apply:

8 May Proper Guidance Information has the meaning given in paragraph 27(q).

9 July 2012 Sales Update has the meaning given in paragraph 8.

12 April Proper Guidance Information has the meaning given in paragraph 22(m).

16 June Proper Guidance Information has the meaning given in paragraph 36B(d).

16 May BAML Presentation has the meaning given in paragraph 31.

23 May AGM Presentation has the meaning given in paragraph 34.

23 May Proper Guidance Information has the meaning given in paragraph 36A(d).

2011 Annual Report has the meaning given in paragraph 18.

AGM Express Statements has the meaning given in paragraph 35.

April Ability to Forecast Representation has the meaning given in paragraph 23(d).

April Ability to Forecast Representation Contravention has the meaning given in paragraph 54.

April Disclosure Contravention has the meaning given in paragraph 39.

April Express Statements has the meaning given in paragraph 21.

April Forecast Representation has the meaning given in paragraph 23(a).

April Implied Representations has the meaning given in paragraph 23.

April Inability to Forecast Information has the meaning given in paragraph 24(c).

April Known Adverse Developments Information has the meaning given in paragraph 24(b).

April Material Information has the meaning given in paragraph 24.

April No Known Adverse Developments Representation has the meaning given in paragraph 23(c).

April No Known Adverse Developments Representation Contravention has the meaning given in paragraph 50.

April No Reasonable Grounds Information has the meaning given in paragraph 24(a).

April Predictable Market Representation has the meaning given in paragraph 23(e).

April Predictable Market Representation Contravention has the meaning given in paragraph 58.

April Reasonable Grounds Representation has the meaning given in paragraph 23(b).

April Reasonable Grounds Representation Contravention has the meaning given in paragraph 46.

April Titanium Dioxide Forecast has the meaning given in paragraph 23(a)(ii).

April Unpredictable Market Information has the meaning given in paragraph 24(d).

April Zircon Forecast has the meaning given in paragraph 23(a)(i).

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

ASX means the Australian Securities Exchange Ltd or the market operated by it.

Board means ILU's Board of Directors.

Contravening Representation has the meaning given in paragraph 78.

Corporations Act means the *Corporations Act 2001* (Cth).

Day 0 Report has the meaning given in the particulars to paragraph 22(a).

Draft March Performance Report has the meaning given in the particulars to paragraph 22(a).

FCAA means the *Federal Court of Australia Act 1976* (Cth).

February Earnings Guidance has the meaning given in paragraph 15.

February Express Guidance Statements has the meaning given in paragraph 16.

February Express Statements has the meaning given in paragraph 13.

February Implied Guidance Statements has the meaning given in paragraph 17.

February Implied Statements has the meaning given in paragraph 14.

February Report has the meaning given in paragraph 12.

First May Disclosure Contravention has the meaning given in paragraph 42.

Group Members has the meaning given in paragraph 1(b).

Houston Reports has the meaning given in the Particulars to paragraph 79.

ILU means the respondent.

ILU Securities means ordinary shares in ILU.

June Disclosure Contravention has the meaning given in paragraph 42F.

Listing Rules means the Listing Rules of the ASX.

March 2012 Quarterly Report has the meaning given in paragraph 20.

Market Contravention has the meaning given in paragraph 75.

May Ability to Forecast Representation has the meaning given in paragraph 29(c).

May Ability to Forecast Representation Contravention has the meaning given in paragraph 70.

~~**May Disclosure Contravention** has the meaning given in paragraph 42.~~

May Earnings Guidance has the meaning given in paragraph 25.

May Express Statements has the meaning given in paragraph 26.

May Forecast Representation has the meaning given in paragraph 28.

May Inability to Forecast Information has the meaning given in paragraph 30(c).

May Known Adverse Developments Information has the meaning given in paragraph 30(b).

May Material Information has the meaning given in paragraph 30.

May No Known Adverse Developments Representation has the meaning given in paragraph 29(b).

May No Known Adverse Developments Representation Contravention has the meaning given in paragraph 66.

May No Reasonable Grounds Information has the meaning given in paragraph 30(a).

May Predictable Market Representation has the meaning given in paragraph 29(d).

May Predictable Market Representation Contravention has the meaning given in paragraph 74.

May Reasonable Grounds Representation has the meaning given in paragraph 29(a).

May Reasonable Grounds Representation Contravention has the meaning given in paragraph 62.

May Titanium Dioxide Forecast has the meaning given in paragraph 26(g).

May Unpredictable Market Information has the meaning given in paragraph 30(d).

May Zircon Forecast has the meaning given in paragraph 26(f).

MFSS has the meaning given in paragraph 22(a5).

Murray Addendum has the meaning given in the Particulars to paragraph 22(m).

Murray Report has the meaning given in the Particulars to paragraph 22(a2).

OECD CLI has the meaning given in paragraph 22(a4).

Relevant Period means 12 April 2012 to 8.26am on 9 July 2012.

Rochester Report has the meaning given in the Particulars to paragraph 22(a3).

Second May Disclosure Contravention has the meaning given in paragraph 42C.


Z/R/SR means zircon, rutile and synthetic rutile.

CERTIFICATE OF LEGAL PRACTITIONER

(Order 11, rule 18)

I, Craig Allsopp, certify to the Court that, in relation to the further amended 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: ~~8 June 2018~~ 9 July 2020


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Craig Allsopp

Legal practitioner representing the Applicant