

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: NSD576/2018  
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 that reads "Sia Lagoos".

Dated: 7/09/2020 12:51:45 PM AEST

Registrar

### Important Information

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Amended



Form 33

Rule 16.32

## **Amended Defence**

No. NSD 576 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

In answer to the Further Amended Statement of Claim, the Respondent (**ILU**) says as follows:

### **OUTLINE OF THE RESPONDENT'S CASE**

- A1. ILU is a significant producer of zircon, titanium dioxide, rutile, synthetic rutil and other products, collectively referred to as "mineral sands".
- A2. Shares in ILU, ILU Securities, are listed on the ASX.
- A3. The Applicant's claim concerns alleged losses suffered by the Applicant as a shareholder in ILU. The claim is also brought as a representative proceeding for group members who acquired ILU Securities during the "Relevant Period" in 2012.<sup>1</sup>

### The Applicant's case

- A4. The Applicant's case is that ILU failed to make disclosures of information, and that ILU made representations which are alleged to be misleading or deceptive, or likely to mislead or deceive and are alleged to have been made without a reasonable basis.

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Filed on behalf of (name & role of party)

Iluka Resources Limited, Respondent

Prepared by (name of person/lawyer)

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<sup>1</sup> 12 April 2012 to 8.26am (AEST) on 9 July 2012, Further Amended Statement of Claim paragraph 1(b)(i).

- A5. The Applicant's case consists of four core propositions.
- A6. First, that in making statements to the market in February<sup>2</sup> and May 2012,<sup>3</sup> ILU allegedly made representations concerning projections for the sales volumes of its mineral sands products and about its ability to make such projections.
- A7. Second, that by making further statements to the market in March,<sup>4</sup> April 2012,<sup>5</sup> and May 2012,<sup>6</sup> ILU allegedly made further representations about its projections for the sales volumes of its mineral sands products and about its ability to make such projections. Such further representations are said to have arisen due to the absence of express statements disavowing the representations ILU is alleged to have previously made in February and May 2012.<sup>7</sup>
- A8. The Applicant claims that the alleged representations are misleading or deceptive, or likely to mislead or deceive and are alleged to have been made without a reasonable basis. As a consequence, the Applicant alleges that ILU contravened section 1041H(1) of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the Australian Consumer Law.
- A9. Third, that as a result of ILU being allegedly aware of underlying matters concerning sales, contracts, and market and economic conditions as at April<sup>8</sup> and May 2012,<sup>9</sup> the Applicant claims that ILU was aware of "material information". This material information is said to consist of awareness of: an absence of reasonable grounds to have made alleged representations; a material risk that alleged representations were no longer reliable; an inability to provide reliable forecasts of future revenue (and in relation to May 2012, sales); and an absence of reasonable basis for providing certain sales estimates.<sup>10</sup>
- A10. The Applicant contends that between 12 April 2012 and 7 May 2012,<sup>11</sup> ~~and~~ from 8 May 2012 (or alternatively 17 May 2012) until 22 May 2012,<sup>12</sup> from 23 May 2012 until 15 June 2012,<sup>13</sup> and from 16 June 2012 until the end of the Relevant Period,<sup>14</sup> ILU was required

<sup>2</sup> Further Amended Statement of Claim paragraphs 14 and 17.

<sup>3</sup> Further Amended Statement of Claim paragraphs 26, 28 and 29.

<sup>4</sup> Further Amended Statement of Claim paragraph 19.

<sup>5</sup> Further Amended Statement of Claim paragraph 23.

<sup>6</sup> Further Amended Statement of Claim paragraphs 33 and 36.

<sup>7</sup> Further Amended Statement of Claim paragraphs 23, 33 and 36.

<sup>8</sup> Further Amended Statement of Claim paragraph 22.

<sup>9</sup> Further Amended Statement of Claim paragraph 27.

<sup>10</sup> Further Amended Statement of Claim paragraphs 24 and 30.

<sup>11</sup> The "April Material Information".

<sup>12</sup> The "May Material Information".

<sup>13</sup> The "23 May Proper Guidance Information".

<sup>14</sup> The "16 June Proper Guidance Information".

by ASX Listing Rule 3.1 to disclose such “material information”, and that by failing to do so, ILU thereby contravened ASX Listing Rule 3.1 and section 674(2) of the Corporations Act.

- A11. The “material information” which the Applicant puts at the centre of its non-disclosure case relies upon the representations alleged to have been made by ILU and opinions which ILU did not in fact hold.
- A12. Fourthly, the Applicant contends that ILU’s alleged disclosure failures and misleading or deceptive conduct caused the market price for ILU Securities to be overvalued, or alternatively, that the Applicant and Group Members relied upon the alleged representations in deciding whether to acquire ILU Securities, and as a result they suffered loss.

#### ILU’s case

- A13. ILU responds to the Applicant’s Further Amended Statement of Claim in paragraphs 1 – 8<sup>23</sup> below. In summary and in answer to the whole of the Applicant’s case ILU says as follows.
- A14. First, ILU denies making the representations alleged by the Applicant. When ILU’s statements to the market between February and July 2012 are considered in full, including the disclaimers which accompanied those statements,<sup>15</sup> it is clear that the alleged representations were not made at all.
- A15. Second, in making its statements to the market, ILU fully disclosed the limitations on its ability to make predictions about future sales volumes and it made it clear that it would not update its sales volume estimates on a regular basis. For example, ILU said:

*"This presentation contains information that is based on projected and/or estimated expectations, assumptions and outcomes";<sup>16</sup>*

*"These forward-looking statements are not guarantees or predictions of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the company's control, and which may cause actual results to differ from those expressed in the statements contained in this release";<sup>17</sup>*

*"While Iluka has prepared this information based on its current knowledge and understanding and in good faith, there are risks and uncertainties involved which could cause results to differ from projections. Iluka shall not be liable for the correctness and/or accuracy of the information nor any differences between*

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<sup>15</sup> See the “February Report Disclaimers”, below at paragraph 12(c), the “February Earnings Guidance Disclaimers”, below at paragraph 15(b), the “May Earnings Guidance Disclaimers”, below at paragraph 25(b) and the “16 May BAML Presentation Disclaimers”, below at paragraph 31(b).

<sup>16</sup> “February Report Disclaimers”, below at paragraph 12(c).

<sup>17</sup> “February Earnings Guidance Disclaimers”, below at paragraph 15(b).

*the information provided and actual outcomes, and furthermore reserves the right to change its projections from time to time. Iluka does not undertake to update the projections provided in this document on a regular basis".<sup>18</sup>*

*"Factors that could cause actual results or performance to differ materially from those expressed or implied in the forward looking statements include, but are not limited to potential changes in: - exchange rate assumptions - product pricing assumptions - mine plans and/or resources - equipment life or capability - current or new technical challenges - market conditions - management decisions".<sup>19</sup>*

- A16. Put simply, ILU endeavoured to provide guidance as to anticipated sales volumes, but there were limitations on its ability to provide such guidance in light of the uncertainties that exist in the market in which it operates. ILU's disclosures repeatedly made these limitations clear to the market.
- A17. Third, alternatively, even if ILU did make the representations alleged, such representations were representations of opinion for which ILU had reasonable grounds.
- A18. These reasonable grounds included<sup>20</sup> that: ILU undertook a budget preparation process between around October 2011 and February 2012 to prepare its budget for 2012; and had processes in place to make forecasts in relation to, and monitor and review sales of, its mineral sands products. These monitoring processes included: preparing monthly performance reports which detailed monthly sales volumes of mineral sands products, and provided commentary on the reasons for any variations between actual sales and budget; periodically preparing forecasts of future sales of mineral sands products; and ILU's management reviewing forecasts of future sales of mineral sands products.
- A19. Further, whether ILU had "reasonable grounds" to make the alleged representations is to be assessed in light of the limitations and disclaimers stated within ILU's disclosures to the market.
- A20. Fourth, ILU denies that it was aware of information that should have been but was not disclosed to the market.
- A21. In this respect, the Applicant's case proceeds on the premise that ILU should have formed *different* views on the matters which were the subject of its statements to the market during the period from 23 February 2012 to 9 July 2012. ILU's case is that the disclosures it made to the market satisfied its continuous disclosure obligations.
- A22. The Applicants' premise, that ILU should have formed different views, does not arise under the continuous disclosure obligations.

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<sup>18</sup> "May Earnings Guidance Disclaimers", below at paragraph 25(b).

<sup>19</sup> "May Earnings Guidance Disclaimers", below at paragraph 25(b).

<sup>20</sup> See, for example, as pleaded and particularised at paragraphs 12(d) and 12(e) below.

- A23. Fifth, in light of the disclaimers included within the disclosures ILU made to the market, the market price for ILU Securities was not artificially inflated.
- A24. Alternatively in this regard, in light of the disclaimers included within the statements ILU made to the market, the Applicant made any decision to purchase ILU Securities fully aware of what ILU had conveyed to the market about its ability to make predictions about future sales volumes.
- A25. To the extent that the Applicant purchased ILU Securities without regard to the disclaimers ILU included in its statements to the market, the Applicant failed to take reasonable care. Accordingly, any award of damages or compensation to the Applicant should be reduced by operation of Corporations Act section 104I.
- A26. Finally, ILU relies upon the 6-year limitation periods arising under the Corporations Act, ASIC Act and/or the Australian Consumer Law. These limitation periods mean that the Applicant cannot maintain the causes of action which arise from and rely upon facts occurring prior to 8 June 2012, which were introduced into the previous Amended Statement of Claim by the amendments served on 8 June 2018. Such amendments take effect, by operation of Federal Court Rules 16.51 and 16.54, on the date the amendments were made. In respect of the amendments made by the Further Amended Statement of Claim, ILU further relies upon the 6-year limitation periods arising under the Corporations Act, ASIC Act and/or the Australian Consumer Law as applying such that the Applicant cannot maintain the causes of action which arise from and rely upon facts occurring prior to 9 July 2014, being 6 years prior to the filing and service of the Further Amended Statement of Claim on 9 July 2020.

## **A INTRODUCTION**

### **A.1 The Applicant and the Group Members**

1. In relation to paragraph 1, it:
  - (a) admits that the ~~a~~Applicant acquired ILU Securities, but otherwise denies sub-paragraph (a); and
  - (b) denies sub-paragraph 1(b)(ii), and otherwise does not plead to sub-paragraph 1(b) as no allegation is made against it.

2. It does not know and therefore cannot admit paragraph 2.

### **A.2 The respondent (ILU)**

3. It admits paragraph 3.

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

4. In relation to paragraph 4 it:
  - (a) admits sub-paragraph (a); and

(b) says that:

(i) at all material times Listing Rule 3.1 provided:

*"Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information."*

(ii) at all material times Listing Rules 3.1A provided:

*"Listing rule 3.1 does not apply to particular information while all of the following are satisfied.*

*3.1A.1 A reasonable person would not expect the information to be disclosed.*

*3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential.*

3.1 A.3 One or more of the following applies:

- *It would be a breach of a law to disclose the information.*
- *The information concerns an incomplete proposal or negotiation.*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure.*
- *The information is generated for internal management purposes of the entity.*
- *The information is a trade secret."; and*

(c) otherwise denies paragraph 4.

5. In relation to paragraph 5 it:

(a) says that at all material times Listing Rule 19.12 included the following definition of "aware":

*"aware an entity becomes aware of information if a director or executive officer (in the case of a trust, a director or executive officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of that entity"; and*

(b) otherwise denies paragraph 5.

6. In relation to paragraph 6 it:

- (a) says that section 674(2) of the Corporations Act applied to ILU by operation of 674(1) of the Corporations Act; and
- (b) otherwise denies paragraph 6.

## B ILU – COMPANY BACKGROUND AND OFFICERS

7. It admits paragraph 7.

7A. It admits paragraph 7A., it:

- (a) —— admits sub-paragraph 7A(a); and
- (b) —— in relation to sub-paragraph 7A(b):
  - (i) —— Says that the following individuals held positions during the period from February 2012 until the end of the Relevant Period with the following title(s):
    - a. —— Alan Tate (Chief Financial Officer and Head of Strategy and Planning);
    - b. —— Cameron Wilson (Chief Legal Counsel and Head of Corporate Acquisitions; Company Secretary; General Manager, Corporate Services);
    - c. —— Victor Hugo (General Manager, Product and Technical Development);
    - d. —— Hans Umlauff (General Manager Project Development, and General Manager NSW Development & Project Standards);
    - e. —— Robert Porter (General Manager, Investor Relations and Corporate Affairs);
    - f. —— Simon Green (General Manager, Finance and Risk);
    - g. —— Matthew Blackwell (General Manager, USA);
    - h. —— Steve Wickham (General Manager Australian Operations);
    - i. —— Doug Warden (General Manager Exploration and Resource Development);
    - j. —— Chris Cobb (General Manager, Sales and Marketing).
  - (ii) —— Says further that:
    - a. —— the individuals listed above at sub-paragraphs 7A(b)(i)a to e and 7A(b)(i)g to j held positions during the period from February 2012 until the end of the Relevant Period which required them to report to ILU's Managing Director, David Alexander Rebb;

b. the individual listed above at sub-paragraph 7A(b)(i) held a position during the period from February 2012 until the end of the Relevant Period which required him to report to Alan Tate; and

Otherwise denies sub-paragraph 7A(b); and

- (c) admits subparagraphs 7A(c) and 7A(d).

7B. In relation to it admits paragraph 7B:

- (a) says that the following individuals were employed by ILU and held positions during the period from February 2012 until the end of the Relevant Period with the following title(s):
  - (i) Barry Murphy (Corporate Planning and Industry Analysis Manager, Planning and Industry Manager);
  - (ii) Simon Hay (Sales and Marketing Manager China); and
- (b) otherwise denies paragraph 7B.

7C. [Not used]

7D. In relation to paragraph 7D it:

- (a) admits that each of the persons identified in sub-paragraph 7A(a), being Directors of ILU, was an officer of ILU during the Relevant Period;
- (b) admits that Cameron Wilson, as Company Secretary, was an officer of ILU during the Relevant Period;
- (c) admits that Alan Tate, as Chief Financial Officer and Head of Strategy and Planning, was an officer of ILU during the Relevant Period;
- (d) refers to sub-paragraph 5(a) above and relies upon the terms of the definition of "aware" within Listing Rule 19.12 as it applied at all material times; and
- (e) otherwise denies paragraph 7D.

7E. In relation to paragraph 7E, it:

- (a) refers to and relies on paragraphs 4, 5, 7A, 7B and 7D above; and
- (b) otherwise denies paragraph 7E.

## C THE 9 JULY 2012 CORRECTIVE SALES UPDATE

8. It admits paragraph 8, and it:

- (a) will refer to and rely on the full terms and effect of the 9 July 2012 Sales Update at trial;

- (b) says further that the 9 July 2012 Sales Update contained statements concerning market conditions and sales volume expectations for the full year.

## PARTICULARS

*The 9 July 2012 Sales Update contained statements including:*

*"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 early May, have had a flow on impact on mineral sands customer confidence levels and future business performance expectations, which is likely to influence sales volumes materially over the remainder of 2012.*

### **Appendix – Market Commentary**

*Iluka provides the following market commentary which would normally be provided with its Quarterly Production Report, scheduled for release on 12 July. The Quarterly Production Report will replicate this commentary.*

#### **Zircon**

*Iluka sold 87 thousand tonnes of zircon in the first half of 2012. A large scheduled shipment was deferred in June associated with port delays and current forecasts assume this volume will not be recovered. Zircon sold in the first half has achieved weighted average prices in line with previous commentary.*

...

#### **High Grade Titanium Dioxide – Rutile and Synthetic Rutile**

*Global economic settings referred to previously have had an impact on this sector, as the half has evolved. Iluka sold 186 thousand tonnes of high grade titanium dioxide products (rutile and synthetic rutile) in the first half of 2012. Approximately 8 thousand tonnes has been contracted but was not shipped due to shipment scheduling delays. This volume is scheduled to ship during July. Volumes sold or committed in the first half are roughly in line with previous commentary on first half expected sales trends. Weighted average rutile and synthetic rutile prices have been in line with previous disclosed information..."*

*Further particulars may be provided following service of ILU's evidence.*

9. In relation to paragraph 9, it:
  - (a) admits sub-paragraphs (a) to (g);
  - (b) says, save that the 9 July 2012 Sales Update provided that:

*"In addition, due to the continuing uncertainty associated with economic and business conditions, Iluka's Key Physical and Financial Parameters, 2012-2014 guidance (issued in November 2011) is now redundant. A reinstatement of such guidance will be dependent on market, commercial and other considerations, including reaching a period in terms of global economic performance when multiple year forecasts can be made with an appropriate degree of confidence."*

it otherwise admits sub-paragraph (h);

- (c) says, save that the 9 July 2012 Sales Update provided that:

*"Iluka's marketing approach over recent years has involved changing sales contract periods from multi-year or annual arrangements to much shorter periods*

*– quarterly or spot in the cases of zircon and six monthly, quarterly or spot in the case of titanium dioxide products.*

*This approach has served the company well, given the level of price increases achieved during periods of strong demand. However, in times of global and regional economic uncertainty and turmoil, and with weakened business confidence levels, this can result in volatility in sales levels from period to period, an effect compounded by de-stocking and re-stocking behaviour through the value chain. Unpredictable economic conditions and markets can also lead some customers to make purchase commitments and then seek to reschedule or reduce those commitments."*

it otherwise admits sub-paragraph (i); and

- (d) will otherwise refer to and rely on the full terms and effect of the 9 July 2012 Sales Update at trial.

10. It admits paragraph 10.

11. It admits paragraph 11.

## **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. In relation to paragraph 12, it:

- (a) admits the paragraph;
- (b) will refer to and rely on the full terms and effect of the February Report at trial;
- (c) says further that the February Report, in the 2011 Full Year Results Presentation Slide Pack, contained the following disclaimers (the **February Report Disclaimers**):

***"Disclaimer"***

***Forward-looking Statements***

*This presentation contains information that is based on projected and/or estimated expectations, assumptions and outcomes.*

*These forward-looking statements are subject to a range of risk factors associated, but not exclusive, with potential changes in:*

- *exchange rate assumptions*
- *product pricing assumptions*
- *mine plans and/or resources*
- *equipment life or capability*
- *current or new technical challenges*
- *market conditions*
- *management decisions*

*While Iluka has prepared this information based on its current knowledge and understanding and in good faith, there are risks and uncertainties involved which could cause results to differ from projections. Iluka shall not be liable for the correctness and/or accuracy of the information, nor any differences between the information provided and actual outcomes, and furthermore reserves the right to change its projections from time to time.*

*All currency referred to is Australian denominated unless otherwise indicated.*

***Non-IFRS Financial Information***

*This presentation uses non-IFRS financial information including mineral sands EBITDA, mineral sands EBIT, Group EBITDA and Group EBIT which are used to measure both group and operational performance. A reconciliation of nonIFRS financial information to profit before tax is included in the supplementary slides. Non-IFRS measures have not been subject to audit or review."*

- (d) says further that:
- (i) ILU issued the February Report and the February Earnings Guidance after its budget for 2012 (**2012 Budget**) was finalised in or around February 2012;
  - (ii) ILU undertook its 2012 Budget process for 2012 between around October 2011 and February 2012 (**the 2012 Budget Process**);
  - (iii) The 2012 Budget was prepared as a result of the 2012 Budget Process;

## PARTICULARS

*Submission to the Board of Directors of ILU dated 14 December 2011.  
Minutes of meeting of Board of Directors of ILU held on 21 December  
2011.*

*Submission to the Board of Directors of ILU dated 20 February 2012.  
Minutes of meeting of Board of Directors of ILU held on 22 February  
2012.*

*Further particulars are provided in the affidavits of:*

Christopher Paul Cobb filed 7 August 2020.

Alan John Tate filed 7 August 2020.

Simon Richard Green dated 6 August 2020.

Gavin John Rezos filed 7 August 2020.

George John Pizzey filed 7 August 2020.

Wayne Geoffrey Osborn dated 6 August 2020.

David Alexander Robb filed 21 August 2020.

*Further particulars may be provided following service of ILU's  
evidence.*

- (e) says further that ILU had processes in place to make forecasts in relation to, and monitor and review sales of, its mineral sands products from time to time (**ILU's Mineral Sands Monitoring Processes**).

## PARTICULARS

*ILU's Mineral Sands Monitoring Processes included:*

- a. *Preparation of monthly performance reports which detailed monthly sales volumes of mineral sands products, and provided commentary on the reasons for any variations between actual sales and budget;*
- b. *Periodic preparation of forecasts of future sales of mineral sands products;*
- c. *Review by ILU's management of forecasts of future sales of mineral sands products.*

*Further particulars may be provided following service of ILU's  
evidence are provided in the affidavits particularised at paragraph  
12(d) above.*

13. In relation to paragraph 13, it:

- (a) will refer to and rely on the full terms and effect of the February Report at trial;
  - (b) says further that the statements contained in the February Report were made subject to the February Report Disclaimers;
  - (c) in relation to sub-paragraph 13(a):
    - (i) says that the February Report included the figure \$1,536.7 million in relation to mineral sands revenue for 2011;
    - (ii) otherwise denies the sub-paragraph;
  - (d) in relation to sub-paragraph 13(f):
    - (i) says that the February Report included the following statements:
      - a. *"Zircon weighted average prices at the end of 2011 were approximately US\$2,400/tonne";*
      - b. *"The weighted average rutile price in 2011 was approximately US\$1,150/tonne. Rutile prices ended 2011 at approximately US\$1,340/tonne.;"*
      - c. *"The weighted average synthetic rutile price in 2011 was approximately US\$880/tonne. Synthetic rutile prices ended 2011 at approximately US\$1,075/tonne";*
    - (ii) otherwise denies the sub-paragraph; and
  - (e) otherwise admits paragraph 13.
14. In relation to paragraph 14, it:
- (a) refers to and repeats paragraph 12;
  - (b) says further that the statements contained in the February Report were made subject to the February Report Disclaimers;
  - (c) admits that the figures pleaded in sub-paragraph (a) are the result of the particularised mathematical process;
  - (d) save that ILU admits that it expected the first quarter 2012 zircon weighted average price to be approximately \$2,500/t, it otherwise denies sub-paragraph 14(b);
  - (e) otherwise denies that the February Report included the February Implied Statements; and
  - (f) further and in the alternative, says that, to the extent the February Report included the February Implied Statements (which is denied), any such statements were statements of opinion for which ILU had reasonable grounds.

#### **PARTICULARS**

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above.*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.*

15. It admits paragraph 15, and it:

- (a) will refer to and rely on the full terms and effect of the February Earnings Guidance at trial;
- (b) says further that the February Earnings Guidance contained the following disclaimers (the **February Earnings Guidance Disclaimers**):

*"This document provides an indicative guide to key physical and financial parameters in the Iluka business for the 2012 financial year. It supplements Iluka's Key Physical & Financial Parameters, 2012-2014 document, which was disclosed as part of the company's November 2011 Mineral Sands Briefing Session. That commentary, which related to three year annual average trends in the business, is available on Iluka's website. That 2012-2014 guidance document was developed before the finalisation of Iluka's 2012 budget and current difficulties in forecasting global economic conditions means that three year average outcomes may vary significantly depending on, initially, 2012 outcomes and then the path of global economic performance through 2013 and 2014.*

*The information contained within this document, as well as the 2012-2014 document, is derived from either budget or corporate plan information. It is, as with all such information, and in the context of: uncertain economic conditions globally; potential changes to supply and demand dynamics; and potential modification to the company's own plans (subject to change and variation) and should be treated as a guide only.*

*Iluka does not undertake to update this information regularly in part or whole, but can be expected to comment on any material variations. Iluka does not provide pricing forecasts.*

*The following excludes the Mining Area C iron ore royalty which contributed \$88 million in EBIT in 2011.*

*The information is provided to assist sophisticated investors with the modelling of the company, but should not be relied upon as a predictor of future performance.*

***Disclaimer – Forward Looking Statements***

*This briefing paper contains information which is based on projected and/or estimated expectations, assumptions and outcomes.*

*These forward-looking statements are not guarantees or predictions of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the company's control, and which may cause actual results to differ from those expressed in the statements contained in this release. Factors that could cause actual results or performance to differ materially from those expressed or implied in the forward-looking statements include, but are not limited to potential changes in:*

- *exchange rate assumptions*
- *product pricing assumptions*
- *mine plans and/or resources*
- *equipment life or capacity*
- *current or new technical challenges*
- *market conditions*
- *management decisions*

*While Iluka has prepared this information based on its current knowledge and understanding and in good faith, there are risks and uncertainties involved which could cause results to differ from projections. Iluka shall not be liable for the correctness and/or accuracy of the information nor any differences between the information provided and actual outcomes, and furthermore reserves the right to change its projections from time to time. Iluka does not undertake to update the projections provided in this document on a regular basis.*

*All currency is in nominal Australian dollar terms unless stated differently"; and*

- (c) refers to and repeats paragraph 12(d) above.
16. In relation to paragraph 16, it:
- (a) will refer to and rely on the full terms and effect of the February Earnings Guidance at trial, including the February Earnings Guidance Disclaimers;
  - (b) says that, save that the amounts set out in the February Earnings Guidance, which were stated below the headline "Iluka Physical Trends", and which was

subject to the February Earnings Guidance Disclaimers, for production in 2012 were:

- (i) zircon ~500 kT;
- (ii) rutile ~225 kT
- (iii) synthetic rutile ~310 kT; and
- (iv) saleable ilmenite ~350 kT,

it otherwise denies sub-paragraph 16(a);

(c) in relation sub-paragraph 16(b):

- (i) says that the February Earnings Guidance, which was subject to the February Earnings Guidance Disclaimers, stated below the headline "Iluka Physical Trends":
  - a. In relation to zircon: "sales volumes, dependent on global demand levels and phasing, could be ~10% lower than production";
  - b. In relation to rutile: "Sales are expected to be in line with production in 2012";
  - c. In relation to synthetic rutile: "SR sales in 2012 are expected to be in line with production"; and
- (ii) otherwise denies the sub-paragraph; and

(d) refers to and repeats sub-paragraph 16(a) above, subject to which it admits sub- paragraph (c).

17. In relation to paragraph 17, it:

- (a) denies sub-paragraph 17(a) and says further that the February Earnings Guidance included the February Earnings Guidance Disclaimers, which provided in part that:
 

*"This document provides an indicative guide to key physical and financial parameters in the Iluka business for the 2012 financial year";*

*"The information contained within this document, as well as the 2012-2014 document, is derived from either budget or corporate plan information. It is, as with all such information, and in the context of: uncertain economic conditions globally; potential changes to supply and demand dynamics; and potential modification to the company's own plans (subject to change and variation) and should be treated as a guide only";*

- (b) says that its commentary in the February Earnings Guidance, which was subject to the February Earnings Guidance Disclaimers, provided below the headline "Iluka Physical Trends" that:
- (i) zircon forecast sales volumes, dependent on global demand levels and phasing, could be ~10% lower than production;
  - (ii) rutile sales were expected to be in line with production in 2012;
  - (iii) synthetic rutile sales in 2012 were expected to be in line with production; and
  - (iv) "level of ilmenite available influenced by internal requirements for synthetic rutile production"; and
- otherwise denies sub-paragraph 17(b);
- (c) refers to and repeats sub-paragraphs 15(a) and (b) above; and
- (d) further and in the alternative, says that, to the extent the February Earnings Guidance included the February Implied Guidance Statements (which is denied), any such statements were statements of opinion for which ILU had reasonable grounds.

#### PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above.*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

18. It admits paragraph 18, and it will refer to and rely on the full terms and effect of the 2011 Annual Report at trial.
19. In relation to paragraph 19, it:
- (a) refers to and repeats paragraphs 12, 13, 14 and 18 above;
  - (b) denies paragraph 19;
  - (c) will otherwise refer to and rely on the full terms and effect of the 2011 Annual Report at trial; and
  - (d) further and in the alternative, says that, to the extent that the 2011 Annual Report repeated the February Express Statements and the February Implied

Statements (which is denied), such statements were statements of opinion for which ILU had reasonable grounds.

### PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above.*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

#### D.2 The March 2012 Quarterly Report

20. It admits paragraph 20, and it:

- (a) will refer to and rely on the full terms and effect of the March 2012 Quarterly Report at trial; and
- (b) says further that the March 2012 Quarterly Report contained the following statements (**the March 2012 Quarterly Report Market Condition Statements**):

#### ***Market Conditions Zircon***

*Iluka has stated on several occasions that it expected a soft quarter or two of zircon demand associated with the following factors: the impact of global economic conditions on customer confidence; the effect of measures by the Chinese Government to control inflation and temper speculative activity in some parts of the Chinese property market; the timing of Chinese New Year and the need for a destocking period, especially for ceramics manufacturers.*

*As anticipated, first quarter zircon sales figures were low as many customers did not reactivate their plants until February, and in the case of some ceramic manufacturers in China, plants remained closed through part or all of March.*

*As Iluka has stated previously, it will take some time for a clear view on overall 2012 zircon demand and the phasing of that demand to emerge*

#### ***Titanium Products***

*Iluka continued to experience strong demand for its high grade titanium dioxide. Similarly, demand for high grade titanium products for use in the manufacture of welding consumables strengthened in the latter half of the quarter as the usage*

*of natural rutile as a feedstock for pigment and titanium metal production limited the global availability of this product."*

21. In relation to paragraph 21, it:
- (a) refers to and repeats paragraph 20 above;
  - (b) says further that the statements contained in the March 2012 Quarterly Report were subject to the March 2012 Quarterly Report Market Condition Statements;
  - (c) in relation to sub-paragraph (b), says that the March 2012 Quarterly Report stated in relation to rutile: "Rutile production for the 3 months to 31 March 2012 was 50.7 thousand tonnes (March quarter 2011: 63.0 thousand tonnes)"; and
  - (d) otherwise admits paragraph 21.

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

22. In relation to paragraph 22, it:
- (a) refers to and repeats paragraphs 20 and 21 above;
  - (b) admits sub-paragraph (a);
  - (b1) admits sub-paragraph (a1);
  - (b2) denies sub-paragraph (a2) and says further that the weighted average price of ILU's zircon products increased from approximately \$1,100 per tonne in 2010 to approximately \$2,400 per tonne by the end of 2011;

#### **PARTICULARS**

Iluka Full Year Results to 31 December 2011 [ILU.020.072.7533].

- (b3) admits that the weighted average prices for ILU's rutile products and ILU's synthetic rutile products of approximately US\$550 per tonne and US\$450 per tonne in 2010 respectively, increased to US\$1,340 per tonne and US\$880 per tonne by the end of 2011, and otherwise denies sub-paragraph (a3);
- (b4) denies sub-paragraphs (a4) and (a5);
- (b5) admits that ILU's total inventory of zircon was approximately 225kt as at 12 April 2012 and otherwise denies sub-paragraph (a6);
- (b6) admits sub-paragraph (a7);
- (b7) denies sub-paragraph (a8);
- (c) in relation to sub-paragraph (b):
  - (i) says that, as at 12 April 2012, ILU had stated on several occasions that it expected a soft quarter or two of zircon demand associated with factors including the impact of global economic conditions on customer confidence, and that it would take some time for a clear view

on overall 2012 zircon demand and the phasing of that demand to emerge;

- (ii) says further that the Draft March Performance Report ([ILU.021.063.3585]) contained statements including:

*In Q4 2011, zircon sales were expected to pick up by by (sic) the end of Q1 2012. This has not materialised as European zircon and opacifier stocks remain high and there is no indication of demand from the European region until the second half of 2012. Still, over half the zircon sales for the quarter occurred in March: small tonnage from Chinese customers returning and the first bulk shipment to a customer left from Portland to Rasa; and*

#### PARTICULARS

*The March 2012 Quarterly Report Market Condition Statements.*

*Further particulars may be provided following service of ILU's evidence.*

- (iii) otherwise denies the sub-paragraph;
- (d) in response to sub-paragraph (c):
  - (i) admits that the actual sales figures for Z/R/SR had been lower than the amount budgeted for during 1Q 2012;
  - (ii) says further that, as at 12 April 2012 first quarter zircon sales figures were low as many customers did not reactivate their plants until February, and in the case of some ceramic manufacturers in China, plants remained closed through part or all of March, and that it would take some time for a clear view on overall 2012 zircon demand and the phasing of that demand to emerge; and

#### PARTICULARS

*The March 2012 Quarterly Report Market Condition Statements.*

*Further particulars may be provided following service of ILU's evidence.*

- (iii) otherwise denies the sub-paragraph;
- (e) in response to sub-paragraph (d), it admits it was aware of the contracts it had in place for the sale of Z/R/SR;
- (f) ~~in response to~~ sub-paragraph (e), ~~it admits that in 2010 China accounted for 41% of Iluka's Zircon sales and in 2011 it accounted for 45% of Iluka's Zircon sales, but otherwise denies the sub-paragraph is not used in the Further Amended Statement of Claim;~~

- (f1) denies sub-paragraph (e1);
- (f2) in response sub-paragraph (e2):
  - (i) denies sub-paragraphs (e2)(i), (ii) and (v);
  - (ii) as to sub-paragraph (e2)(iii), admits that in or about November 2011, Huntsman Tioxide had declined tonnage and cut chloride production, and otherwise denies this sub-paragraph; and
  - (iii) denies sub-paragraph (e2)(iv);
- (g) in response to sub-paragraph (f):
  - (i) admits that it was aware that some ceramics manufacturers in China were purchasing Indonesian zircon; and
  - (ii) otherwise denies the sub-paragraph;
- (h) in response to sub-paragraph (g):
  - (i) says that as at 12 April 2012, ILU had stated on several occasions that it expected a soft quarter or two of zircon demand associated with factors including the effect of measures by the Chinese Government to control inflation and temper speculative activity in some parts of the Chinese property market, that it would take some time for a clear view on overall 2012 zircon demand and the phasing of that demand to emerge, and that ILU continued to experience strong demand for its high grade titanium dioxide; and

#### PARTICULARS

*The March 2012 Quarterly Report Market Condition Statements.*

*Further particulars may be provided following service of ILU's evidence.*

- (ii) otherwise denies the sub-paragraph;
- (i) in response to sub-paragraph (h):
  - (i) says that reports referred to 'thrift'ing practices and substitutes; **and**
  - (ii) says further that as at early 2012, there was uncertainty as to the impact substitution and thrifting practices had on ILU's zircon sales in 2011, and may have on ILU's zircon sales in 2012; and
  - (iii) otherwise denies the sub-paragraph;
- (j) denies sub-paragraph (i);
- (k) in relation to sub-paragraph (i1), it:
  - (i) refers to and repeats sub-paragraphs 12(d) and 12(e);

- (ii) says that the 2012 Budget was prepared as a result of the 2012 Budget Process and was not thereafter "amended";
  - (iii) says further that ILU had in place ILU's Mineral Sands Monitoring Processes; and
  - (iv) otherwise denies the sub-paragraph;
- (l) in response to sub-paragraph (j):
- (i) admits that changing sales contract 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;
  - (ii) says further that ILU's marketing strategy, which included changes to contract arrangements, provided benefits; and

#### **PARTICULARS**

*The ability to more quickly respond to the market. Further particulars may be provided following service of ILU's evidence.*

- (iii) otherwise denies the sub-paragraph;
- (m) denies sub-paragraph (k), and says further that:
- (i) the statements contained in the February Earnings Guidance were subject to the February Earnings Guidance Disclaimers; and
  - (ii) ILU had stated that it would take time for a clear view on overall 2012 zircon demand and phasing to emerge; and

#### **PARTICULARS**

*ILU refers to and repeats paragraph 15 above. March 2012 Quarterly Report Market Condition Statements. Further particulars may be provided following service of evidence.*

- (n) denies sub-paragraph (l), and says further that the statements contained in the February Earnings Guidance were subject to the February Earnings Guidance Disclaimers; and.
- (o) denies sub-paragraph (m).

#### **D.2.2 The April Representations**

23. In relation to paragraph 23, it:
- (a) refers to and repeats sub-paragraphs 15, 16, 17 and 20 above;
  - (b) otherwise denies paragraph 23; and

- (c) further and in the alternative, says that, to the extent the March 2012 Quarter Report included the April Implied Representations (which is denied), any such representations were representations of opinion for which ILU had reasonable grounds.

#### **PARTICULARS**

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above.*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

#### **D.2.3 The April Material Information**

24. In relation to paragraph 24, it:
- (a) refers to and repeats the matters pleaded at paragraphs 22 and 23 above;
  - (b) says that ILU had in place ILU's Mineral Sands Monitoring Processes; and
  - (c) otherwise denies paragraph 24.

#### **D.3 The May Earnings Guidance**

25. It admits paragraph 25, and it:
- (a) will refer to and rely on the full terms and effect of the May Earnings Guidance at trial;
  - (b) says that the May Earnings Guidance contained the following disclaimers (the **May Earnings Guidance Disclaimers**):

*"This document provides an indicative guide to key physical and financial parameters in the Iluka business for the 2012 financial year.*

*The information contained within this document is derived from Iluka's budgetary forecasts and other estimates. It is, as with all such information, developed in the context of: uncertain economic conditions globally; potential changes to supply and demand dynamics; and potential modifications to the company's plans and should be treated as a guide only.*

*Iluka does not undertake to update this information regularly in part or whole, but can be expected to comment on any material variations. Iluka does not provide pricing forecasts.*

*The following excludes the Mining Area C iron ore royalty which contributed \$88 million in EBIT in 2011.*

*The information is provided to assist sophisticated investors with the modelling of the company, but should not be relied upon as a predictor of future performance.*

***Disclaimer – Forward Looking Statements***

*This briefing paper contains information which is based on projected and/or estimated expectations, assumptions and outcomes.*

*These forward-looking statements are not guarantees or predictions of future performance and involve known and unknown risks, uncertainties and other factors, many of which are beyond the company's control, and which may cause actual results to differ from those expressed in the statements contained in this release. Factors that could cause actual results or performance to differ materially from those expressed or implied in the forward-looking statements include, but are not limited to potential changes in:*

- *exchange rate assumptions*
- *product pricing assumptions*
- *mine plans and/or resources*
- *equipment life or capability*
- *current or new technical challenges*
- *market conditions*
- *management decisions*

*While Iluka has prepared this information based on its current knowledge and understanding and in good faith, there are risks and uncertainties involved which could cause results to differ from projections. Iluka shall not be liable for the correctness and/or accuracy of the information nor any differences between the information provided and actual outcomes, and furthermore reserves the right to change its projections from time to time. Iluka does not undertake to update the projections provided in this document on a regular basis.*

*All currency is in nominal Australian dollar terms unless stated differently"; and*

- (c) says further that the *Key Physical and Financial Parameters – Update* document cross-referenced and linked to the *Key Physical and Financial Parameters Iluka 2012 – May Update* document, and the May Earnings Guidance Disclaimers applied to each document.

26. In relation to paragraph 26, it:

- (a) refers to and repeats paragraph 25 above;
- (b) says further that the statements contained in the May Earnings Guidance were made subject to the May Earnings Guidance Disclaimers;
- (c) admits sub-paragraphs (a) to (e);
- (d) in relation to sub-paragraph (f):
  - (i) save that the May Earnings Guidance provided that "Iluka now forecasts its zircon sales for the full year to be ~400 thousand tonnes compared with the previously forecast ~450 thousand tonnes", which was stated subject to the May Earnings Guidance Disclaimers, it otherwise denies sub-paragraph (f); and
  - (ii) further and in the alternative, says that, to the extent the May Earnings Guidance included the May Zircon Forecast, (which is denied), any such forecast was a representation of opinion for which ILU had reasonable grounds;

#### PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above, which included (but were not limited to) the 5 May 2012 document "UPDATED ILUKA GROUP 2012 OUTLOOK", [ILU.017.005.5994].*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

- (e) in relation to sub-paragraph (g):
  - (i) save that the May Earnings Guidance provided that "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", which was stated subject to the May Earnings Guidance Disclaimers, it otherwise denies sub-paragraph (g); and
  - (ii) further and in the alternative, says that, to the extent the May Earnings Guidance included the May Titanium Dioxide Forecast, (which is

denied), any such forecast was a representation of opinion for which ILU had reasonable grounds; and

## PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above, which included (but were not limited to) the 5 May 2012 document "UPDATED ILUKA GROUP 2012 OUTLOOK", [ILU.017.005.5994].*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

- (f) admits sub-paragraphs (h) and (i).

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

27. In relation to paragraph 27 it:

- (a) refers to and repeats paragraphs 25 and 26 above;
- (b) admits sub-paragraph (a);
- (b1) denies sub-paragraph (a1);
- (b2) denies sub-paragraph (a2);
- (c) in response to sub-paragraph (b):
  - (i) admits that the actual sales figures for Z/R/SR had been lower than the amount budgeted for during 1Q 2012;
  - (ii) says further that, as at 8 May 2012, ~~Huka ILU~~ had 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, and had also 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; and

## PARTICULARS

*The May Earnings Guidance. Further particulars may be provided following service of ILU's evidence.*

- (iii) otherwise denies the sub-paragraph;
- (d) in relation to sub-paragraph (c):
  - (i) it repeats the matters pleaded and particularised at paragraph 27(c)(ii);
  - (ii) says further that, as at 8 May 2012, Hukka ILU had stated:
 

*"After a low first quarter, zircon sales volumes improved in April. While there is 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. The global economic outlook therefore remains far from clear"; and*

## PARTICULARS

*The May Earnings Guidance. Further particulars may be provided following service of ILU's evidence.*

- (iii) otherwise denies the sub-paragraph;
- (e) in relation to sub-paragraph (d):
  - (i) says that the document "Q1 Functional Review Sales & Marketing April 2012" contained statements including:

### ***Pigment – US/Europe***

*Paint season has commenced slowly Failed to meet expectations*

*Chloride pigment substitution by Sulphate occurring Talk of production reductions in Q3*

...

### ***China Pigment***

*Domestic pigment demand slowing, domestic prices falling and increased exports in recent weeks*

*The ilmenite price has suffered from an increase in Vietnamese supply in March*

*However price hasn't collapsed even considering the poor demand and short-term over-supply*

...

*Japanese internal pigment demand is softening, exports up..."; and*

- (ii) otherwise denies the sub-paragraph;
- (f) in relation to sub-paragraph (e):
  - (i) says that the document "Q1 Functional Review Sales & Marketing April 2012" contained statements including:
 

**"Pigment – US/Europe**

*Paint season has commenced slowly Failed to meet expectations Chloride pigment substitution by Sulphate occurring Talk of production reductions in Q3"; and*
  - (ii) otherwise denies the sub-paragraph;
- (g) in relation to sub-paragraph (f):
  - (i) says that the document "Q1 Functional Review Sales & Marketing April 2012" contained statements including:
 

**"China Sponge**

*Sponge price increased strongly in Q1 but now flat or declining New sponge producers (Yunnan Xinli, Jinchuan, Zunbao) experiencing commissioning delays*

*Sponge producers are unable to afford the rutile price so they are relying on slag or TiCl4*

*Zunbao have decided to not use rutile as a feedstock due to inability to secure long term supply*

*Difficult market conditions on the horizon"; and*
  - (ii) otherwise denies the sub-paragraph;
- (h) in relation to sub-paragraph (g), it admits it was aware of the contracts it had in place for the sale of Z/R/SR;
  - (i) in relation to sub-paragraph (h), it:
    - (i) says that the document "Iluka Resources Limited Performance Report April 2012" contained statements including:
 

*"Major Variances - Month" for "Zircon" were "4" "Metric Tonnes (kt)" for "Month" and "(15)" "Metric Tonnes (kt)" for "Year to Date";*
    - (ii) says further that the document "DAY 0 REPORT – April 2012" contained statements including:
 

*...In addition, zircon sales volumes were 1kt lower (~\$1 million)"; and*
    - (iii) otherwise denies the sub-paragraph;

(j) in relation to sub-paragraph (i):

(i) says that, as at 8 May 2012, Iluka ILU had stated:

*"Iluka has 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.*

*Iluka has also stated previously 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.*

*After a low first quarter, zircon sales volumes improved in April. While there is 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. The global economic outlook therefore remains far from clear"; and*

#### PARTICULARS

*The May Earnings Guidance. Further particulars may be provided following service of ILU's evidence.*

(ii) otherwise denies the sub-paragraph;

(k) in relation to sub-paragraph (j):

(i) says that the document "Zircon What may we expect in the next 12 to 18 months in terms of Supply / Demand" contained statements including:

#### ***Zircon Supply***

...

*Indonesian sand marked the highest rate of increase with almost 50% growth in volume from 2010 to ~90Kmt. It is anticipated that Indonesian sand may increase to 150Kmt in 2012.*

...

*Furthermore, Indonesian government announced plan to restrict export of minerals and impose export taxes by 25% to 50%. History may repeat itself as Indonesian sand supply was reduced by more than 50% back in 2007";*

- (ii) admits that it was aware that some ceramics manufacturers in China were purchasing Indonesian zircon; and
- (iii) otherwise denies the sub-paragraph;
- (l) in relation to sub-paragraph (k):
  - (i) repeats the matters pleaded and particularised at paragraph 27(j) above; and
  - (ii) otherwise denies the sub-paragraph;
- (m) in relation to sub-paragraph (l):
  - (i) says that reports referred to 'thrift'ing practices and substitutes;
  - (ii) says further that as at early 2012, there was uncertainty as to the impact substitution and thrifting practices had on ILU's zircon sales in 2011, and may have on ILU's zircon sales in 2012, and this uncertainty continued in May 2012; and
  - (iii) otherwise denies the sub-paragraph;
- (n) denies sub-paragraph (m);
- (o) in response to sub-paragraph (n):
  - (i) admits that changing sales contract 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;
  - (ii) says further that ILU's marketing strategy, which included changes to contract arrangements, provided benefits; and

#### PARTICULARS

*The ability to more quickly respond to the market. Further particulars may be provided following service of ILU's evidence.*

- (iii) otherwise denies the sub-paragraph;
- (p) denies sub-paragraph (o), and says further that the statements contained in the February Earnings Guidance were subject to the February Earnings Guidance Disclaimers; and
- (q) denies sub-paragraph (p), repeats the matters pleaded and particularised at paragraphs 26(d) and 26(e), and says further that:
  - (i) the statements contained in the May Earnings Guidance were made subject to the May Earnings Guidance Disclaimers; and

- (ii) ILU had stated that it would take time for a clear view on overall 2012 zircon demand and phasing to emerge;

### **PARTICULARS**

*The May Earnings Guidance.*

*Further particulars may be provided following service of ILU's evidence.*

- (r) denies sub-paragraph (q).

28. In relation to paragraph 28, it:

- (a) refers to and repeats paragraphs 25 and 26 above;
- (b) says further that the statements contained in the May Earnings Guidance were made subject to the May Earnings Guidance Disclaimers;
- (c) save as to admit the May Earnings Guidance contains the statements that "*Iluka now forecasts its zircon sales for the full year to be ~400 thousand tonnes 2012 sales are estimated at ~400k tonnes*", which was stated subject to the May Earnings Guidance Disclaimers, otherwise denies sub-paragraph (a);
- (d) save as to admit the May Earnings Guidance contains the statement "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", which was stated subject to the May Earnings Guidance Disclaimers, otherwise denies sub-paragraph (b);
- (e) save as to admit the May Earnings Guidance contains the statement "Overall, Iluka expects its zircon/rutile/synthetic rutile sales volumes to be approximately one third/two thirds weighted between the first half and second half of 2012", which was stated subject to the May Earnings Guidance Disclaimers, otherwise denies sub-paragraph (c); and
- (f) further and in the alternative, says that, to the extent the May Earnings Guidance included the May Forecast Representation, (which is denied), any such representation was a representation of opinion for which ILU had reasonable grounds.

### **PARTICULARS**

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above, which included (but were not limited to) the 5 May 2012 document "UPDATED ILUKA GROUP 2012 OUTLOOK", [ILU.017.005.5994].*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

29. In relation to paragraph 29, it:

- (a) refers to and repeats paragraphs 25, 26 and 27 above;
- (b) says further that the statements contained in the May Earnings Guidance were made subject to the May Earnings Guidance Disclaimers;
- (c) otherwise denies paragraph 29; and
- (d) further and in the alternative, says that, to the extent the May Earnings Guidance included the May Reasonable Grounds Representation, May No Known Adverse Developments Representation, May Ability to Forecast Representation and/or the May Predictable Market Representation.(which is denied), any such representations were representations of opinion for which ILU had reasonable grounds.

#### PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above, which included (but were not limited to) the 5 May 2012 document "UPDATED ILUKA GROUP 2012 OUTLOOK", [ILU.017.005.5994].*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

#### D.3.2 The May Material Information

30. In relation to paragraph 30 it:

- (a) refers to and repeats the matters pleaded at paragraphs 25 to 29 above;
- (b) says that ILU had in place ILU's Mineral Sands Monitoring Processes; and
- (c) otherwise denies paragraph 30.

#### D.4 The 16 May BAML Presentation

31. It admits paragraph 31, and it:

- (a) will refer to and rely on the full terms and effect of the 16 May BAML Presentation at trial; and
- (b) says that the 16 May BAML Presentation contained the following disclaimers (**the 16 May BAML Presentation Disclaimers**):

***"Forward-looking Statements"***

*This presentation contains information that is based on projected and/or estimated expectations, assumptions and outcomes.*

*These forward-looking statements are subject to a range of risk factors associated, but not exclusive (sic), with potential changes in:*

- *exchange rate assumptions*
- *product pricing assumptions*
- *mine plans and/or resources*
- *equipment life or capability*
- *current or new technical challenges*
- *market conditions*
- *management decisions*

*While Iluka has prepared this information based on its current knowledge and understanding and in good faith, there are risks and uncertainties involved which could cause results to differ from projections. Iluka shall not be liable for the correctness and/or accuracy of the information, nor any differences between the information provided and actual outcomes, and furthermore reserves the right to change its projections from time to time.*

*All currency referred to is Australian denominated unless otherwise indicated.*

***Non-IFRS Financial Information***

*This presentation uses non-IFRS financial information including mineral sands EBITDA, mineral sands EBIT, Group EBITDA and Group EBIT which are used to measure both group and operational performance. Non-IFRS measures have not been subject to audit or review."*

32. In relation to paragraph 32, it:
- (a) refers to and repeats paragraphs 28 and 31 above;
  - (b) says that the statements in the 16 May BAML Presentation were made subject to the 16 May BAML Presentation Disclaimers;
  - (c) otherwise denies paragraph 32; and

- (d) further and in the alternative, says that, to the extent the 16 May BAML Presentation repeated the May Forecast Representation (which is denied), any such representation is a representation of opinion for which ILU had reasonable grounds.

#### PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above, which included (but were not limited to) the 5 May 2012 document "UPDATED ILUKA GROUP 2012 OUTLOOK", [ILU.017.005.5994].*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence~~ are provided in the affidavits particularised at paragraph 12(d) above.*

33. In relation to paragraph 33 it:
- (a) refers to and repeats paragraphs 29 and 31 above;
  - (b) says that the statements in the 16 May BAML Presentation were made subject to the 16 May BAML Presentation Disclaimers;
  - (c) otherwise denies paragraph 33; and
  - (d) further and in the alternative, says that, to the extent the 16 May BAML Presentation repeated the May Reasonable Grounds Representation, May No Known Adverse Developments Representation, May Ability to Forecast Representation and/or the May Predictable Market Representation (which is denied), any such representations were representations of opinion for which ILU had reasonable grounds.

#### PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above, which included (but were not limited to) the 5 May 2012 document "UPDATED ILUKA GROUP 2012 OUTLOOK", [ILU.017.005.5994].*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.*

#### D.5 The 23 May AGM Presentation

34. It admits paragraph 34, and it:

- (a) will refer to and rely on the full terms and effect of the 23 May AGM Presentation at trial; and
- (b) says further that the 23 May AGM Presentation contained statements concerning market conditions (the **23 May AGM Presentation Market Condition Statements**).

#### PARTICULARS

*The 23 May AGM Presentation contained statements including:*

##### ***"Mineral sands market conditions***

*Before turning to some of the priorities for 2012 and the medium term, I will make some comments on mineral sands market conditions.*

*Since late last year, we have stated that we expected a soft quarter or two of zircon demand. The factors contributing to this related to: global economic settings; 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.*

*While Iluka does not disclose sales until its June quarter report, revenues in the first quarter reflected that "soft quarter" in terms of zircon sales. In addition, some shipment timing issues for titanium dioxide products meant that a substantial part of product produced in the first quarter was not shipped.*

*While there is some evidence of improved economic traction in major economies such as the US and China, European demand remains subdued and could deteriorate if sovereign debt issues in the EU overwhelm attempts to rectify them. However, a positive sign is that European customer zircon sand stocks are almost exhausted which should now require replenishment.*

*As stated in our ASX disclosure of 8 May, Iluka is prepared to flex production in line with demand, and to hold inventory.*

*Lower pricing will not, in our assessment, generate additional demand.*

*Zircon prices are holding, with second quarter pricing rolled over at the first quarter level of approximately US\$2,400/tonne. Minor supplier and spot prices have, after drifting lower, moved back up close to Iluka's contracted prices. We wait to see if they will move above contract levels, which would be a positive development.*

*Importantly, major customers' inventory holdings are low and we are seeing bulk order interest resuming, which is again a positive indicator.*

*Turning to the high grade titanium dioxide market, there is evidence of sustained feedstock cost flow through the chain. Inevitably, when an industry is undergoing the change this one is, there are challenges in adaptation at some levels of the chain. We see this now, for example, between paint makers and paint retailers which slows the flow through of supply and demand impacts on price to consumers.*

*Our titanium dioxide pricing is as indicated – approximately US\$2,400/tonne for rutile and US\$2,050/tonne for synthetic rutile. Pricing in niche markets is well in advance of these levels, but we believe legacy or transition contracts also exist at lower prices, resulting in an industry with multiple, and very different, pricing levels for similar products.*

*Iluka is continuing with plans to re-start the third of its four kilns, subject to market developments, and is also investigating reactivation options for the fourth kiln."*

*Further particulars may be provided following service of ILU's evidence.*

35. In relation to paragraph 35, it:

- (a) will refer to and rely on the full terms and effect of the 23 May AGM Presentation at trial; and
- (b) otherwise admits paragraph 35.

36. In relation to paragraph 36, it:

- (a) refers to and repeats paragraphs 29 and 35 above;
- (b) otherwise denies paragraph 36; and
- (c) further and in the alternative, says that, to the extent the 23 May AGM Presentation repeated the May Reasonable Grounds Representation, May No Known Adverse Developments Representation, May Ability to Forecast Representation and/or the May Predictable Market Representation (which is

denied), any such representations were representations of opinion for which ILU had reasonable grounds.

## PARTICULARS

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(d) above.*

*ILU refers to and repeats the matters pleaded and particularised at paragraph 12(e) above, which included (but were not limited to) the 17 May 2012 document "FORECAST F4+8", [ILU.021.052.8833].*

*Reasonable grounds are to be assessed in light of the limitations stated in ILU's disclosures.*

*Further particulars ~~may be provided following the service of ILU's evidence are provided in the affidavits particularised at paragraph 12(d) above.~~*

### 36A. In relation to paragraph 36A, it:

- (a) refers to and repeats paragraphs 20, 21, 25 and 26 above;
- (b) in relation to sub-paragraph (a), it:
  - (i) refers to and repeats paragraphs 22 and 27; and
  - (ii) otherwise denies the sub-paragraph;
- (c) in relation to sub-paragraph (b), it:
  - (i) denies the sub-paragraph; and
  - (ii) says further that:
    - a. the complaint to which the paragraph refers was resolved in December 2011; and
    - b. in H1 2012 ILU was in ongoing negotiations with Aoli in relation to additional sales of HyTi in 2012, which resulted in further HyTi sales to Aoli in early July 2012;
- (d) in relation to sub-paragraph (c), it:
  - (i) denies the sub-paragraph; and
  - (ii) says further that in Q2 2012, ILU was working to develop a bespoke synthetic rutile blend specifically for Cristal and expected sales from this product would eventuate during the budget period;
- (e) denies sub-paragraph (d).

### 36B. In relation to paragraph 36B:

- (a) it refers to and repeats paragraphs 20, 21, 25 and 26 above;

- (b) in relation to sub-paragraph (a), it:
- (i) refers to and repeats paragraphs 22, 27 and 36A; and
  - (ii) otherwise denies the sub-paragraph;
- (c) in relation to sub-paragraph (b), it:
- (iii) denies the sub-paragraph; and
  - (iv) says further that, after early May 2012, ILU adjusted the timing of Timet's HyTi shipment to October 2012;
- (d) in relation to sub-paragraph (c), it:
- (i) denies the sub-paragraph; and
  - (ii) says further in relation to sub-paragraph (c)(i) that:
    - a. discussions ILU had with Tronox representatives in early 2012 indicated that Tronox's intention was to continue sourcing a large percentage of its feedstock requirements from ILU following its potential merger with Exxaro Resources; and
    - b. at the time Tronox's merger with Exxaro was completed on 15 June 2012, ILU was in negotiations with Tronox regarding its H2 2012 requirements. When those negotiations concluded in or around early July 2012, it became clear ILU was unlikely to secure any synthetic rutile sales to Tronox in H2 2012, which was immediately included in ILU's F6+6 forecast; and
- (e) denies sub-paragraph (d).

## **E ILU'S CONTINUOUS DISCLOSURE CONTRAVENTIONS**

### **E.1 April Material Information contraventions**

37. In relation to paragraph 37, it:
- (a) refers to and repeats paragraph 24; and
  - (b) otherwise denies paragraph 37.
38. It denies paragraph 38.
39. In relation to paragraph 39 it:
- (a) refers to and repeats paragraphs 24 and 37 above;
  - (b) says that it did not inform the ASX of the "April Material Information" (as defined);

- (c) says further that the "April Material Information" was not information of which it was aware from 12 April 2012 to 7 May 2012 (inclusive);
- (d) says further that it was not required to inform the ASX of the "April Material Information" from 12 April 2012 to 7 May 2012 (inclusive); and
- (e) otherwise denies paragraph 39.

#### **E.2 May Material Information contraventions**

40. In relation to paragraph 40, it:
- (a) refers to and repeats paragraph 30; and
  - (b) otherwise denies paragraph 40.
41. It denies paragraph 41.
42. In relation to paragraph 42 it:
- (a) refers to and repeats paragraphs 30 and 40;
  - (b) says that it did not inform the ASX of the "May Material Information" (as defined);
  - (c) says further that the "May Material Information" was not information of which it was aware from 8 May 2012 and throughout the Relevant Period until 22 May 2012;
  - (d) says further that it was not required to inform the ASX of the "May Material Information" from 8 May and throughout the Relevant Period until 22 May 2012; and
  - (e) otherwise denies paragraph 42.

#### **E.3 Subsequent disclosure contraventions**

- 42A. In relation to paragraph 42A, it:
- (a) refers to and repeats paragraph 36A; and
  - (b) otherwise denies paragraph 42A.
- 42B. It denies paragraph 42B.
- 42C. In relation to paragraph 42C, it:
- (a) refers to and repeats paragraphs 36A and 42A;
  - (b) says that it did not inform the ASX of the "23 May Proper Guidance Information" (as defined);
  - (c) says further that the "23 May Proper Guidance Information" was not information of which it was aware from 23 May 2012 to 15 June 2012;

- (d) says further that it was not required to inform the ASX of the "23 May Proper Guidance Information" from 23 May 2012 to 15 June 2012; and
- (e) otherwise denies paragraph 42C.

42D. In relation to paragraph 42D, it:

- (a) refers to and repeats paragraph 36B; and
- (b) otherwise denies paragraph 42D.

42E. It denies paragraph 42E.

42F. In relation to paragraph 42f, it:

- (a) refers to and repeats paragraphs 36B and 42D;
- (b) says that it did not inform the ASX of the "16 June Proper Guidance Information" (as defined);
- (c) says further that the "16 June Proper Guidance Information" was not information of which it was aware from 16 June 2012 until the end of the Relevant Period;
- (d) says further that it was not required to inform the ASX of the "16 June Proper Guidance Information" from 16 June 2012 until the end of the Relevant Period; and
- (e) otherwise denies paragraph 42F.

## F MISLEADING OR DECEPTIVE CONDUCT

### F.1 The April Reasonable Grounds Representation Contravention

- 43. It denies paragraph 43 and refers to and repeats paragraph 23 above.
- 44. It denies paragraph 44.
- 45. It denies paragraph 45.
- 46. It denies paragraph 46.

### F.2 The April No Known Adverse Developments Representation Contravention

- 47. It denies paragraph 47 and refers to and repeats paragraph 23 above.
- 48. It denies paragraph 48.
- 49. It denies paragraph 49.
- 50. It denies paragraph 50.

### F.3 The April Ability to Forecast Representation Contravention

- 51. It denies paragraph 51 and refers to and repeats paragraph 23 above.
- 52. It denies paragraph 52.

- 53. It denies paragraph 53.
- 54. It denies paragraph 54.

**F.4 The April Predictable Market Representation Contravention**

- 55. It denies paragraph 55 and refers to and repeats paragraph 23 above.
- 56. It denies paragraph 56.
- 57. It denies paragraph 57.
- 58. It denies paragraph 58.

**F.5 The May Reasonable Grounds Representation Contravention**

- 59. It denies paragraph 59 and refers to and repeats paragraph 29.
- 60. It denies paragraph 60.
- 61. It denies paragraph 61.
- 62. It denies paragraph 62.

**F.6 The May No Known Adverse Developments Representation Contravention**

- 63. It denies paragraph 63 and refers to and repeats paragraph 29.
- 64. It denies paragraph 64.
- 65. It denies paragraph 65.
- 66. It denies paragraph 66.

**F.7 The May Ability to Forecast Representation Contravention**

- 67. It denies paragraph 67 and refers to and repeats paragraph 29.
- 68. It denies paragraph 68.
- 69. It denies paragraph 69.
- 70. It denies paragraph 70.

**F.8 The May Predictable Market Representation Contravention**

- 71. It denies paragraph 71 and refers to and repeats paragraph 29.
- 72. It denies paragraph 72.
- 73. It denies paragraph 73.
- 74. It denies paragraph 74.

**G CAUSATION, LOSS AND DAMAGE**

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

- 75. It denies paragraph 75.

76. It denies paragraph 76.
77. It denies paragraph 77.
78. It denies paragraph 78.

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

79. In relation to paragraph 79, it:

- (a) says that if, which is denied, ILU has committed any of the 'Market Contraventions' (as defined), the matters pleaded by the applicant Applicant in paragraphs 75 to 78 of the Amended Statement of Claim would not, even if established, constitute any causal nexus sufficient to support a claim for compensation pursuant to any of ss 1317HA and 1041l of the Corporations Act, s 12GF of the ASIC Act or s 236 of the Australian Consumer Law in respect of such contraventions; and
- (b) says further that if, which is denied, ILU has committed any of the 'Market Contraventions' (as defined), the Applicant and Group Members have not suffered any loss or damage by or resulting from the Market Contraventions, including because:
- (i) to the extent that the "matters" relied upon by the Applicant and Group Members in paragraph 22 of the Further Amended Statement of Claim were correct, those matters (except for the matter pleaded in subparagraph (m)) were known to market participants and, as a consequence, incorporated into the price of ILU shares as at 12 April 2012;

#### **PARTICULARS**

Expert report of John W. Holzwarth dated 21 August 2020 at [12], [131], [137] and [355].

- (ii) to the extent that the "matters" relied upon by the Applicant and Group Members in paragraph 27 of the Further Amended Statement of Claim were correct, those matters (except for the matter pleaded in subparagraph (q)) were known to market participants and, as a consequence, incorporated into the price of ILU shares as at 8 May 2012 (and/or 17 May 2012); and

#### **PARTICULARS**

Expert report of John W. Holzwarth dated 21 August 2020 at [13], [291], [296] and [355].

- (c) otherwise denies the paragraph.
80. In relation to paragraph 80 it:

- (a) denies that it has committed any Reliance Specific Contraventions (as defined) and otherwise denies sub-paragraph (a); and
- (b) if, which is denied, ILU has committed any of the Reliance Specific Contraventions (as defined), the matters pleaded in paragraphs 75 – 78 of the Further Amended Statement of Claim would not, even if established, constitute any causal nexus sufficient to support a claim for compensation pursuant to any of ss 1317HA and 1041I of the Corporations Act, s 12GF of the ASIC Act or s 236 of the Australian Consumer Law in respect of such contraventions.

## H Disclosure and ILU Disclaimers

81. In further answer to paragraphs 75 to 80, ILU says:

- (a) at all relevant times it complied with its disclosure obligations, including by releasing the February Report, February Earnings Guidance, 2011 Annual Report, March 2012 Quarterly Report, May Earnings Guidance, 16 May BAML Presentation, 23 May AGM Presentation and 9 July 2012 Sales Update;
- (b) it endeavoured to provide guidance as to market conditions, but there were limitations on the ability to provide such guidance;
- (c) ILU expressly stated the limitations of the information it provided, and notified the market that reliance could and should not be placed upon this information;

### PARTICULARS

*The February Report Disclaimers. The February Earnings Guidance Disclaimers. The May Earnings Guidance Disclaimers. The 16 May BAML Presentation Disclaimers. (Together, the ILU Disclaimers)*

- (d) accordingly, the price or value of ILU Securities was not increased by the representations alleged in paragraphs 14, 17, 19, 23, 26, 28, 29, 32, 33, and/or 36 of the Further Amended Statement of Claim (which are denied); and
- (e) further and in the alternative:
  - (i) in light of the ILU Disclaimers, the Applicant and Group Members made any decision to purchase ILU Securities knowing the limitations of the information ILU provided, and that reliance could not be placed upon this information; and
  - (ii) to the extent that the Applicant and/or Group Member(s) made any decision to purchase ILU Securities without regard to the ILU Disclaimers, the Applicant and/or Group Member(s) failed to take reasonable care, and should accordingly have any award of damages or compensation reduced by operation of Corporations Act section 1041I.

## PARTICULARS

*Particulars may be provided following evidence and/or interrogatories.*

### I Limitation period

82. In further answer to paragraphs 7A, 7B, 7D, 7E, 22(b), 22(c), 22(i1), 24, 27, 28, 30, 40, 41, and 45 (the **Materially Amended Paragraphs**):
- (a) the Further Amended Statement of Claim, and the previous Amended Statement of Claim, pleads contraventions of the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth) and/or the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
  - (b) such alleged contraventions are subject to 6-year limitation periods by operation of:
    - (i) Sections 236(2) and/or 237(3) of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
    - (ii) Sections 131?K and/or 1325(4) of the *Corporations Act 2001* (Cth); and
    - (iii) Sections 12GF(2), 12GM(5) and/or 12GNB(5) of the *Australian Securities and Investments Commission Act 2001* (Cth);
  - (c) the facts which are pleaded in the Materially Amended Paragraphs occurred in or concern matters between February and 9 July 2012;
  - (d) the Materially Amended Paragraphs were amended pursuant to *Federal Court Rules 2011* Rule 16.51, and by operation of *Federal Court Rules 2011* Rule 16.54 take effect on the date the amendments were made.
  - (e) the Amended Statement of Claim was filed and served on 8 June 2018;
  - (f) the Materially Amended Paragraphs are pleaded in support of new causes of action and/or alleged contraventions; and
  - (g) accordingly, to the extent that the Materially Amended Paragraphs concern facts occurring prior to 8 June 2012, the new causes of action and/or alleged contraventions supported by the Materially Amended Paragraphs are brought outside of the 6-year limitation periods pleaded at subparagraph (b), and cannot be maintained.
83. In further answer to paragraphs 22, 24, 27, 30, 36A, 36B, 42A-42F, 75 and 80 (the Further Materially Amended Paragraphs):
- (a) ILU refers to and repeats paragraph 82(a) and (b);

- (b) the facts which are pleaded in the Further Materially Amended Paragraphs occurred in, concern or allege matters occurring between April and 9 July 2012;
- (c) on 8 July 2020 the Court ordered that the date that the amendments effected by the Applicant's Further Amended Statement of Claim take effect is to be determined at trial;
- (d) the Further Amended Statement of Claim was filed and served on 9 July 2020, the Applicant has not explained why the amendments could not have been made earlier, and accordingly the amendments to the Further Materially Amended Paragraphs should take effect no earlier than 9 July 2020;
- (e) the Further Materially Amended Paragraphs are pleaded in support of new causes of action and/or alleged contraventions; and
- (f) to the extent that the Further Materially Amended Paragraphs concern facts occurring prior to 9 July 2014, being 6 years prior to the filing of the Further Amended Statement of Claim, the new causes of action and/or alleged contraventions supported by the Further Materially Amended Paragraphs are brought outside of the 6-year limitation periods pleaded at paragraph 82(b), and cannot be maintained.

Date: 3 August 2018 September 2020



Signed by Ante Golem

Lawyer for the Respondent

This pleading was prepared by Jason Betts and Ante Golem of HSF and settled by Christopher Withers and Benjamin Cameron of counsel.

**Certificate of lawyer**

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

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

Date: 3 August 2018 4 September 2020



Signed by Ante Golem

Lawyer for the Respondent