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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID918/2018
File Title: MATTHEW HALL v PITCHER PARTNERS (A FIRM)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 14/12/2020 4:22:57 PM AEDT

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

Registrar

Important Information

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

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



Form 17
Rule 8.05(1)(a)

SECOND FURTHER AMENDED STATEMENT OF CLAIM

(Filed pursuant to Order 1 of the Orders of Middleton J dated 10 December 2020)

No. VID918 of 2018

Federal Court of Australia
District Registry: Victoria
Division: General

Matthew Hall

Applicant

Pitcher Partners (a firm)

First Respondent

Ernst & Young LLP

Second Respondent

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Filed on behalf of:	Matthew Hall (Applicant)		
Prepared by:	Lee Taylor, Maurice Blackburn		
Tel:	(03) 9605 2772	Fax	(03) 9258 9610
Email	LTaylor@mauriceblackburn.com.au		
Address for service:	Level 21, 380 La Trobe Street Melbourne Vic 3000		

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A. INTRODUCTION

A.1. The Applicant and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on his own behalf and on behalf of all persons who or which:
 - (a) acquired an interest in fully paid ordinary shares in Slater & Gordon Limited (**SGH Shares**) during the period between 30 March 2015 and 24 February 2016 (**Relevant Period**);
 - (b) suffered loss or damage by reason of the conduct of the First Respondent (**Pitchers**) and/or the Second Respondent (**EY UK**) pleaded in this Second Further Amended Statement of Claim; and
 - (c) were not during any part of the Relevant Period, and are not as at the date this proceeding was filed, any of the following:
 - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth)) (**Corporations Act**) of SGH;
 - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of SGH;
 - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of SGH;

- (iv) an officer or a close associate (as defined by s 9 of the Corporations Act) of SGH;
- (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia; or
- (vi) an officer or employee of, or other legal practitioner engaged by, Maurice Blackburn Pty Ltd in relation to this proceeding,

(Group Members).

2. The Applicant acquired interests in SGH Shares during the Relevant Period on his own behalf and in his capacity as trustee of the Hall Family Trust.

Particulars

Details of the particular acquisitions of SGH Shares by the Applicant are set out below:

Date	Transaction type	Number of shares	Capacity
20/04/2015	Purchase on ASX	10,000	Personal
29/04/2015	Exercise of rights pursuant to Entitlement Offer	5,334	Personal
15/05/2015	Purchase on ASX	6,500	Personal
29/05/2015	Purchase on ASX	50,000	Trust
1/06/2015	Purchase on ASX	13,000	Personal
25/06/2015	Purchase on ASX	12,000	Personal
25/06/2015	Purchase on ASX	10,000	Trust
02/07/2015	Purchase on ASX	22,000	Trust
16/07/2015	Purchase on ASX	20,000	Personal
05/08/2015	Purchase on ASX	48,166	Personal
06/08/2015	Purchase on ASX	10,000	Personal
27/08/2015	Purchase on ASX	18,000	Trust
24/11/2015	Purchase on ASX	14,000	Personal
26/11/2015	Purchase on ASX	100,000	Trust
12/01/2016	Purchase on ASX	10,000	Trust
13/01/2016	Purchase on ASX	12,000	Personal
13/01/2016	Purchase on ASX	19,000	Trust
25/01/2016	Purchase on ASX	66,000	Personal
25/01/2016	Purchase on ASX	21,000	Trust
27/01/2016	Purchase on ASX	9,000	Personal
27/01/2016	Purchase on ASX	10,000	Trust
23/02/2016	Purchase on ASX	20,000	Personal

23/02/2016	Purchase on ASX	20,000	Trust
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3. Immediately prior to the commencement of this proceeding, the group, on whose behalf this proceeding is brought, comprised more than seven persons.

A.2. The Respondents

4. Pitchers at all material times:

- (a) is and was a partnership and the Applicant is entitled, by reason of Rule 9.41 of the *Federal Court Rules 2011* (Cth), to bring this proceeding against the partners of Pitchers in the partnership name;
- (b) carried on business within Victoria as accountants, auditors and advisors under the partnership name "Pitcher Partners";
- (c) included among its partners and employees practising in Victoria persons who were registered company auditors, including Mr Adrian R Fitzpatrick (**Fitzpatrick**), Mr Mark J Harrison (**Harrison**) and Mr David A Knowles (**Knowles**), each of whom at all material times was:
- (i) a partner of Pitcher Partners;
- (ii) a person for the purposes of s 1041H of the Corporations Act;
- (iii) a person for the purposes of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and;
- (iv) a person for the purposes of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
- (A) s 131 of the *Competition and Consumer Act 2010* (Cth);
- (B) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
- (C) s 28 of the *Fair Trading Act 1987* (NSW);
- (D) s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
- (E) s 16 of the *Fair Trading Act 1989* (Qld);
- (F) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
- (G) s 19 of the *Fair Trading Act 2010* (WA);
- (H) s 14 of the *Fair Trading Act 1987* (SA); and/or

(l) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),
(individually, or together, the **Australian Consumer Law**);

- (d) was, by reason of s 761F of the Corporations Act, a person for the purposes of Chapter 7 of the Corporations Act, such that any contravention of a provision of Chapter 7 of the Corporations Act (including s 1041H of the Corporations Act) that would otherwise be a contravention by Pitchers is taken to have been a contravention by each partner of Pitchers who:
- (i) aided, abetted, counselled or procured the relevant act or omission; or
 - (ii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner); and
- (e) was governed, inter alia, by the *Partnership Act 1958* (Vic), such that each partner of Pitchers (including Fitzpatrick):
- (i) is an agent of the firm and each partner of the firm for the purposes of the business of the partnership; and
 - (ii) is liable jointly with the other partners for all wrongful acts or omissions of any partner acting in the ordinary course of the business of Pitchers.

4A. EY UK:

- (a) at all material times is and was:
- (i) a body corporate duly formed pursuant to law and capable of being sued;
 - (ii) a person for the purposes of s 1041H of the Corporations Act
 - (iii) a person for the purposes of s 12DA of the ASIC Act; and
 - (iv) a person for the purposes of s 18 of the Australian Consumer Law.
- (b) has been:
- (i) named in Pitchers' Defence in these proceedings as a person whose acts or omissions caused the loss or damages alleged by the Applicant in these proceedings; and
 - (ii) been joined by Pitchers by Notice of Cross-Claim filed 20 May 2019 in these proceedings.

A.3. SGH

5. Slater & Gordon Limited (**SGH**) at all material times in the Relevant Period was:

- (a) a public company within the meaning of s 9 of the Corporations Act;
- (b) a disclosing entity within the meaning of s111AC(1) of the Corporations Act;
- (c) included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**) and by reason thereof SGH Shares are:
 - (i) ED securities for the purposes of s 111AE of the Corporations Act; and quoted ED securities within the meaning of s 111AM of the Corporations Act; and
 - (ii) able to be acquired and disposed of by investors and potential investors in SGH Shares (**Affected Market**) on the financial market operated by ASX;
- (d) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (e) subject to and bound by Part 2M.3 of the Corporations Act, including being obliged:
 - (i) by s 295 of the Corporations Act, to prepare a financial report for a financial year (including FY15), consisting of the financial statements for the year the notes to the financial statements and the directors' declaration about the statements and notes (**Financial Report**), which:
 - (A) complies with accounting standards, as required by s 296 of the Corporations Act, including Australian Accounting Standard 3 ("*Business Combinations*") (**AASB3**), Australian Accounting Standard 101 ("*Presentation of Financial Statements*") (**AASB101**); Australian Accounting Standard 118 ("*Revenue*") (**AASB118**); and Australian Accounting Standard 136 ("*Impairment of Assets*") (**AASB136**);
 - (B) gives a true and fair view of the financial position and performance of SGH, and the consolidated entity comprising SGH and its subsidiaries;

- (ii) by s 301 of the Corporations Act, to have the financial report for a financial year audited in accordance with Part 2M.3, Division 3 and obtain an auditor's report (**Auditor's Report**);
- (iii) by ss 314 and 315(1) of the Corporations Act, to provide the Financial Report and the Auditor's Report to the members of SGH by no later 21 days before the next Annual General Meeting of the members of SGH after the end of the financial year, or 4 months after the end of the financial year (whichever is the earlier);
- (iv) by s 319 of the Corporations Act, to lodge the Financial Report and the Auditor's Report with the Australian Securities and Investments Commission (**ASIC**) within 3 months of the end of the financial year,

(SGH's Statutory Reporting Obligations).

- (f) subject to and bound by the Listing Rules of the ASX, including being obliged:
 - (i) by Listing Rules 4.3A and 4.3B, to give ASX the information set out in Appendix 4E (which must be based upon the same accounting policies as the accounts upon which it is based, and which must comply with all relevant accounting standards) immediately when they are ready to be given to ASX and no later than the time that it lodges any accounts with ASIC, and in any event no later than 2 months after the end of the accounting period, which information includes:
 - (A) the amount and percentage change up or down from the previous corresponding period of revenue from ordinary activities (Item 2.1);
 - (B) the amount and percentage change up or down from the previous corresponding period of profit (loss) from ordinary activities after tax attributable to members (Item 2.2);
 - (C) the amount and percentage change up or down from the previous corresponding period of net profit (loss) for the period attributable to members (Item 2.3);
 - (D) any other significant information needed by an investor to make an informed assessment of its financial performance and financial position (Item 12);

- (E) a commentary on the results for the period, which is sufficient for the user to be able to compare the information presented with equivalent information for previous periods, which would include discussion of any factor which has affected the results in the period or which are likely to affect results in the future, including those where the effect could not be quantified (Item 14); and
 - (F) a statement as to whether the report is based on accounts which have been audited or subject to review, are in the process of being audited or reviewed, or have not yet been audited or reviewed (Item 15), and if the accounts have not yet been audited and are likely to contain an independent audit report that is subject to a modified opinion, emphasis of matter or other matter paragraph, a description of the modified opinion, emphasis of matter or other matter paragraph (Item 16).
- (ii) by Listing Rule 4.3D, if it became aware of any circumstance which was likely to materially affect the results or other information contained in the preliminary final report given to ASX under Listing Rule 4.3A, to immediately give ASX an explanation of the circumstances and the effects the circumstances are expected to have on its current or future financial performance or financial position; and
 - (iii) by Listing Rule 4.5, to give ASX a copy of the documents which it must lodge with ASIC under s 319 of the Corporations Act at the same time as it lodges them with ASIC.

(SGH's ASX Reporting Obligations).

B. SGH'S BUSINESS

B.1. Services provided by SGH

- 6. At all material times from 2012 up to and including the Relevant Period, SGH carried on business providing legal services to consumers being:
 - (a) personal injuries law services, including in relation to motor vehicle accidents, workers' compensation and civil liability (**PI Work**); and

- (b) non-personal injuries law (also called general law) services, including “Personal Legal Services” (family law, conveyancing, wills, estate planning and probate services) and “Business and Specialised Litigation Services” (business law, property law, estate, employment and professional negligence litigation, class actions and criminal defence) (**Non-PI Work**).

Particulars

Further details are contained in:

- i) *SGH’s Annual Report 2012 published and lodged with ASX (and published on SGH’s website) on 3 October 2012 (**2012 Report**), p. 10 (MHL.003.001.0001 at _0012);*
- ii) *SGH’s Annual Report 2013 published and lodged with ASX (and published on SGH’s website) on 24 September 2013 (**2013 Report**), pp.2, 7 (MHL.003.001.0002 at _0004 and _0009);*
- iii) *SGH’s Annual Report 2014 published and lodged with ASX (and published on SGH’s website) on 19 September 2014 (**2014 Report**), pp.2, 9-10 (MHL.003.001.0003 at _0004 and _0011 to _0012);*
- iv) *SGH’s Half Year Report for the period ending 31 December 2014, published and lodged with ASX (and published on SGH’s website) on 10 February 2015 (**2015 HY Report**), p. 12 (MHL.003.001.0004 at _0016); and*
- v) *SGH’s Annual Report 2015 published and lodged with ASX (and published on SGH’s website) on 19 October 2015 (**2015 Report**), p. 16 (MHL.003.001.0005 at _0018).*

7. At all material times from 2012 up to and including the Relevant Period most PI Work performed by SGH was performed on a “no win no fee” (or conditional fee arrangement) basis where legal fees are paid on the successful conclusion of a client’s matter (**CFA Basis**).

Particulars

- i) *2012 Report, p.10 (MHL.003.001.0001 at _0012);*
- ii) *2013 Report p.7 (MHL.003.001.0002 at _0009);*
- iii) *2014 Report, pp.9 and 10 (MHL.003.001.0003 at _0011 to _0012);*
- iv) *2015 Report, p.16 (MHL.003.001.0005 at _0018).*

8. At all material times from 2012 up to and including the Relevant Period, legal services providers who perform PI Work on a CFA Basis generally recover legal fees from:

- (a) settlements of claims by a defendant, or an insurer; or

(b) awards of costs against an unsuccessful defendant or insurer.

9. At all material times from 2012 up to and including the Relevant Period SGH carried on business in the UK providing legal services (by performing PI Work and Non-PI Work) to consumers in the United Kingdom, through its subsidiary Slater & Gordon (UK) 1 Ltd and its controlled entities (SGH UK).

B.2. SGH's acquisition of PSD

10. On 30 March 2015, SGH published and lodged with the ASX (and published on SGH's website):

(a) an announcement entitled "Slater and Gordon executes agreement to acquire Quindell's Professional Services Division and launches A\$890m accelerated renounceable entitlement offer" (**30 March Announcement**) (MHL.001.001.0004); and

(b) a presentation entitled "Professional Services Division Acquisition and Entitlement Offer" (**30 March Presentation**) (MHL.001.001.0005).

(together, the **30 March Publications**).

11. In the 30 March Announcement, SGH made the following statements:

(a) SGH had entered into an agreement to acquire the Professional Services Division (**PSD**) of Quindell Plc (**Quindell**); and

(b) in consideration for the acquisition of PSD, SGH had agreed to pay the following amounts (together, the **PSD Acquisition Price**):

(i) upfront consideration of £637 million (\$1,225 million based on an exchange rate of AUDGBP 0.52); and

(ii) an earnout based on the performance of PSD's noise induced hearing loss (**NIHL**) cases.

12. In the 30 March Publications, SGH made the following statements about the acquisition of PSD:

(a) the acquisition of PSD by SGH was anticipated to create significant value for SGH shareholders, including because it:

- (i) was expected to be substantially EPS accretive (greater than 30%) to SGH from the first full year of ownership; and
 - (ii) had an attractive acquisition multiple of c.6.9x;
- (b) the transaction was anticipated to be substantially EPS accretive (greater than 30%) to SGH from the first full year of ownership (being FY2016), assuming FY2014 volume trend core PSD EBITDA of £86 million;
- (c) the transaction had an attractive acquisition multiple of c.6.9 times the pro forma adjusted volume trend core PSD EBITDA (ex NIHL contribution) (assuming FY2014 volume trend core PSD EBITDA (excluding legacy NIHL) of £86 million, based on an adjusted transaction value of £597 million (upfront cash consideration of £637 million less £40 million NPV of 50% earnout related to legacy NIHL portfolio);
- (d) the key financial assumptions made by SGH included that:
 - (i) the acquisition multiple of 6.9x (referred to in sub-paragraphs 12(a)(ii) and 12(c) was based upon:
 - (A) a transaction value of £597 million, calculated by deducting from the upfront cash consideration of £637 million, £40 million (being 50% of the earnout of the legacy NIHL portfolio in FY2016 and FY2017, on a net post-tax basis at a 10% discount rate), being the same amount referred to in sub-paragraph 12(c) above; and
 - (B) volume trend adjusted core PSD EBITDA of £86 million for FY2014, being the amount referred to in sub-paragraph 12(b);in that the amount referred to in (A) divided by the amount referred to in (B) equals 6.9; and
 - (ii) \$710 million would be recognised as goodwill, being the excess of the acquisition purchase consideration over the fair value of the net assets.
- (e) The acquisition of PSD was a transformational opportunity in line with SGH's growth strategy, positioning SGH as the leading personal injury law group in the UK (**Growth Strategy**);

- (f) SGH intended to reorient PSD to focus on fast-track road traffic accident (**RTA**), employers' liability and public liability claims;
- (g) there was a compelling strategic rationale for the acquisition, including:
 - (i) transformational opportunity in line with SGH's growth strategy, making SGH the leading personal injury law group in the UK;
 - (ii) PSD built to provide and sustain competitive advantage; and
 - (iii) extensive period of due diligence, based on a bottom-up, fundamental assessment of PSD plus SGH's deep UK market experience, underpins confidence in opportunity;
- (h) the acquisition would give SGH an increased market share from c. 5% to c.12% in the UK and position SGH at the forefront of the £2.5 billion UK personal injury market (which was 5 to 6 times the size of the Australian personal injury market);
- (i) SGH's vision included to become the leading Fast Track personal injury claim service provider in the UK;
- (j) execution of SGH's vision included pivoting PSD to entrench its market leading position in the RTA segment, in circumstances where PSD currently only intakes c.80% of possible RTA volume from pool, with clear path to increase client intake (**Case Intake Growth Strategy**);
- (k) SGH had developed pro forma adjusted FY2014 financial statements for PSD from internal accounts based on Quindell's accounting policies (which recorded FY2014 (December y/e) revenue at £645 million (**PSD Baseline Revenue**) and EBITDA at £289 million (**PSD Baseline EBITDA**)), but had:
 - (i) removed all revenue and expenses related to NIHL in their entirety (resulting in a £278 million reduction to PSD Baseline Revenue, a £210 million reduction to gross profit, and a £201 million reduction to PSD Baseline EBITDA); and
 - (ii) better aligned non-NIHL Legal Services revenue recognition with SGH's approach of using evidence based milestones and other accounting adjustments (which resulted in a £1 million increase to PSD Baseline

Revenue, a £18 million reduction to gross profit, and a £18 million reduction to PSD Baseline EBITDA;

- (l) SGH's adjustments to the FY2014 (December y/e) internal accounts of Quindell for PSD (calculated by undertaking the processes described in sub-paragraph (k) above) resulted in:
 - (i) revenue (ex NIHL) (**PSD FY2014 Core Revenue**) of £368 million, as compared to Quindell's internal accounts which showed £645 million including NIHL (i.e. PSD Baseline Revenue);
 - (ii) gross profit of £99 million (ex NIHL), as compared to Quindell's internal accounts which showed £328 million including NIHL; and
 - (iii) EBITDA (ex NIHL) (**PSD FY2014 Core EBITDA**) of £70 million, as compared to Quindell's internal accounts which showed £289 million including NIHL (i.e. PSD Baseline EBITDA);
- (m) SGH's further adjustments to the PSD FY2014 Core EBITDA of £70 million to reflect the impact of annualised actual Sep-Nov 2014 quarter RTA intake (93,660) with settlements (77,381)) resulted in a "Pro forma adjusted volume trend" EBITDA (**PSD FY2014 Volume Trend Core EBITDA**) of £86 million;
- (n) PSD's guidance for FY2016 EBITDA, inclusive of legacy NIHL portfolio run-off was £95 million, of which legal services was expected to contribute £55 million (based, inter alia, upon continued momentum in RTA case intake, forecast to grow more than 20% year-on-year, and growth in RTA settlement rates) (**PSD RTA Growth Trend EBITDA Projections**); and
- (o) following the acquisition of PSD, the pro forma combined balance sheet would increase the amount of intangible assets (including goodwill) by approximately \$851 million to \$996 million.

Particulars

- i) *the statement in sub-paragraph 12(a)(i) was made in the 30 March Announcement at page 1 (MHL.001.001.0004), and in the 30 March Presentation at pages 8, 17 and 30 (MHL.001.001.0005 at _0008, _0017 and _0030);*
- ii) *the statement in sub-paragraph 12(a)(ii) was made in the 30 March Announcement at page 1 (MHL.001.001.0004), and in the 30 March*

- Presentation at pages 8 and 17 (MHL.001.001.0005 at _0008 and _0017);*
- iii) the statement in sub-paragraph 12(b) was made in the 30 March Presentation at pages 8, 17 and 30 (MHL.001.001.0005 at _0008, _0017 and _0030);*
 - iv) the statement in sub-paragraph 12(c) was made in the 30 March Presentation at pages 8 and 17 (MHL.001.001.0005 at _0008 and _0017);*
 - v) the statement in sub-paragraph 12(d)(i) was made in the 30 March Presentation at page 51 (MHL.001.001.0005 at _0051);*
 - vi) the statement in sub-paragraph 12(d)(ii) was made in the 30 March Presentation at page 53 (MHL.001.001.0005 at _0053);*
 - vii) the statement in sub-paragraph 12(e) was made in the 30 March Announcement at page 1 (MHL.001.001.0004);*
 - viii) the statement in sub-paragraph 12(f) was made in the 30 March Announcement at page 2 (MHL.001.001.0004 at _0002);*
 - ix) the statement in sub-paragraph 12(g) was made in the 30 March Presentation at page 7 (MHL.001.001.0005 at _0007);*
 - x) the statement in sub-paragraph 12(h) was made in the 30 March Presentation at page 13 (MHL.001.001.0005 at _0013);*
 - xi) the statement in sub-paragraph 12(i) was made in the 30 March Presentation at pages 15 (MHL.001.001.0005 at _0015);*
 - xii) the statement in sub-paragraph 12(j) was made in the 30 March Presentation at page 15 (MHL.001.001.0005 at _0015);*
 - xiii) the statement in sub-paragraph 12(k) was made in the 30 March Presentation at page 21 (MHL.001.001.0005 at _0021);*
 - xiv) the statement in sub-paragraph 12(l) was made in the 30 March Presentation at page 21 (MHL.001.001.0005 at _0021);*
 - xv) the statement in sub-paragraph 12(m) was made in the 30 March Presentation at page 23 (MHL.001.001.0005 at _0023);*
 - xvi) the statement in sub-paragraph 12(n) was made in the 30 March Presentation at page 24 (MHL.001.001.0005 at _0024); and*
 - xvii) the statement in sub-paragraph 12(o) was made in the 30 March Presentation at page 28 (MHL.001.001.0005 at _0028).*

13. As part of the due diligence process for the acquisition of PSD, SGH developed a three-year integrated financial model incorporating profit & loss, balance sheet, cash flow, and forecasts (**3 Year Financial Model**) to justify:

- (a) the acquisition of PSD for the PSD Acquisition Price; and
- (b) the recognition of a significant goodwill upon the acquisition of PSD.

14. On or about 29 May 2015, SGH completed the acquisition of PSD.

Particulars

SGH announcement entitled "Slater and Gordon Limited successfully completes acquisition of PSD" published and lodged with ASX on 1 June 2015 (PIP.002.001.1146).

B.3. The significance of PI work to SGH

15. At all material times from 2012 up to and including the Relevant Period, PI Work was the core business of, and contributed the majority of revenue to SGH (both in Australia (**SGH Australia**) and in the UK (that is, SGH UK, including, from 29 May 2015, PSD)).

Particulars

- i) *In FY2012, PI Work contributed approximately 80% of SGH's revenue from the Australian business (2012 Report, p.10 (MHL.003.001.0001 at _0012)). As the total group revenue was \$217.7m (2012 Report, p.3 (MHL.003.001.0001 at _0005)) and the contribution of SGH UK to this was \$11.5m (2012 Report, p.8 (MHL.003.001.0001 at _0010)), the contribution to SGH's revenue of PI Work by SGH Australia (**SGH Australia PI Work**) was approximately \$164.96m (($\$217.7m - \$11.5m$) x 80%).*
- ii) *In FY2013, SGH Australia PI Work contributed approximately \$178.16m of SGH's consolidated revenue (there being 8% revenue growth ($\$164.96m \times 108\%$): 2013 Report, p.1 (MHL.003.001.0002 at _0003)). As total group revenue was \$297.6m (2013 Report p.1(MHL.003.001.0002 at _0003)), SGH Australia PI Work contributed approximately 59.9% of that amount. The Applicant does not know with his present state of knowledge the percentage of SGH UK revenue for FY2013 (\$70.5m) which was attributable to PI Work (**SGH UK PI Work**), but believes it to be in excess of 60% on the basis that at the time of acquisition of Russell Jones Walker (**RJW**), PI Work represented 60% of RJW's revenue: SGH's Announcement "Slater & Gordon Ltd Expansion into UK Legal Market" published and lodged with ASX (and published on SGH's website) on 30 January 2012, p.6 (MHL.006.001.0001 at _0006).*
- iii) *In FY2014, SGH Australia PI Work contributed approximately 46% of SGH's consolidated revenue and SGH UK PI Work contributed approximately 34% of SGH's consolidated revenue, being a combined total of 80% of SGH revenue: 2014 Report, p.2 (MHL.003.001.0003 at _0004).*
- iv) *In the half year ending 31 December 2014, SGH Australia PI Work contributed 79% of revenue of \$127.7m (\$100.88m) and SGH UK PI Work contributed 80% of revenue of \$117.6m (\$94.08m), and thus PI*

Work contributed total of \$194.96m of revenue of \$245.3m (80%): SGH's "H1 FY15 Results Presentation" published and lodged with ASX (and published on SGH's website) on 10 February 2015, pp.6-7 (MHL.003.001.0006 at _0006 to _0007).

- v) *In FY2015, SGH Australia PI Work contributed \$211.1m of SGH's consolidated revenue, and SGH UK PI Work contributed \$211.6m of SGH's consolidated revenue. As total group revenue was \$521.9m, SGH Australia PI Work contributed approximately 40.4% of that amount, and SGH UK PI Work contributed approximately 40.5% of that amount. Therefore, PI Work contributed a total of \$422.7m of revenue (80.9%): SGH's "FY15 Full Year Financial Results Investor Presentation" published and lodged with ASX on 28 August 2015, pp 8, 12 and 14 (MHL.005.001.0001 at _0008, _0012 and _0014).*

B.4. Types of UK PI Work

16. At all material times prior to and during the Relevant Period, the Ministry of Justice (**MoJ**) was the ministerial department of the Government of the UK (**UK Government**) with responsibility for the civil justice system of the UK.
17. At all material times prior to and during the Relevant Period, PI Work in the UK was divided between:
- (a) cases in the "**Small Claims Track**", which is the normal track for low value cases where the financial value of the claim is not more than a stipulated amount and the financial value of any claim for damages for personal injuries is not more than a stipulated amount (**Small Claims Track PI Cases**);
 - (b) cases in the "**Fast Track**", which is the normal track for cases with a financial value up to a stipulated amount where the trial is likely to last for no longer than one day and there are only two expert fields with each party having only one expert per expert field (**Fast Track PI Cases**); and
 - (c) cases in the "**Multi-Track**", for which the Small Claims Track or the Fast Track is not the normal track (**Multi-Track PI Cases**), which cases are normally of higher value or complexity.

Particulars

Civil Procedure Rules 1998, Rule 26.6.

18. At all material times prior to and during the Relevant Period:

- (a) one class of claim which was the subject of PI Work in the UK has been claims for personal injury sustained as a result of a road traffic accident (**RTA Claims**); and
- (b) a subset of RTA Claims was claims for soft tissue injury also known as “whiplash claims” (**Whiplash Claims**).

B.5. Reforms relevant to UK PI Work

19. From 3 November 2008 until the dissolution of the UK Parliament on 30 March 2015 the UK Government was engaged in a process of reform of personal injuries litigation designed to reduce the number and cost of such claims (**PI Reform Process**).

Particulars

Particulars are in Schedule A.

20. The UK Government had, since 2008:
- (a) been engaged, as part of the PI Reform Process, in a programme of reform focussed upon:
 - (i) reducing the costs which legal services providers could charge for performing PI Work for RTA Claims under £25,000; and/or
 - (ii) reducing the number and cost of Whiplash Claims, (**RTA Claim Reform Programme**); and
 - (b) considered, as part of the RTA Claim Reform Programme, but had deferred implementing, the small claims track limit of the county court for road traffic accident personal injury claims from to £1,000 to £5,000 (**Small Claims Track Threshold Reform**).

Particulars

Particulars are in Schedule A.

21. At all material times the Small Claims Track Threshold Reform was a reform which would:

- (a) reduce the costs which lawyers could charge for performing PI Work for RTA Claims under £25,000; and
- (b) reduce the number and cost of Whiplash Claims.

Particulars

Particulars are in Schedule A.

22. As at 30 June 2015:

- (a) the Small Claims Track Threshold Reform was a reform which remained a strong possibility, as there was broad support for this reform and it was relatively simple to implement; and

Particulars

- i) *a report dated 9 February 2015 prepared by Instinctif Partners entitled "Slater and Gordon: Report on political and regulatory due diligence" and its annexures (**Instinctif Report**), p.5 (SGH.029.002.0624 at 0628);*
 - ii) *a document entitled Project Malta Board Information Session dated 20 March 2015 (**20 March Board Report**), p.42 (SGH.029.001.0018 at 0059).*
- (b) responses to a survey of members of Parliament on personal injuries policy had indicated that:
- (i) a majority of members of Parliament supported introducing change to the legislation on personal injury claims in the next Parliament;
 - (ii) many members of Parliament tended to agree there was a need to reform personal injuries legislation; and
 - (iii) whiplash injuries were the leading concern for members of Parliament in personal injuries claims policy, with 49% reporting this to be the most important of the options listed.

Particulars

- i) *Instinctif Report, Comres annexure, pp.6, 10, 15 (SGH.029.002.0624 at 0639, 0643, 0648).*
- ii) *20 March Board Report, pp.43-45 (SGH.029.001.0018 at 0060-0062).*

23. By reason of the matters pleaded in paragraphs 19 to 22 as at 30 June 2015 there existed a material risk that, within the term of the 56th Parliament of the UK (being a term of approximately 5 years pursuant to the *Fixed Term Parliaments Act 2011* (UK)), the UK Government would continue the RTA Claim Reform Programme, and/or implement the Small Claims Track Threshold Reform (**Reform Risk**).

B.6. Potential Impact of the RTA Claim Reform Programme as at 30 June 2015

24. Between about July 2012 and June 2015:

- (a) the average Whiplash Claim was around £2,500; and
- (b) the majority of Whiplash Claims were less than £5,000.

Particulars

- i) 2012 MoJ Whiplash IA (defined in Schedule B), p.9 [1.9] and Footnote 4 (MHL.003.001.0007 at _0009).*

25. Between about July 2012 and June 2015:

- (a) the average Whiplash Claim (as pleaded in paragraph 24(a)) was able to be resolved through the RTA PI Protocol or the Fast Track, in which case:
 - (i) successful claimants were able to recover Portal FRC or Reduced Portal FRC (depending upon when the claim was lodged), or Fast Track Costs; and
 - (ii) legal services providers performing UK PI Work on a CFA Basis in respect of the average successful Whiplash Claim were able to earn an income;
- (b) the majority of Whiplash Claims (as pleaded in paragraph 24(b)) were able to be resolved either through:
 - (i) the RTA PI Protocol or the Fast Track if they were above the Small Claims Track Threshold of £1,000 (**Moderate Value Whiplash Claims**), in which case:
 - (A) successful claimants were able to recover stipulated fixed recoverable costs (namely, Portal FRC or Reduced Portal FRC (depending upon when the claim was lodged)) or Fast Track Costs

(with any applicable credit for any Portal FRC or Reduced Portal FRC already paid before such claims left the Portal); and

- (B) legal services providers performing UK PI Work on a CFA Basis in respect of that proportion of the majority of Whiplash Claims as were successfully resolved through the RTA PI Protocol or the Fast Track were able to earn an income;
- (ii) the Small Claims Track if they were below the Small Claims Track Threshold of £1,000 (**Low Value Whiplash Claims**), in which case:
- (A) successful claimants were only able to recover Non-Legal FRC; and
 - (B) legal services providers performing UK PI Work on a CFA Basis were unable to earn an income from that proportion of the majority of Whiplash Claims as were successfully resolved through the Small Claims Track.

Particulars

- i) *Refer to Schedule A, paragraphs A4, A7, A22 and A24. The terms “Fast Track Costs”, “Non-Legal FRC”, “Portal”, “Portal FRC”, “Reduced Portal FRC” and “RTA PI Protocol” are also defined in Schedule A.*

26. By reason of the matters pleaded in paragraph 25 at all material times after in or about July 2012, legal services providers performing UK PI Work on a CFA Basis were able to earn an income:

- (a) from performing legal services in respect of the average successful Whiplash Claim;
- (b) from performing legal services in respect of that proportion of the majority of Whiplash Claims which were successful Moderate Value Whiplash Claims; and
- (c) without performing legal services in respect of that proportion of the majority of Whiplash Claims which were Low Value Whiplash Claims.

27. By reason of the matters pleaded in paragraphs 25 to 26, at all material times after in or about July 2012, legal services providers performing UK PI Work on a CFA Basis were able to make projections of the future income they would derive, by making

assumptions for the period in respect of which projections were being made **(Projection Period)** based on:

- (a) the number of average Whiplash Claims and/or Moderate Value Whiplash Claims which had been brought to them by claimants but were not yet finally resolved and would be brought to them by claimants in the Projection Period (based upon historical claim generation rates) **(Claims Pipeline Assumptions)**;
- (b) the number of cases in the Claims Pipeline case resolved in the Projection Period (based on historical timelines for claim resolution) **(Claims Resolution Rate Assumption)**;
- (c) the rate of success of average Whiplash Claims and/or Moderate Value Whiplash Claims (based on historical success rates) **(Claims Success Rate Assumptions)**; and
- (d) the quantum of Portal Costs, Reduced Portal Costs and/or Fast Track Costs usually recoverable in respect of successful average Whiplash Claims and/or Moderate Value Whiplash Claims **(Recoverable Costs Assumptions)**,

(together, **Relevant Earnings Projection Assumptions**).

28. At all material times after in or about July 2012 if the Small Claims Track Threshold Reform was implemented:

- (a) all Moderate Value Whiplash Claims valued at less than £5,000 **(Reform Affected Whiplash Claims)** would fall to be determined in the Small Claims Track, including, by reason of the matters pleaded in paragraph 24:
 - (i) the average Whiplash Claim; and
 - (ii) the majority of Whiplash Claims;
- (b) in respect of the Reform Affected Whiplash Claims described in sub-paragraph (a), claimants would only be able to recover Non-Legal FRC, and therefore, by reason of the matters pleaded in paragraph 24:
 - (i) claimants would only be able to recover Non-Legal FRC in respect of the average successful Whiplash Claim; and

- (ii) the majority of claimants with Whiplash Claims would only be able to recover Non-Legal FRC in respect of their Whiplash Claims.

Particulars

- i) Refer to Schedule A, paragraphs A4, A7, and A24. The terms “Fast Track Costs”, “Non-Legal FRC”, “Portal”, “Portal FRC”, “Reduced Portal FRC” and “RTA PI Protocol” are also defined in Schedule A.*

29. By reason of the matters pleaded in paragraphs 27 and 28 at all material times after in or about July 2012, if the Small Claims Track Threshold Reform was implemented:

- (a) legal services providers performing UK PI Work on a CFA Basis would be unable to earn an income from performing legal services in respect of:
 - (i) Reform Affected Whiplash Claims;
 - (ii) the average Whiplash Claim; and/or
 - (iii) the majority of Whiplash Claims;
- (b) further, or alternatively, there would be an aggregate reduction in business volume for legal service providers carrying out UK PI Work in respect of Whiplash Claims due to a reduction of demand for such services.

Particulars

- i) 2012 MoJ Whiplash IA (defined in Schedule A), p.20 [2.71] p.24 [2.112], p.27 [2.135] (MHL.003.001.0007 at _0020, _0024 and _0027).*

30. By reason of the matters pleaded in paragraph 23 and 29, if the Reform Risk eventuated:

- (a) there would be a material adverse impact on the future financial performance and financial position of legal service providers who had a significant dependence on performing UK PI Work on a CFA Basis in respect of Whiplash Claims and/or Reform Affected Whiplash Claims; and/or
- (b) the viability of the business model of legal service providers who had a significant dependency upon performing UK PI Work on a CFA Basis in respect of Whiplash Claims and/or Reform Affected Whiplash Claims would be uncertain or questionable,

(each a **Reform Impact**).

Particulars

- i) The future financial performance of such legal service providers was adversely affected because of the reduction in revenue which was consequential upon the matters pleaded in each of sub-paragraphs 29(a) and (b).*
- ii) The future financial position of such legal service providers was adversely affected because of: (1) the impairment to the asset position of the company consequential upon revenue reduction and/or (2) the impairment to any goodwill which was dependent upon their business continuing to perform UK PI Work in respect of Whiplash Claims and/or Reform Affected Whiplash Claims (including the fair value of any acquired businesses which had such a dependency).*

31. By reason of the matters pleaded in paragraphs 23 and 29 to 30, as at 30 June 2015, there existed a material risk that the Reform Impacts would affect legal service providers who had a significant dependency upon performing UK PI Work on a CFA Basis in respect of Whiplash Claims and/or Reform Affected Whiplash Claims (**Reform Impact Risk**).

32. By reason of the matters pleaded in paragraphs 23 to 29, as at 30 June 2015, the reliability of projections of future income on the basis of the Relevant Earnings Projection Assumptions made by legal service providers who had a significant dependency upon performing UK PI Work on a CFA Basis in respect of Whiplash Claims and/or Reform Affected Whiplash Claims depended upon the Small Claims Track Threshold Reform not occurring in the Projection Period, or at all.

Particulars

- i) The Claims Pipeline Assumptions depended upon the Small Claims Track Threshold Reform not happening because if it did happen historical claims generation rates would not be an accurate guide to future claims generation, and the “pipeline” would narrow to resolution of those average Whiplash Claims and/or Reform Affected Whiplash Claims which had already been brought, but which were not resolved;*
- ii) The Claims Resolution Rate Assumption depended upon the Small Claims Track Threshold Reform not happening, because: (1) the assumed rate was applied to the results of the Claims Pipeline Assumptions; and (2) if it did happen, historical resolution rates of average Whiplash Claims and/or Reform Affected Whiplash Claims through the RTA PI Scheme or the Fast Track would not be a meaningful guide to future resolution rates in the Small Claims Track;*

- iii) *The Claim Success Rate Assumptions depended upon the Small Claims Track Threshold Reform not happening, because: (1) the assumed rate was applied to the results of the Claims Pipeline Assumptions as modified by the Claims Resolution Rate Assumption; and (2) if it did happen, historical rates of success average Whiplash Claims and/or Reform Affected Whiplash Claims through the RTA PI Scheme or the Fast Track would not be a meaningful guide to future success rates in the Small Claims Track;*
- iv) *The Recoverable Costs Assumptions depended upon the Small Claims Track Threshold Reform not happening because if it did happen Portal Costs, Reduced Portal Costs and Fast Track Costs would not be applicable to average Whiplash Claims and/or Reform Affected Whiplash Claims, but instead only Non-Legal FRC would be recoverable.*

33. By reason of the matters pleaded in paragraphs 23 and 31, as at 30 June 2015 there existed a material risk that projections of income of legal service providers performing UK PI Work which had a significant dependency upon performing UK PI Work in respect of Whiplash Claims and/or Reform Affected Whiplash Claims in and for the period from 2015 to 2020 were unreliable (**UK Income Projection Unreliability Risk**).

B.7. SGH's exposure to Regulatory Risk by reason of the acquisition of PSD

34. As at 30 June 2015, PSD was significantly dependent upon performing UK PI Work in respect of Whiplash Claims and/or Reform Affected Whiplash Claims.

Particulars

- i) *The 30 March Presentation stated, inter alia:*
 - A) *key facts about PSD included:*
 - a. *as to "Legal Services" "RTA", there was a significant opportunity given the size of the market (over 818,000 claims p.a. and 657,000 settlements p.a. (in each case based on the 2012-13 year)) as well as fragmentation and lack of scale of competitors;*
 - b. *as to "Legal Services," "Other Practices" comprised ELPL (being cases arising from workplace accidents and accidents in public places), Multi-Track (being higher value cases with expected damages above £25,000) and Compass Costs (one of the UK's largest legal costs drafting practices); and*
 - c. *as to "Legal Services," "NIHL" involved claims relating to hearing loss caused by exposure to excessive noise levels during employment (but SGH would initially place a moratorium on NIHL new case intake in PSD and focus operations on settling existing portfolios of NIHL cases),*

(p.9) (MHL.001.001.0005 at _0009);

- B) *SGH's vision included to become the leading Fast Track personal injury claim service provider in the UK (p.15) (MHL.001.001.0005 at _0015);*
- C) *execution of SGH's vision included pivoting PSD to entrench its market leading position in the RTA segment, in circumstances where PSD currently only intakes c.80% of possible RTA volume from pool, with clear path to increase client intake (pp.15, 41) (MHL.001.001.0005 at _0015 and _0041);*
- D) *the key outlook drivers for PSD included:*
 - a. *the monthly case intake volumes for RTA claims, of which recent observations had been a total of ~8,400 (of which ~70% were Portal claims) and the outlook was increasing;*
 - b. *the success rate through the RTA Portal, of which recent observations had been ~90%, and the outlook was steady;*
 - c. *the typical settlement period through the RTA Portal, of which recent observations had been 6 – 9 months, and the outlook was steady; and*
 - d. *the acquisition cost per case for RTA claims, of which recent observations had been - £810, and the outlook was decreasing,*

(p.25) (MHL.001.001.0005 at _0025);

ii) *The appendices to the 30 March Presentation stated that SGH's analysis of PSD to construct its view of future performance had been based upon certain selected drivers, which in relation to the "Legal Services" Division of PSD were:*

- A) *RTA monthly case intake, where SGH considered the glide path (recent performance to outlook) was on an upward trajectory, such that there would be continued growth in case intake volume;*
- B) *RTA success rates, where SGH considered the glide path (recent performance to outlook) was on a downward trajectory, such that there would be incrementally higher dilution as intake volumes increase;*
- C) *RTA settlement period, where SGH considered the glide path (recent performance to outlook) was on a flat trajectory, such that the time to resolve was consistent with historical PSD trends and SGH UK experience;*
- D) *RTA average fee per file, where SGH considered the glide path (recent performance to outlook) was on a flat trajectory, such that fees per successful case were consistent with historical trends and SGH UK experience;*
- E) *RTA case acquisition cost, where SGH considered the glide path (recent performance to outlook) was on a downward trajectory, such that acquisition costs per case were reduced*

through optimising origination mix, moving towards SGH UK experience; and

F) ELPL monthly case intake, where SGH considered the glide path (recent performance to outlook) was on a flat trajectory, such that ELPL case volume was consistent with recent PSD levels;

(p.45) (MHL.001.001.0005 at _0045);

*iii) RTA claims were PSD's largest product line, and 99% of the work was below the multi-track threshold of £25,000 in expected damages, and about 95% of PSD's resolved RTA cases had a damage value of less than £5,000: SGH Board Report prepared by Mr Andrew Grech (Managing Director of SGH) and Mr Kenneth Fowlie (Executive Director of SGH) dated 29 January 2015 (**29 January Board Paper**), Item 3.3: SGH.029.001.0248 at 0252.*

35. As at 30 June 2015 and through to at least 30 September 2015, PSD:

(a) was exposed to the Reform Impacts (and each of them) and/or the Reform Impact Risks (and each of them);

(b) alternatively, was exposed to the Reform Impacts (and each of them) and/or the Reform Impact Risks (or any of them) to a significant degree.

Particulars

i) Whiplash Claims and/or Reform Affected Whiplash Claims (being the type of claims that were exposed to the Reform Risks and/or the Reform Impacts) comprised the substantial majority of the UK PI Work performed by PSD (namely 95% of that work, and the particulars to paragraph 34 are repeated).

36. By reason of the matters pleaded in paragraph 35, as at 30 June 2015 and through to at least 30 September 2015, PSD:

(a) was exposed to the UK Income Projection Unreliability Risk;

(b) alternatively, was exposed to the UK Income Projection Unreliability Risk to a significant degree.

Particulars

i) Whiplash Claims and/or Reform Affected Whiplash Claims (being the type of claims that were exposed to the Reform Risks and/or the Reform Impacts) would comprise the substantial majority of the UK PI Work performed by PSD (namely 95% of that work, and the particulars to paragraph 34 are repeated).

ii) Accordingly the reliability of PSD's projections of future income in respect of a significant majority of PSD's consolidated revenue would

be affected by the UK Income Projection Unreliability Risk (because the validity of the Relevant Earnings Assumptions in respect of that part of the future income was dependent upon the Reforms not happening).

37. As at 30 June 2015, SGH:

- (a) derived a significant proportion of its consolidated revenue (approximately 49.7%) from SGH UK (including PSD);

Particulars

In FY2015, SGH UK contributed \$259.4m of SGH's consolidated revenue of \$521.9m: SGH's "FY15 Full Year Financial Results Investor Presentation" published and lodged with ASX on 28 August 2015, pp 8, 14 and 15 (MHL.005.001.0001 at _0008, _0014 and _0015).

- (b) anticipated that it would in the future derive the substantial majority of its consolidated revenue (in excess of 75%) from SGH UK (including PSD);

Particulars

The appendices to the 30 March Presentation stated that following the acquisition of PSD, SGH's pro forma FY2014 EBITDA by geography would change from 50% (SGH Australia) and 50% (SGH UK) to 21% (SGH Australia), 21% (SGH UK) and 58% (PSD) (p.43) (MHL.001.001.0005 at _0043).

- (c) anticipated that in the future the majority of its consolidated revenue would be derived from SGH UK PI Work in respect of claims which were not Multi-Track PI Cases (but which were Whiplash Claims and/or Reform Affected Whiplash Claims); and

Particulars

- i) PSD would contribute approximately 58% of SGH's consolidated revenue, and the particulars to sub-paragraph 37(b) are repeated.*
- ii) Over 90% of PI Work performed by PSD was in respect of Whiplash Claims and/or Reform Affected Whiplash Claims, and the particulars to paragraphs 34 are repeated.*

- (d) had anticipated that revenues from future SGH UK PI Work would be consistent with its pro forma PSD FY2014 Volume Trend Core EBITDA and PSD RTA Growth Trend EBITDA Projections.

38. By reason of the matters pleaded in paragraphs 34 and 37 as at 30 June 2015, following the acquisition by SGH of PSD, SGH was significantly dependent upon

performing UK PI Work in respect of Whiplash Claims and/or Reform Affected Whiplash Claims.

39. By reason of the matters pleaded in paragraphs 14 and 34 to 37, as at 30 June 2015, SGH:

- (a) was exposed to the Reform Impacts (and each of them) and/or the Reform Impact Risks (and each of them);
- (b) alternatively, was exposed to the Reform Impacts (and each of them) and/or the Reform Impact Risks (or any of them) to a significant degree.

Particulars

- i) Following SGH's acquisition of PSD, in excess of 50% of SGH's consolidated revenue would be derived from PSD, and Whiplash Claims and/or Reform Affected Whiplash Claims (being the type of claims that were exposed to the Reform Risks and/or the Reform Impacts) would comprise the substantial majority of the UK PI Work performed by PSD.*
- ii) Accordingly, following SGH's acquisition of PSD a significant majority of SGH's consolidated revenue would be derived from performing legal services which were subject to the Reform Impacts.*

40. By reason of the matters pleaded in paragraph 39, as at 30 June 2015, SGH:

- (a) was exposed to the UK Income Projection Unreliability Risk;
- (b) alternatively, was exposed to the UK Income Projection Unreliability Risk to a significant degree.

Particulars

- i) Whiplash Claims and/or Reform Affected Whiplash Claims (being the type of claims that were exposed to the Reform Risks and/or the Reform Impacts) would comprise the substantial majority of the UK PI Work performed by PSD (namely 95% of that work, and the particulars to paragraph 34 are repeated), and thereby SGH.*
- ii) Accordingly the reliability of PSD's projections of future income in respect of a significant majority of PSD's, and thereby SGH's, consolidated revenue would be affected by the UK Income Projection Unreliability Risk (because the validity of the Relevant Earnings Assumptions in respect of that part of the future income was dependent upon the Reforms not happening).*

B.8. SGH's exposure to Growth Strategy Risks

41. By reason of the matters pleaded in paragraphs 12 to 14, and 34 to 40 above, at all material times subsequent to the completion of the PSD acquisition, SGH's net asset position:

- (a) included a significant goodwill asset for the acquisition of PSD that SGH justified by SGH's expectations of future financial performance; and
- (b) was therefore dependent on SGH achieving financial results and performance consistent with the Growth Strategy, including the Case Intake Growth Strategy and the PSD RTA Growth Trend EBITDA Projections.

42. By reason of the matters pleaded in paragraphs 12 to 14 and 41 above, the existence of any risks to SGH's Growth Strategy (**Growth Strategy Risks**) or existence of any indicators of risk to SGH's Growth Strategy (**Growth Strategy Risk Indicators**) would have a material effect on SGH's net asset position, in particular the amount able to be recognised as goodwill associated with the PSD acquisition:

- (a) at the time of initial recognition; and
- (b) following initial recognition, without impairment.

C. PITCHER PARTNERS' ROLE

C.1. Pitchers' Due Diligence Retainer

43. On or around 26 March 2015, SGH engaged Pitcher Partners Consulting Pty Ltd, an entity wholly owned by Pitchers, to undertake an examination of the 3 Year Financial Model (the **Pitchers Due Diligence Retainer**).

Particulars

- i) Letter dated 6 March 2015 sent by Fitzpatrick to Wayne Brown, SGH company secretary, entitled "Model Examination – Slater and Gordon" (PIP.900.003.0001).*

44. Pursuant to the Pitchers Due Diligence Retainer:

- (a) Fitzpatrick, and Pitchers' employees under Fitzpatrick's supervision, received from SGH a version of the 3 Year Financial Model named "SGH Financial Model FY16-FY18 v3";

- (b) Fitzpatrick, and Pitchers' employees under Fitzpatrick's supervision, examined the 3 Year Financial Model provided for mathematical reasonability, including checking calculations were consistent across ranges; checking information flowed logically through the model; and checking calculation logic;
- (c) Fitzpatrick, and Pitchers' employees under Fitzpatrick's supervision, revised the 3 Year Financial Model and, on or about 24 March 2015 provided it to SGH in a version named "SGH Financial Model FY16 – FY18 v5 PP"; and
- (d) Fitzpatrick, and Pitchers' employees under Fitzpatrick's supervision, revised the 3 Year Financial Model and, on or about 26 March 2015, provided it to SGH in a version named "Project Malta – Consolidated Model – Updated Covenant 2015 03 23".

Particulars

- (i) *24 March 2015 due diligence report sent by Fitzpatrick to Wayne Brown, SGH company secretary (SGH.029.002.0735-36);*
- (ii) *26 March 2015 due diligence report sent by Fitzpatrick to Wayne Brown, SGH company secretary (PIP.006.001.2556);*
- (iii) *Document entitled "SGH Financial Model FY16-FY18 v3" (PIP.900.003.0011);*
- (iv) *Document entitled "SGH Financial Model FY16 – FY18 v5 PP" (PIP.900.003.0012);*
- (v) *Document entitled "Project Malta – Consolidated Model – Updated Covenant 2015 03 23" (PIP.900.003.0008).*

45. On or around 27 March 2015, Fitzpatrick and Pitchers (through Fitzpatrick) pursuant to the Pitchers Due Diligence Retainer "concluded with no error or issues noted in the integrated financial model."

Particulars

Document entitled "Project Malta Board Information Session 27 March 2015 (SGH.029.001.0997 at .1065).

- 46A. Between about 29 March 2015 and about 20 April 2015, Fitzpatrick, and Pitchers' employees under Fitzpatrick's supervision, continued to revise the 3 Year Financial Model and continued to receive from and provide to SGH a series of versions of the 3 Year Financial Model.

Particulars

- i) Document entitled "Project Malta - Bank Model_Final Offer Metrics_20150329_1200" (PIP.900.003.0005);
- ii) Document entitled "Project Malta - Bank Model_Final Offer Metrics_20150331_1145" (PIP.900.003.0006);
- iii) Document entitled "Project Malta - Bank Model_Final Offer Metrics_20150410" (PIP.900.003.0007); and,
- iv) Document entitled "Group YTD planning - Project Malta - Bank Model_Final Offer Metrics_20150420_FY15 Outputs" (PIP.002.001.0548).

46B. On 20 April 2015, Pitchers received from SGH a copy of a document prepared by ~~Ernst & Young LLP (EY UK)~~ for the purposes of due diligence on the PSD acquisition entitled "Project Malta: Transaction Insights" dated 29 March 2015 (**EY UK Transaction Insights Report**).

Particulars

- i) Email from Ann Liu, SGH Senior Financial Accountant, to Fitzpatrick dated 20 April 2015 (PIP.006.001.3073).
- ii) Document entitled "Project Malta: Transaction Insights" dated 29 March 2015 (PIP.006.001.3074).

46. By reason of the matters referred to in paragraphs 43 to 46B above, as late as 20 April 2015, Pitchers was aware that subsequent to the completion of the PSD acquisition, SGH's net asset position included a significant goodwill asset for the acquisition of PSD that:

- (a) SGH justified by SGH's expectations of future financial performance; and
- (b) was dependent on SGH achieving financial results and performance consistent with the Growth Strategy, including the Case Intake Growth Strategy and the PSD RTA Growth Trend EBITDA Projections, including SGH achieving;
 - (i) in respect of RTA Claims that were Fast Track PI Cases, intake of:
 - (A) 16,660 new cases for the remainder of FY15;
 - (B) 104,460 new cases in FY16;
 - (C) 126,960 new cases in FY17; and
 - (D) 144,000 new cases in FY18;
 - (ii) in respect of RTA Claims that were Fast Track PI Cases, settlement of:

- (A) 12,916 cases in the remainder of FY15;
 - (B) 80,679 cases in FY16;
 - (C) 94,259 cases in FY17; and
 - (D) 122,400 cases in FY18;
- (iii) in respect of RTA Claims that were Fast Track PI Cases, average fees of:
- (A) £1,330 per settled case for the remainder of FY15;
 - (B) £1,377 per settled case in FY16;
 - (C) £1,452 per settled case in FY17; and
 - (D) £1,403 per settled case in FY18;
- (iv) in respect of RTA Claims that were Fast Track PI Cases, total fee revenue of:
- (A) £17,178,000 for the remainder of FY 15;
 - (B) £111,007,000 in FY16;
 - (C) £136,904,000 in FY17; and
 - (D) £171,666,000 in FY18;
- (v) no intake of any new NIHL cases, and settlement of:
- (A) 875 existing NIHL cases in the remainder of FY15, generating £3,500,000 in fee revenue;
 - (B) 14,420 existing NIHL cases in FY16, generating £57,680,000 in fee revenue; and
 - (C) 13,825 existing NIHL cases in FY17, generating £55,300,000 in fee revenue.
- (vi) Quarterly growth of 24% in PSD's settlement run rate between November 2014 and July 2015 in the number of cases settled, which Pitchers considered a big increase, resulting in a forecast of 6,783 RTA cases and ELPL cases (being cases arising from workplace accidents and accidents in public places) cases in the month of July 2015.

Particulars

- i) *As to the matters in subparagraph (a), the 3 Year Financial Model reviewed by Pitchers included, as at 30 June 2015, a goodwill asset of \$863,342,000 in the consolidated entity's PSD segment, and net assets in the consolidated entity's PSD segment of \$1,734,910,000: (PIP.900.003.0008, tab BS, cells G27 and G32); and*
- ii) *As to the matters in subparagraph (b), the Applicant refers to:*
 - A) *Document entitled "SGH Financial Model FY16 – FY18 v5 PP" (PIP.900.003.0012 at tab 'Assumptions');*
 - B) *Document entitled "Project Malta – Consolidated Model – Updated Covenant 2015 03 23" (PIP.900.003.0008 at tab 'Operating Assumptions');*
 - C) *Document entitled "Project Malta: Transaction Insights" dated 29 March 2015 (PIP.006.001.3074 at _0056)*

C.2. Pitchers' Audit Obligations

47. On or around 6 May 2015, SGH retained Pitchers to audit, as required by s 301 of the Corporations Act, the Financial Report for FY2015 (**FY15 Financial Report**).

(Pitchers Audit Retainer).

Particulars

Letter entitled 'Audit Engagement Letter' dated 6 May 2015 from Fitzpatrick to the Audit, Compliance and Risk Management Committee of SGH (PIP.002.001.0369).

- 48A. By the Pitchers Audit Retainer, Pitchers (through Fitzpatrick and/or Harrison) was obligated to, among other things:
- (a) plan and perform the audit to obtain reasonable assurance about whether the FY15 Financial Report was free from material misstatement;
 - (b) obtain audit evidence about the amounts and disclosures in the FY15 Financial Report;
 - i. evaluate the appropriateness of accounting policies in the FY15 Financial Report;
 - ii. evaluate the reasonableness of accounting estimates made by management in the FY15 Financial Report;

- iii. communicate with the Audit, Compliance and Risk Management Committee of SGH concerning any significant deficiencies in internal control relevant to the audit of the FY15 Financial Report;
- (c) engage and provide instructions to EY UK;
 - i. oversee and review of work performed by, and liaise with, EY UK in relation to their audit of SGH UK, including in relation to the PSD acquisition; and
- (d) provide 'Audit clearance on Slater Group (Australia and UK)'.

Particulars

Letter entitled 'Audit Engagement Letter' dated 6 May 2015 from Fitzpatrick to the Audit, Compliance and Risk Management Committee of SGH (PIP.002.001.0369).

48. As auditor of SGH for the year ended 30 June 2015, Pitchers (through Fitzpatrick and/or Harrison) was obligated:
- (a) pursuant to s 307 of the Corporations Act to form an opinion as to whether:
 - (i) the ~~20~~FY15 Financial Report was prepared in accordance with the Corporations Act, including whether they complied with the accounting standards, and whether they gave a true and fair view of the financial position and performance of SGH (and of the consolidated group comprising SGH and its controlled entities); and
 - (ii) Pitchers had been given all information, explanation and assistance necessary for the conduct of the review and audit;
 - (b) pursuant to s 307A of the Corporations Act to conduct the audit of the ~~20~~FY15 Financial Report in accordance with applicable auditing standards, including Australian Auditing Standard 200 ("*Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards*") (**ASA200**), Australian Auditing Standard 230 ("*Audit Documentation*") (**ASA230**), Australian Auditing Standard 300 ("*Planning of an Audit of a Financial Report*") (**ASA300**), Australian Auditing Standard 315 ("*Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment*") (**ASA315**), Australian Auditing Standard 330 ("*The Auditor's Responses to Assessed Risks*") (**ASA330**),

Australian Auditing Standard 500 (“*Audit Evidence*”) (**ASA500**), Australian Auditing Standard 540 (“*Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures*”) (**ASA540**), and Australian Auditing Standard 600 (“*Special Considerations – Audits of a Group Financial Report (Including the Work of Component Auditors)*”) (**ASA600**);

- (c) pursuant to s 308 of the Corporations Act to:
- (i) report to the members of SGH on whether Pitchers was of the opinion that the FY15 Financial Report was in accordance with the Corporations Act (being the Auditor’s Report), including whether it complied with the accounting standards, and whether it gave a true and fair view of the financial position and performance of SGH, and:
 - (A) if Pitchers was not of that opinion, say in the report why; and
 - (B) if Pitchers was of the opinion that the FY15 Financial Report was not in compliance with an accounting standard, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report, or if it is not practicable to quantify the effect fully, say why; and
 - (ii) describe in the Auditor’s Report:
 - (A) any defect or irregularity in the FY15 Financial Report;
 - (B) any deficiency, failure or shortcoming in respect of whether Pitchers has been given all information, explanation and assistance necessary for the conduct of the audit, whether SGH has kept financial records sufficient to enable a financial report to be prepared and audited, and whether SGH has kept other records and registers required by the Corporations Act;
 - (iii) if the FY15 Financial Report~~financial report~~ contained additional information to give a true and fair view of the financial position and performance of SGH, state in the Auditor’s Report whether the inclusion of that additional information was necessary to give a true and fair view.

(individually, or together, **Statutory Auditing Obligations**)

49. Pursuant to the Pitchers Audit Retainer and/or the Statutory Auditing Obligations, Pitchers through Fitzpatrick and/or Harrison was obligated to prepare an Auditor's Report in respect of the FY15 Financial Report by no later than the date which would enable SGH to comply with SGH's Statutory Reporting Obligations and SGH's ASX Reporting Obligations.

Particulars

- i) *To the extent the obligation arose contractually, the term was implied to give business efficacy to the relationship between Pitchers and the entities Pitchers was required to audit pursuant to the Pitchers Audit Retainer.*
- ii) *To the extent the obligation arose by statute, the Applicant refers to and relies upon SGH's Statutory Reporting Obligations, and the mandatory timeframes for lodgement of an Auditor's Report with ASIC, for which s 319 of the Corporations Act provides (as pleaded in paragraph 5(e)(iv)).*

50. It was a term of the Pitchers Audit Retainer that Pitchers would use reasonable skill and care in providing services pursuant to the Pitchers Audit Retainer:

Particulars

The term was implied by law or alternatively was implied to give business efficacy to the relationship between Pitchers and the entities Pitchers was required to audit pursuant to the Pitchers Audit Retainer.

C.3. Pitchers Audit Team

51. At all material times, Pitchers and Fitzpatrick employed, engaged to act on their behalf, or directed, consented to or agreed to a number of persons (**Pitchers Audit Team**) to carry out work in providing professional accounting and auditing services to SGH for and incidental to the Pitchers Audit Retainer and the performance of the Statutory Auditing Obligations.

Particulars

- i) *To the best of the Applicant's knowledge, the Pitchers Audit Team included:*
 - A) *Fitzpatrick, Harrison and Knowles;*
 - B) *Michelle Straubinger (**Straubinger**) and Georgina Cox (**Cox**);*
 - C) *Any person in the Pitchers Audit Team who was not an employee of Pitchers was engaged to act on behalf of Pitchers, under the direction of and with the consent or agreement of*

Fitzpatrick, as agent of Pitchers, with authority to give such direction, consent or agreement.

52. At all material times, pursuant to sections 769B(4), (6) and (10) of the Corporations Act:

(a) conduct (including acts or omissions) engaged in or on behalf of the partners of Pitchers (including Fitzpatrick, Harrison and Knowles), by:

(i) an employee or agent of the partners of Pitchers (including Fitzpatrick, Harrison and Knowles), acting within the scope of the actual or apparent authority of that employee or agent; or

(ii) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of Pitchers (including Fitzpatrick, Harrison and Knowles), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in also by the partners of Pitchers (including Fitzpatrick, Harrison and Knowles);

(b) the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of:

(i) an employee or agent of the partners of Pitchers (including Fitzpatrick, Harrison and Knowles), acting within the scope of the actual or apparent authority of that employee or agent; or

(ii) any other person acting at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the partners of Pitchers (including Fitzpatrick, Harrison and Knowles), where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is sufficient to establish the state of mind of the partners of Pitchers (including Fitzpatrick, Harrison and Knowles) for the purposes of a proceeding under Chapter 7 of the Corporations Act in respect of conduct engaged in by the partners of Pitchers or the firm Pitchers.

53. At all material times, by reason of the matters pleaded in paragraphs 51 to 52:
- (a) the conduct (including acts or omissions) of persons in the Pitchers Audit Team is taken, for the purposes of Chapter 7 of the Corporations Act, to have been engaged in by the partners of Pitchers (including Fitzpatrick); and
 - (b) the state of mind (including actual knowledge and constructive knowledge (that is, what ought to be known)) of persons in the Pitchers Audit Team is imputed to the partners of Pitchers (including Fitzpatrick) for the purposes of a proceeding under Chapter 7 of the Corporations Act in relation to the conduct of Pitchers (including conduct which the partners of Pitchers (including Fitzpatrick) are taken to have engaged in by reason of the matters pleaded in sub-paragraph (a) above).

C.4. Pitcher Partners' Audit Work

54. From on or around 6 May 2015, in performance of the Pitchers Audit Retainer, Fitzpatrick and other members of the Pitchers Audit Team commenced to conduct an audit of the FY15 Financial Report, for the purposes of which they:
- (a) had access to and made reference to working papers from all previous half-year reviews and audits conducted by Pitchers for SGH in the period 2007 to 2015;
 - (b) attended at the premises at which business records of SGH were held, including premises located in the United Kingdom;
 - (c) required officers and employees of SGH to provide Pitchers with:
 - (i) access to the books of SGH and its controlled entities; and
 - (ii) information, explanations and other assistance to enable Pitchers to form opinions about the books of SGH and its controlled entities, including the recently acquired PSD;
 - (d) had access to, and had examined, the financial model used by SGH to calculate and assess the value of the PSD Goodwill asset (including all material that supported any assumptions used in those calculations and assessments) (that is, the 3 Year Financial Model);

- (e) had access to SGH's due diligence files on the acquisition of PSD, operating budgets and forecasts, monthly management accounts and operation reports, policies on fee collection, policies on revenue recognition, policies on WIP recognition, policies on receivables, policies on budgets, issued credit notes, bad debt provisioning reports, bad debt write-off reports, WIP reversal reports, collection data;
- (f) had access to board papers and board minutes of SGH;
- (g) had access to and reviewed documents which set out, *inter alia*, processes, procedures, guidance and other material relevant to the conduct of Pitchers' review and audit (including the need to consider the reliability of management representations and to corroborate management representations by reviewing supporting evidence);
- (h) had access to appropriate tests and guidance relevant to the impairment of assets (including goodwill), the assessment of the fair-value of assets acquired during a business combination, and the assessment of expenses incurred during a reporting period;
- (i) had the benefit of advice from component auditors EY UK, engaged to perform audit work on SGH UK, but not registered as an auditor in Australia, which included specific directions from EY UK as to work required to perform satisfactory audit work in relation to the PSD goodwill asset;
- (j) independently reviewed the impairment testing model created by SGH;
- (k) independently reviewed the due diligence reports for the PSD acquisition;

Particulars

- i) As to the matters pleaded in subparagraph (i) above, the Applicant relies upon the matters pleaded in paragraphs 56C to 56I, and 56O to 56X below;*
- ii) As to the matters pleaded in subparagraph (j) above, the Applicant relies upon:*
 - A) File note entitled 'Review of Slater & Gordon Impairment Testing for Quindell CGU [Draft, in progress]' dated 22 September 2015 (PIP.002.001.0569)*
 - B) File note entitled 'Review of Slater & Gordon Impairment Testing for PSD CGU' (PIP.002.001.0738)*

C) *The audit file contains a copy of the EY UK Transaction Insights Report with handwritten comments (by Fitzpatrick) (PIP.002.001.0560);*

iii) *As to the matters pleaded in subparagraph (k) above, the Applicant relies upon the matters in paragraph 46B above:*

55. Pitchers and/or Fitzpatrick engaged in the conduct pleaded in paragraph 54 for the purpose of performing the Statutory Auditing Obligations and their obligations pursuant to the Pitchers Audit Retainer.

C.5. Supervision of EY UK

56A. On or about 10 July 2015, Pitchers provided to EY UK a document entitled “Questionnaire to the Auditors of Subsidiary/Associate Companies (Component Auditor)”, which inter alia:

- (a) identified the SGH subsidiaries which were the subject of EY UK’s component auditor engagement by Pitchers;
- (b) provided instructions to EY UK as component auditor;
- (c) set out a time line for completion of the component audit work;
- (d) identified Kevin Harkin (**Harkin**), John Howarth (**Howarth**), and Ryan Squires of EY UK as component auditor contacts; and
- (e) identified Fitzpatrick, Straubinger and Cox as Pitchers contacts.

Particulars

Document entitled “Questionnaire to the Auditors of Subsidiary/Associate Companies (Component Auditor)” (PIP.002.001.0853)

56B. On or about 15 July 2015, Fitzpatrick reviewed a workpaper for ‘APM-2 Risk Factors’ prepared by Pitchers as part of its audit of SGH that recorded, inter alia that:

- (a) *“Valuation of goodwill... dependent on DCF and appropriate monitoring of identifiable cash generating units... DCFs contain subjective estimates and therefore valuation has a higher risk. Significant Quindell acquisition in 2015 results in High magnitude risk of RMM due to the scale of the acquisition and the inherent risk of revenue recognition differences identified at the time of acquisition...”;*

- (b) *“Quindell has effectively doubled the size of S&G... Change in auditor as a result of scale – now EY – and PP required to be instructing the component auditor – therefore, requirement to be across the detail of such a significant transaction... The scale of the UK acquisitions and the related negative press around Quindell in the UK market and criticism of S&G for going ahead with the acquisition heightens the scrutiny that will be put on the business post-Quindell acquisition. While a lesser impact this year on the results as acquisition finalised end of May, the acquisition accounting is still critical to be reasonable (based on most reliable data available)...”*
- (c) *“significant decrease in share price – i.e. 50% drop...” and “Significant drop in share price may trigger various consequences which need to be considered and assessed during the audit including: ... - Impairment concerns – intangibles?”*

Particulars

APM-2 Risk Factors workpaper (PIP.002.001.0266)

- 56C. On or about 27 July 2015, EY UK provided Pitchers with a memorandum entitled ‘Slater & Gordon (UK) Audit Strategies Memorandum’ which recorded, among other things, that:
- (a) SGH UK had made several acquisitions during the past three years within the UK, including the acquisition of PSD;
 - (b) there accordingly was a significant balance within goodwill;
 - (c) EY UK had identified a significant risk that the goodwill could be impaired based on market or business conditions.

Particulars

Memorandum entitled ‘Slater & Gordon (UK) Audit Strategies Memorandum’ (PIP.002.001.0022)

- 56D. On or about 21 August 2015, a conference call was held at 4.30PM between SGH management (Grech, Brown, and Fowlie), EY UK (Harkin and Howarth), and Pitchers (Fitzpatrick, Harrison, Ben Powers, Brendan Britten, and Straubinger), during which, in relation to “Goodwill Impairment Review – S&G”:
- (a) EY UK *“indicated that a review for indicators needed to be undertaken in relation to [PSD]”*; and.

- (b) the meeting was advised that a paper had been prepared by S&G Management, and this paper needed to be discussed with EY UK and Pitchers.

Particulars

*File note with subject 'Phone Conference 21 August at 4.30PM...'
(PIP.002.001.0276)*

- 56E. On or around 21 August 2015, a conference call was held at 6PM between EY UK (Harkin and Howarth), and Pitchers (Fitzpatrick, Harrison, Ben Powers, Brendan Britten, and Straubinger), during which Fitzpatrick:
- (a) stated that Pitchers had a legal obligation to review EY UK's audit files;
 - (b) advised EY UK that Pitchers would review EY UK's files subsequent to the publication of SGH's 2015 Preliminary Accounts on 28 August 2015; and
 - (c) noted after the call that Pitchers would:
 - (i) instruct EY UK to assist them with the preparation of an interim report;
 - (ii) identify the issues Pitchers wanted EY UK to report on; and
 - (iii) send EY UK a copy of SGH's Appendix 4E preliminary final report.

Particulars

*File note with subject 'Conference call at 6PM on Friday 21 August 2015
between EY & PP' (PIP.002.001.0275)*

- 56F. On or around 25 August 2015, a conference call was held between EY UK and Pitchers which included, at least, Howarth and Fitzpatrick, and during which, inter alia:
- (a) the question of whether SGH UK was a going concern and the impairment review of PSD were identified as two items that both EY UK and PP needed to work on together and share information;
 - (b) Pitchers said that they needed to understand EY UK's position on whether SGH UK was a going concern and the impairment review of PSD in order to finalise SGH's financial statements on or before 30 September;
 - (c) Howarth said that EY UK was concerned about:

- (i) 'fallout from the audit regarding financial systems, processes, procedures, behaviour, and the errors etc discovered';
 - (ii) 'regulatory review and what impact that might have'; and
 - (iii) 'the impact of the reduction in market capitalisation' of SGH; and
- (d) Howarth asked whether there was any requirement to disclose the acquisition balance sheet in the Appendix 4E, to which Pitchers responded they didn't think so but would follow through on.

Particulars

File note with subject 'Conference call with EY on 25 August 2015 (5PM - 6PM AEST)' (PIP.002.001.0277)

- 56G. On or about 26 August 2015, Pitchers received from EY UK a report entitled "Slater & Gordon (UK)1 Ltd – DRAFT – 30 June 2015 audit results update" which was watermarked "DRAFT" and dated 25 August 2015 (**Draft EY UK Audit Results Report**) which stated, inter alia,
- (a) it was agreed that the group auditor (Pitchers) would conclude on both the going concern assessment of SGH UK and the impairment review of PSD;
 - (b) a number of audit procedures relating to Quindell Legal Services had not been completed;
 - (c) group management had deemed that any impairment review on the acquired PSD business would be performed and concluded on by the group auditor (Pitchers); and
 - (d) that Deloitte had concluded that no reliable estimate of the value of the 53,000 NIHL cases acquired with PSD could be made and that EY UK agreed with the accounting treatment but recommended that the group auditor (Pitchers) consider the matter as part of its reporting.

Particulars

- i) *Report entitled "Slater & Gordon (UK)1 Ltd – DRAFT – 30 June 2015 audit results update" dated 25 August 2015 (PIP.006.001.7652)*
- ii) *Email from Matthew Miller of EY UK to Fitzpatrick and Harrison dated 26 August 2015 (PIP.006.001.7651)*

56H. On or about 27 August 2015, Pitchers received from EY UK a document entitled “Slater & Gordon (UK)1 Ltd – 30 June 2015 – Status Update Report” which was not marked draft, was dated 26 August 2015 (**EY UK Status Report**) and was substantially identical to the Draft EY UK Audit Results Report, and repeated the statements pleaded at paragraph 56G.

Particulars

Email from Matthew Miller of EY UK to Fitzpatrick and Harrison dated 27 August 2015 (PIP.006.001.7690) attaching a report dated 26 August 2015 entitled “Slater & Gordon (UK) 1 Ltd – 30 June 2015 – Status Update Report” (PIP.006.001.7691)

56I. The EY UK Status Report was included in the Audit Pack distributed for the purposes of the 27 August 2015 meeting of SGH’s Audit, Compliance and Risk Management Committee.

Particulars

- i) Email to SGH’s Audit, Compliance and Risk Management Committee dated 27 August 2015 (PIP.005.001.0627)*
- ii) Audit Pack for 27 August 2015 (PIP.005.001.0628 at _0055)*

D. SGH’S FINANCIAL STATEMENTS

D.1. Appendix 4E

56J. From at least 13 August 2015 until on or about 27 August 2015, Pitchers performed audit work and provided feedback on draft consolidated models and draft versions of the preliminary accounts and Appendix 4E provided to them by SGH.

Particulars

- i) Document entitled “4E-00” summarising work performed by Pitchers on “CONSOL EXCEL MODELS and 4E in the lead up to the release of the 4E on Friday 28th August 2015” (PIP.002.001.0217)*
- ii) The Applicant repeats the matters listed in paragraph 56F(d) and the particulars thereto.*

56K. On or about 19 August 2015, SGH provided Pitchers with a draft version of the FY15 financial statements, which recorded, among other things, that SGH was considering whether it should include within Note 13: Intangible Assets a comment regarding the potential impairment of the goodwill associated with the acquisition of PSD due to recent events.

Particulars

Document entitled "Draft Proforma Accounts (words only) FY15" which contained the water-mark "Draft 19/08/2015" and which contains a comment: "Do we need to comment on PSD, following EY query re Impairment testing for PSD. i.e. do recent events give rise to indication for impairment? JW investigating." (PIP.002.001.0410 at _0047)

- 56L. On or about 27 August 2015, Pitchers received from SGH a draft Appendix 4E which stated that "the financial report is in the process of being audited and is not likely to be subject to audit dispute or qualification".

Particulars

- i) Email from Elaine Comer of SGH to Harrison and Fitzpatrick and others dated 27 August 2015 (PIP.006.002.2220) conveying a draft version of the preliminary accounts for review (PIP.006.002.2221).*
- ii) A further draft of the preliminary accounts entitled "SG Limited Appendix 4E 2015 27 08 15 – Formated version" received by SGH on or about 27 August 2015 (PIP.002.001.0857).*

- 56M. On or about 27 August 2015, Pitchers delivered to SGH's Audit, Compliance and Risk Management Committee its interim report for the financial year ended 30 June 2015 which stated, inter alia, that:

- (a) Pitchers was unaware of any circumstance that may lead them to expect that they would not sign an unqualified audit opinion on the FY15 Financial Report, subject to completion and satisfactory resolution of outstanding processes and issues that had been noted on a list of open items on page 3 of the interim report;
- (b) The list of open items included, among other things:
 - (i) '4E to be reviewed and disclosures contained therein fully considered (unaudited release)';
 - (ii) 'PSD assessment for indications of impairment by management, the Board, EY (statutory audit) and PP (SGH Group audit)';
 - (iii) 'Review of UK component auditors and return of Component Auditor Questionnaire to [Pitchers]'.

Particulars

Pitchers Interim Report to the Audit, Compliance & Risk Management Committee of SGH for the year ended 30 June 2015 (PIP.002.001.0243 at_0003-0004).

56N. On 27 August 2015, SGH's Audit, Compliance & Risk Management Committee met and was advised by Pitchers that:

- (a) Pitchers were unaware of any circumstance that may lead (Pitchers) to expect that they will not sign an unqualified audit opinion on the FY15 Financial Report, but this was subject to completion and satisfactory resolution of outstanding processes and issues; and
- (b) the impairment review of PSD was an issue for Pitchers and that EY UK needed to be involved.

Particulars

- i) *Minutes of ACRM Committee Meeting on 27 August 2015 (PIP.002.001.0054).*
- ii) *File note of Fitzpatrick dated 28 August 2015 with subject 'PP Attendance at S&G Board Meeting Scheduled for Thursday 27 August 2015 at 3.30pm' (PIP.002.001.0286).*
- iii) *File note of Straubinger dated 27 August 2015 (PIP.002.001.0628).*

56O. Following the meeting referred to in paragraph 56N above, Pitchers continued to perform audit work and provide feedback on draft versions of the preliminary accounts and draft Appendix 4E document provided to them by SGH including, among other things, providing feedback on the wording of disclosures therein.

Particulars

- i) *Document entitled "4EMEMO" or "Minutes of discussions with client on amendments to 4E – post Board meeting 27.8.15" (PIP.002.001.0218).*
- ii) *A file note by Fitzpatrick recording his review of a draft Appendix 4E at 1.15am on the morning of 28 August 2018, including a copy of the Appendix 4E with hand-written mark-up (PIP.002.001.0562).*

56P. On 28 August 2015, in reliance on the matters in paragraphs 56J to 56O, SGH published and lodged with the ASX its Appendix 4E (**Appendix 4E**).

Particulars

- i) *Document entitled "Minutes of the AC & RM Committee (27 Aug 2015)" (PIP.002.001.0054).*
- ii) *Document entitled "Board Minutes (27 Aug 2015)" (PIP.002.001.0048).*

56Q. The Appendix 4E recorded that:

- (a) SGH (and its controlled entities) had:
 - (i) Intangible assets in the sum of \$1,229,398,000, of which \$1,082,519,000 was allocated to PSD as intangibles, including goodwill which included ~~attributable to the~~ goodwill recognised on its the acquisition of PSD (the **Appendix 4E PSD Goodwill Asset**);
 - (ii) generated a profit before income tax expense in the sum of \$82,341,000; and
- (b) the FY15 Financial Report was in the process of being audited and was not likely to be subject to audit dispute or qualification; and

Particulars

- i) The statement referred to in subparagraph (a)(i) above was in writing and made in the Appendix 4E at pp. 4 and 20 (MHL.001.001.0026 at _0004 and _0020).*
- ii) The statement referred to in subparagraph (a)(ii) above was in writing and made in the Appendix 4E at p.2 (MHL.001.001.0026 at _0002).*
- iii) The statement referred to in subparagraph (b) above was in writing and made in the Appendix 4E at p. 22 (MHL.001.001.0026 at _0022).*

D.2. Pitchers' continuing work

56R. On or about 16 September 2015, during a call between Pitchers and EY, Pitchers and EY agreed that it was prudent to undertake a PSD goodwill impairment assessment and that it would need to exclude any cash flows from NIHL cases.

Particulars

File note drafted by Fitzpatrick with the subject heading "Matters discussed on call with John Howarth on 16 September 2015 at 12 noon" memorialising a conference call (PIP.002.001.0620).

56S. On 22 September 2015, Pitchers reviewed a report from Deloitte Touche Tohmatsu entitled 'Valuation critique on Deferred Consideration' dated 18 September 2015 which:

- (a) recorded that SGH had engaged Deloitte Touche Tohmatsu to prepare a report providing a critique on management's commentary on whether or not there was sufficient information to value the deferred consideration associated with PSD's NIHL portfolio,

- (b) reported that:
- (i) since taking ownership of PSD, SGH had commenced a review of PSD's 53,000 NIHL cases and sought 74 further pieces of management information to estimate the volume of cases that have a reasonable likelihood of success;
 - (ii) the likelihood of success of NIHL cases was complicated by proceedings that were then on appeal which created uncertainty and was likely to impact on management's assessment of failure rates;
 - (iii) the UK Government had instructed the Civil Justice Council to consider whether a fixed fee regime was appropriate for NIHL cases, that the appointed committee was expected to complete its work in early 2016, and that SGH expected that the Civil Justice Council would recommend a fixed fee regime, at a level potentially below that currently available on a time-costed basis;
 - (iv) the rate of file resolutions of NIHL cases had been slower than anticipated when compared against budget, which also increased the associated files, and that there was evidence of slowing of claim resolutions in SGH's pre-PSD NIHL cases, in part due to insurers working harder to defend claims, in which regard the announced Civil Justice Council consultation on fixed fees was expected further to incentivise insurers;
 - (v) the information available at that time (18 September 2015) – was either subject to significant uncertainty or was insufficient to base a reliable valuation of the NIHL cases and therefore the deferred consideration for the PSD NIHL cases, because, *inter alia*,
 - (A) evolving legislative precedent created a risk that historical information on success rates may be overstated or unreliable for the purpose of developing forward looking projections,
 - (B) SGH's sampling of PSD NIHL files did not appear to support national average claimant legal costs for a successful NIHL claim, which limited the reliability of case success rates established by Slater & Gordon in the due diligence phase, and

- (C) PSD had underperformed in respect of NIHL case durations when compared with the budget, and budgeting inaccuracy pointed to further uncertainty in developing reasonable forward looking projections.
- (c) contained handwritten notes by Pitchers including “significant uncertainty to value”.

Particulars

Deloitte Touche Tohmatsu entitled ‘Valuation critique on Deferred Consideration’ dated 18 September 2015 (PIP.002.001.0566)

- 56T. On or about 22 September 2015, ~~and~~ 28 September 2015, and 29 September 2015 Pitchers received from EY UK further reports entitled “Slater & Gordon (UK)1 Ltd – 30 June 2015 – Status Update Report” and “Slater & Gordon (UK) 1 Ltd – DRAFT – 30 June 2015 audit results update” that reported that the impairment review of the PSD business and the issue of whether SGH UK was a going concern was to be followed up by Pitchers.

Particulars

- i) *Report entitled ‘Slater & Gordon (UK)1 Ltd –30 June 2015 – Status Update Report’ dated 22 September 2015 (PIP.002.001.0238 at 0017)*
 - ii) *Report entitled ‘Slater & Gordon (UK) 1 Ltd – DRAFT – 30 June 2015 audit results update’ dated 28 September 2015 and containing Fitzpatrick’s handwritten annotations (PIP.002.001.0394)*
 - iii) *Email from Howarth to Fitzpatrick and Harrison dated 28 September 2015, 8:28am (PIP.006.001.1709) attaching report entitled ‘Slater & Gordon (UK) 1 Ltd – DRAFT – 30 June 2015 audit results update’ dated 28 September 2015 (PIP.006.001.1710)*
 - iv) *Email from Tim West to Fitzpatrick, Harrison, Straubinger, and Howarth dated 29 September 2015, 9:18am (PIP.005.003.0272) attaching report entitled ‘Slater & Gordon (UK) 1 Ltd – 30 June 2015 audit results update’ dated 28 September 2015 (PIP.005.003.0277).*
- 56U. On or about 23 September 2015, a conference call was held among SGH management, Pitchers, and EY UK in which the following issues relating to the PSD Goodwill Impairment Assessment were discussed:
- (a) that SGH management expected an up tick in activity and reduction in costs to contribute to future cash flows;

- (b) that 83% of new PSD client intake was derived from third party generators and that PSD's relationships with third party generators was expected to improve without the burden of Quindell;
- (c) that ~~SHG~~SGH considered that consolidation forces within the legal fraternity could only help Slater & Gordon;
- (d) that SGH expected 14,000 NIHL cases to be resolved in FY16; and
- (e) that Pitchers were concerned, given the expected focus on RTA cases, as to whether there were sufficient lawyers to ensure that more difficult cases were dealt with on a timely basis, to which SGH responded that one of Fowlie's initiatives would be "*to put the right decision makers in the right places*".

Particulars

File note drafted by Fitzpatrick with the subject heading "Conference call on 23 September 2015 at 9pm (AEST) – SGS considerations of forecasts and underlying assumptions" memorialising a telephone conference among Pitchers, EY UK, and SGH management (PIP.002.001.0287 at _0001-0003).

- 56V. On or about 24 September 2015, following the conference call referred to in paragraph 56U above, Howarth sent an email to, *inter alia*, Grech, Straubinger, Cox, Fitzpatrick and Harrison, in which he noted that:
- (a) the 23 September conference call, the 'key risks' to achieving the steady state cash flows had been discussed;
 - (b) the assumptions reflected in the EY Transactions Insight Report which were used to build from the Quindell FY14 cashflows/EBITDA to FY26 were key to achievement of the steady state cash flows which it was necessary to achieve to support the value of the PSD Goodwill Asset;
 - (c) the key to those assumptions was '*clearly . . . achiev[ing] the RTA settlement volumes and settling the [NIHL] cases*', and the associated risks discussed in the report were consistent with those discussed during the call;
 - (d) that the '*headroom on the goodwill [of PSD] [wa]s tight*';
 - (e) that the tightness of the headroom was an issue in relation to disclosure, as to which applicable standards required disclosure of the discount rate and other key assumptions and of the impact of an adjustment of a key assumption;

- (f) that he (Howarth) would '*pick up with Adrian [Fitzpatrick] initially and then [Fitzpatrick] should liaise with [Grech]*'.

Particulars

Email from Howarth to Grech copied to Fitzpatrick and others dated 24 September 2015 (PIP.004.001.0005).

56W. On or about 24 September 2015, Howarth sent an email to Fitzpatrick and advised that:

- (a) EY UK's valuation team saw the appropriate discount rate as being 10.5-13%;
- (b) SGH's proposed discount rate was at the lower end of the range and that the upper end did result in an impairment on the pre-sensitised cash flows; and
- (c) EY UK were following up as to what the above meant from an audit perspective and what form of disclosure of the issue SGH should provide in the annual report.

Particulars

Email from Howarth to Fitzpatrick dated 24 September 2015 (PIP.002.001.0287 at 0005).

56X. On 25 September 2015, Fitzpatrick made handwritten comments on:

- (a) a printed copy of Howarth's 24 September email referred to in paragraph 56V above, which noted that, as of 25 September 2015, EY UK had not provided Pitchers anything with respect to the required disclosures but that '*having said that PP are well aware of the disclosure requirements and have been proactive with client in this regard*'; and
- (b) a printed copy of the email from Howarth referred to in paragraph 56W above, which noted that Pitchers had considered the discount rate and formed the view that the lower end of the range was supportable only if '*managements (sic) cash flow forecasts were reliable and based on reasonable assumptions*' but if management's forecasts were '*unreliable/not supportable*' the upper end of the range, which resulted in an impairment, should have been used.

Particulars

- i) *PIP.002.001.0287 at _0004*

ii) *PIP.002.001.0287 at _0005*

56Y. On 28 September 2015 at 5pm, a telephone discussion was conducted between EY UK (which included Howarth) and Pitchers (which included Fitzpatrick) whereby, inter alia, according to Harrison:

- (a) EY UK confirmed that in respect of Quindell Legal Services Limited (**QLS**), which is part of PSD, they agreed that goodwill was not impaired, but it was close under their scale of acceptable discount rates;
- (b) EY UK stated that they believe it was a key element to cover reasonable assumptions in the disclosures in the FY15 Financial Report; and
- (c) Pitchers stated they were working closely with management to ensure they provide sufficient disclosures in the intangibles note.

Particulars

File note of Harrison with subject 'Slater and Gordon' (PIP.002.001.0454)

56Z. Later on ~~28~~29 September 2015, EY UK provided to Pitchers:

- (a) a final version of the "Slater & Gordon (UK) 1 Ltd – 30 June 2015 audits results update" (**Final EY Report**); and
- (b) EY UK's "Independent Auditor's Report on Special Purpose Financial Information Prepared for Consolidation Purposes" (**FY15 EY UK Audit Letter**).

Particulars

- i) *Final EY Report (PIP.002.001.0183). See also email from Howarth to Fitzpatrick, Harrison and Straubinger dated 29 September 2015, 6.29pm (PIP.006.004.0497) and attached Final EY Report (PIP.006.004.0498).*
- ii) *EY UK's "Independent Auditor's Report on Special Purpose Financial Information Prepared for Consolidation Purposes". (PIP.002.001.0438). See email from Email from Tim West to Fitzpatrick, Harrison, Straubinger, and Howarth dated 29 September 2015, 9:18am (PIP.005.003.0272) and attachment (PIP.005.003.0276). See also email from Howarth to Harrison, Fitzpatrick, and Straubinger dated 29 September 2015, 6:56pm (PIP.005.003.0260) and attachment (PIP.005.003.0264).*

56AA. The Final EY Report stated, inter alia:

- (a) “Our audit report refers to items which are either to be followed up by the group auditor or are open at the time of this report... In particular, please note that we have agreed that the group auditor will conclude on both the going concern assessment of the group and the impairment review of Professional Services Division (PSD) – with particular work required over the bridge between the S&G valuation and the external market capitalisation.” (at _0003)
- (b) “The objective of our work is to provide an audit opinion to the group auditor (Pitcher Partners) on the consolidated S&G UK group entity for the year ended 30 June 2015 in accordance with the group accounting policies’ (at 0003)
- (c) “We note that S&G’s accounting policy is to perform a goodwill impairment review at the year end and IAS 36 requires such a review for new goodwill where it has been allocated to CGUs. On this basis, management has performed an impairment review of the PSD business – in accordance with the accounting standards.” (at _0007)
- (d) “Management’s assumptions noted that there is £150.3m of headroom over the carrying value of goodwill of £529.4m. The key assumptions are the discount rate of 10.5% - which is at the lower end of the EY acceptable range – and the underlying cash flows have not significantly altered since the acquisition date. Clearly, there is risk to the achievement of these cash flows and we have flexed the assumptions – which could result in an impairment. IAS 36 requires disclosure of these assumptions and also requires disclosure where a reasonably possible change could erode the headroom. These factors should be considered by the group auditor in terms of disclosures in the annual report.” (at _0007)
- (e) “In relation to the impairment review of the PSD business, the group auditor should perform work in order to review the variance noted by management between the market capitalisation and the value in use of the business. Consideration should also be given to the appropriate disclosures being made in the annual report.” (at _0008)
- (f) “The most significant business area for QLS is RTA cases which comprise 90% of the total cases evaluated” (at _0016)
- (g) ‘key assumptions’ in the audit of QLS, including *inter alia*:

- (i) Success rates (the probability of success for each case type and stage of completion) (at _0018)
- (ii) Average fees per case (at _0020)
- (h) “We have reviewed the Deloitte report on the deferred consideration and concur with management’s view that it is too early to reasonably estimate the value of the NIHL asset or deferred consideration. The group auditor should consider the appropriateness of disclosures made in the annual report in this area.” (at_0041)
- (i) “Management has performed a value in use model through a discounted cash flow analysis with the following assumptions:
 - Cash flows for the full PSD business (including those from noise induced hearing loss) from the approved business plan for 2016-18. A risk factor of 50% has been weighted against the NIHL cash flows – given the difficulties in valuing these.
 - A growth in cash flows of 5% in 2019 and 2020.
 - a terminal growth rate of 2.25%
 - A discount rate of 10.5% - specifically calculated for this business unit as required by the accounting standards” (at _0042)
- (j) “One trigger which has not been considered by management’s paper is the deterioration in the group share price from \$7.85 in April 2015 to \$2.67 in September 2015.” (at _0042)
- (k) “Even before considering the factor above, we consider it appropriate that management has performed an impairment review given its accounting policy and a specific paragraph of IAS 36 which notes “If some or all of the goodwill allocated to a CGU or group of CGUs was acquired in a business combination during the current annual period, that unit must be tested for impairment before the end of the current period”. (at __0042)
- (l) “Based on the work performed above, EY notes the following:
 - The discount rate (10.5%) used by the client is at the lower end of the EY considered acceptable range (10.5% - 13%)

- The underlying cash flows have been prepared for funding from banks and therefore have been under significant scrutiny. Our discussions with management have noted risk around timings and also integration costs and some conservatism in certain other assumptions – for instance removal of the NIHL revenue stream after FY19. The terminal growth rate is considered appropriate.” (at _0042)
- (m) “These assumptions have been flexed – with a worst case scenario of a 13% discount rate calculating an impairment and risk-based scenario of a one-off £10m investment in the business, a discount rate of 11.75% and a lag of cash flows of six months showing a minor impairment” (at _0042)
- (n) “A typical check that the audit team would perform would be to build a bridge from the client’s valuation to the current market capitalisation. Given EY have limited knowledge of the client’s position on the ASX – this which the Group auditor is requested to review and conclude upon. We have noted that certain brokers’ reports do indicate that the target share price is 2-3x higher than the current share price.” (at _0043)
- (o) “EY also notes that IAS 36 requires companies to make disclosure of key assumptions associated with the impairment review and also to disclose where reasonably possible changes could lead to an impairment these should be disclosed. This should be discussed between the group auditor and S&G.” (at _0043)
- (p) “The work performed has provided evidence that the goodwill carrying value associated with PSD at 30 June is supported by the underlying cash flows. The group auditor should consider the bridge between the client’s valuation and the current market capitalisation and the disclosures associated with the impairment review in the annual report.” (at _0043)

Particulars

Final EY Report (PIP.002.001.0183)

D.3. FY15 Statutory Accounts

56. On 29 September 2015, ~~Fitzgerald~~Fitzpatrick (on behalf of Pitchers) signed an independent auditor’s report to the members of SGH in respect of the audited FY15

Financial Report (**Pitchers' Audit Report**), and provided it to SGH with authority to lodge it with the ASX as part of its FY2015 statutory accounts (**FY15 Statutory Accounts**) and the 2015 Report.

Particulars

- i) *FY15 Statutory Accounts lodged with the ASX on 30 September 2015 at pp.116-117 (MHL.001.001.0027 at _0117 to _0118).*
- ii) *2015 Report lodged with the ASX on 19 October 2015 at pp.137-138 (MHL.003.001.0005 at _0139 to _0140).*
- iii) *Email from Fitzpatrick to Brown dated 29 September 2015, 9:50pm (PIP.006.001.0770) enclosing signed Pitchers' Audit Report (PIP.006.001.0771) and signed Independence Declaration (PIP.006.001.0772).*

57. On 30 September 2015, in reliance on the matters pleaded in paragraph 56, SGH published and lodged with the ASX (and published on SGH's website) an announcement entitled "Full Year Statutory Accounts", being the FY15 Statutory Accounts.

58. The FY15 Statutory Accounts included the FY15 Financial Report and Pitchers' Audit Report.

59. In the FY15 Statutory Accounts, SGH stated, inter alia:

- (a) SGH tested goodwill annually for impairment, or more frequently if events or changes in circumstances indicate that it might be impaired (p.55), and did so by estimating the value of change in use of the cash generating units ("CGUs") to which goodwill had been allocated which SGH had determined were (1) Australia – Personal Injury Law, (2) Australia – General Law, (3) UK Personal Injury Law, (4) UK General Law and (5) PSD (now called Slater Gordon Solutions (**SGS**) (p.65); and
- (b) SGH had carried out impairment testing in June 2015, and had determined that there was no impairment to its CGUs (pp.77-79).

60. Further to paragraph 59, the FY15 Financial Report included within the FY15 Statutory Accounts recorded that as at 30 June 2015, SGH (and its controlled entities) had:

- (a) by its acquisition of PSD acquired:
 - (i) \$358,956,000 worth of 'trade and other receivables';

- (ii) \$153,349,000 worth of 'work in progress'; and
 - (ia) \$44,720,000 worth of 'deferred tax assets'; and
 - (iii) \$71,299,000 worth of 'intangible assets',
- from Quindell (the **PSD Assets**);
- (b) intangible assets in the sum of \$1,244,964,000, of which \$1,027,722,000 was attributable to the goodwill recognised on its acquisition of PSD (the **PSD Goodwill Asset**); and
 - (c) generated a profit before income tax expense in the sum of \$83,803,000.

Particulars

- i) The representation referred to in subparagraph (a) above was in writing and made in the FY15 Financial Report at p.98 of FY15 Statutory Accounts (MHL.001.001.0027 at _0099) and at p.119 of the 2015 Report (MHL.003.001.0005 at _0121).*
- ii) The representation referred to in subparagraph (b) above was in writing and made in the FY15 Financial Report at pp.46 and 77 of the FY15 Statutory Accounts (MHL.001.001.0027 at _0047 and _0078) and pp.67 and 98 of the 2015 Report (MHL.003.001.0005 at _0069 and _0100).*
- iii) The representation referred to in subparagraph (c) above was in writing and made in the FY15 Financial Report at p.45 of the FY15 Statutory Accounts (MHL.001.001.0027 at _0046) and p.66 of the 2015 Report (MHL.003.001.0005 at _0068).*

E. SGH'S TRUE FINANCIAL POSITION

E.1A. Risk Indicator – Market Capitalisation Information

- 61A. From no later than 30 June 2015 to 30 September 2015, the value of SGH's net assets significantly exceeded SGH's market capitalisation (**Market Capitalisation Information**).

Particulars

Final EY Report (PIP.002.001.0183 at _0042)

- 61B. The Market Capitalisation Information was a Growth Strategy Risk Indicator.

E.1B. Risk Indicator – Inadequate PSD Financial Reporting Information

61C. From no later than 30 June 2015 to 30 September 2015, SGH was experiencing, and it was likely SGH would continue to experience during FY2016, significant issues in the financial reporting function of PSD, with the result it was difficult to obtain accurate information about PSD's actual financial performance (**Inadequate PSD Financial Reporting Information**)

Particulars

Spreadsheet entitled "Matters for Partner Attention" (PIP.002.001.0633).

61D. The Inadequate PSD Financial Reporting Information was a Growth Strategy Risk Indicator.

E.1. Risk Indicator - Negative Cash Flow Information

61. From no later than 30 June 2015 to 30 September 2015, SGH was experiencing, and it was likely SGH would continue to experience during FY2016, significant negative cash flow (**Negative Cash Flow Information**).

Particulars

- i) *SGH's Appendix 4E stated that SGH had consolidated positive cash flows from operating activities in FY2015 of \$40,762,000 (average monthly cash flow of \$3.4m) (p.5) (MHL.001.001.0026 at _0005);*
- ii) *The condensed consolidated cash flow statement of Quindell for FY2014 contained in its Interim Results for the Six Months Ended 30 June 2014 published on 21 August 2014 (MHL.002.001.0002):*
 - A) *reported its adjusted operating cash flow for the half year ended 30 June 2014 was £51.2 million, on which basis the average monthly cash flow was approximately £4.26 million (negative);*
 - B) *stated that Quindell expected an operating cash inflow of £30-40 million in the second half of FY2014;*
- iii) *Quindell's 2014 Report published on 5 August 2015 (MHL.002.001.0003) recorded that:*
 - A) *in 2015, PSD had operating cash flows of £83.2 million (negative) during CY2014, representing an average monthly cash outflow of £6.9 million (Note 37, pp.106-107) (MHL.002.001.0003 at _0105 to _0106); and*
 - B) *in 2015, PSD continued to trade and incurred operating losses which needed to be funded by other Quindell group companies*

*(Quindell 2014 Report (p. 12))(MHL.002.001.0003 at _0012).
Intragroup funding would not have been necessary if PSD had
been cash flow positive in 2015;*

- iv) *On the basis of (ii) to (iii), as at the time SGH took ownership of PSD, PSD had been significantly cash flow negative for a considerable period of time in amounts which significantly exceeded the average monthly cash inflows of SGH prior to the acquisition of PSD, and it was unlikely in such circumstances that that longstanding trend of negative cash flow would be reversed in the short-term;*
- v) *A document entitled "Attachment B Summary of June-August Flash Results-1.doc" dated 24 September 2015 (PIP.002.001.0297) recorded that operating cash flow for Legal Services subsequent to the acquisition of PSD in the months of June and July 2015 was negative £2.2 million and £6.6 million respectively, and cash flow for August was expected to be 'adverse to expectations'.*

62. The Negative Cash Flow Information was a Growth Strategy Risk Indicator.

E.2. Risk indicator – Achievability of forecast assumptions

63. From no later than 30 June 2015 to 30 September 2015, by reason of:

- (a) the Negative Cash Flow Information,
- (b) the matters referred to in the warnings provided to Pitchers by EY UK referred to in paragraphs 56C(c), 56F(c), 56G(d), 56R, 56V, 56W, 56Y, and/or 56AA;
- (c) the matters referred to in the warnings provided to Pitchers by the Deloitte Touche Tohmatsu report entitled 'Valuation critique on Deferred Consideration' and dated 18 September 2015 as pleaded in paragraph 56S above; and/or
- (d) the matters referred to in paragraphs 56B(c), 56S(c), 56U(e) and/or 56X(b),

it was likely, or there was a significant risk, that the forecast assumptions relied upon by SGH for its acquisition of PSD and the recognition of a significant goodwill upon the acquisition of PSD, were not achievable (the **Unachievable Forecast Information**).

Particulars

As to the matters in subparagraph (a):

- i) *the "key item that gave rise to the goodwill [on acquisition of PSD]" was "the capacity of [PSD] to underpin the strategic growth of the personal injuries practice within the UK market" (FY15 Financial*

Report, p 98 of the FY15 Statutory Accounts) (MHL.001.001.0027 at _0099);

ii) *The forecast assumptions relied upon by SGH for its acquisition of PSD and recognition of the PSD Goodwill Asset on acquisition, in the 3 Year Financial Model included the matters pleaded in paragraph 46(b)(i) to (vi) above, and:*

- A) *a growth in road traffic accident cases from 8,330 per month in Q1FY16F to 9,080 per month in Q4FY16F, and eventually to 12,000 per month;*
- B) *100% road traffic accident cases lodged pursuant to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (RTA PI Protocol) being settled within 9 months, an increase from the 50% rate experienced historically;*
- C) *a growth in the number of road traffic accident cases being settled from 34,000 in YTDNov14A, to 80,678 in FY16F;*
- D) *an increase in average value for road traffic accident cases lodged pursuant to the RTA PI Protocol from the historical average of £827 to £1,052,*

(Document entitled 'Project Malta: Transaction Insights' report dated 29 March 2015) (PIP.006.001.3074).

iii) *it was unlikely, given the negative cash flow referred to in particulars (ii) to (iii) to paragraph 61, that at the time of acquisition the forecast assumptions were achievable.*

As to the matters in subparagraph (b), the warnings from EY UK, by their very nature, revealed to Pitchers that there was a risk that the forecast assumptions relied upon by SGH for its acquisition of PSD and the recognition of a significant goodwill upon the acquisition of PSD, were not achievable.

As to the matters in subparagraph (c), the content of the Deloitte Touche Tohmatsu report entitled 'Valuation critique on Deferred Consideration' and dated 18 September 2015 as pleaded in paragraph 56S above revealed that the settlement rate and revenue assumptions for NIHL cases underpinning the PSD Goodwill Asset, as pleaded in paragraph 46(b)(v) above, were unlikely to be achieved.

As to the matters in subparagraph (d), the views of Pitchers, by their very nature, revealed to Pitchers that there was a risk that the forecast assumptions relied upon by SGH for its acquisition of PSD and the recognition of a significant goodwill upon the acquisition of PSD, were not achievable.

64. The Unachievable Forecast Information was a Growth Strategy Risk Indicator.

E.3. Risk indicator – Unachieved forecast assumptions

65. From no later than 30 June 2015 to 30 September 2015, the forecast assumptions for April 2015 to September 2015 relied upon by SGH for its acquisition of PSD and the recognition of a significant amount of goodwill upon the acquisition of PSD were not being achieved (the **Unachieved Forecast Information**).

Particulars

- i) particulars i) and ii) to paragraph 63 are repeated.*
- ii) given the negative cash flow referred to in particulars (ii) to (iv) to paragraph 61, it can be inferred that during the period post the acquisition of PSD to 30 September 2015, SGH's actual performance did not correspond to the performance that had been assumed in the forecasts prepared for the acquisition of PSD.*
- iii) further or alternatively, the value of the PSD Goodwill Asset was dependent on the settlement rate and revenue assumptions for NIHL cases, as pleaded in paragraph 46(b)(v) above, and these assumptions were not achieved by reason of:*
 - A) the content of the Deloitte Touche Tohmatsu report entitled 'Valuation critique on Deferred Consideration' and dated 18 September 2015 as pleaded in paragraph 56S above; and*
 - B) the matters referred to in the warning from EY UK contained in the EY Final Report as pleaded in paragraph 56AA(h) above.*

66. The Unachieved Forecast Information was a Growth Strategy Risk Indicator.

E.4. Risk indicator – Dilution Rates

67. A key component of the forecasts within the 3 Year Financial Model that concerned PSD was the expected failure rates of the underlying cases in the PSD business (**Forecast Dilution Rates**).

68. At the time the Forecast Dilution Rates were calculated, they were premised, in part, upon failure rates that were stated to have been experienced by PSD historically (the **Stated Dilution Rates**).

Particulars

- i) The Stated Dilution Rates were as follows:*
 - A) for RTA Claims processed through the Ministry of Justice portal (**Portal**)– 9%;*
 - B) for RTA claims that exited the Portal and were litigated in the fast track – 9%;*

- C) for RTA Claims and Employers' Liability or Public Liability claims that were litigated in the Multi-Track – 16%;
- D) for Employers' Liability or Public Liability claims that were not litigated in the Multi-Track – 22.5%; and
- E) as an average of the abovementioned case categories, and weighted by the expected case intake for each category – 11.2%.

Slater & Gordon (UK) 1 Limited Claim Form against Watchstone Group PLC dated 13 June 2017 in High Court of Justice, Queen's Bench Division, Commercial Court proceeding no. CL-2017-000348 (SGH UK Watchstone Claim) at [31(3)] (MHL.005.001.0002 at _0011).

- ii) *"The Stated Dilution Rates (as adjusted by S&G) were a key input used by S&G to assess whether to agree to the Acquisition [of PSD], and if so what price": SGH UK Watchstone Claim at [98] (MHL.005.001.0002 at _0033).*

69. By reason of the matters in paragraphs 67 and 68 above, the Stated Dilution Rates were a key input for the PSD forecasts within the 3 Year Financial Model and therefore, a key input for the justification of:

- (a) the acquisition of PSD for the PSD Acquisition Price; and
- (b) the recognition of a significant goodwill asset upon the acquisition of PSD.

70. From no later than 30 June 2015 to 30 September 2015 information existed to indicate that the Stated Dilution Rates were inaccurate and/or could no longer be relied upon to support the Forecast Dilution Rates (the **Dilution Rate Information**).

Particulars

- i) *The "Board Packs" for Quindell Legal Services Limited (QLS), part of PSD, for April and May 2015 recorded historical dilution rates for January 2013 to December 2014 that were materially higher than the Stated Dilution Rates: SGH UK Watchstone Claim at [84] (MHL.005.001.0002 at _0027) and Schedule 7 (MHL.005.001.0002 at _0054).*
- ii) *The "Board Pack" for April 2015 was provided to Mr Fowlie of SGH on 19 May 2015: Watchstone Group PLC Defence dated 12 October 2017 in High Court of Justice, Queen's Bench Division, Commercial Court proceeding no. CL-2017-000348 (Watchstone Defence) at Schedule 7, [2] (MHL.005.001.0003 at _0129).*
- iii) *The "Board Pack" for May 2015 was provided to Mr Fowlie of SGH on 16 June 2015: Watchstone Defence at Schedule 7, [3(1)] (MHL.005.001.0003 at _0131)*
- iv) *"Project Midas" reports reported historical dilution rates that were materially higher than the Stated Dilution Rates: SGH UK Watchstone*

Claim at [73] (MHL.005.001.0002 at_0024) and Schedule 3 (MHL.005.001.0002 at_0046).

- v) *A summary of "Project Midas" was sent to SGH on 12 May 2015: Watchstone Defence at [92] (MHL.005.001.0003 at_0034).*
- vi) *In the period from November 2014 onwards, QLS was experiencing backlogs in processing cases: SGH UK Watchstone Claim at [78] (MHL.005.001.0002 at_0025), and Watchstone Defence at [98] (MHL.005.001.0003 at_0036).*

71. The Dilution Rate Information was a Growth Strategy Risk Indicator.

E.5. Growth Strategy Risks

72. The Reform Impacts, Reform Impact Risks, and UK Income Projection Unreliability Risk, were Growth Strategy Risks.

E.6. Effect of the Growth Strategy Risk Indicators and Growth Strategy Risks (Material Impairment)

73. By reason of each of the Growth Strategy Risk Indicators and Growth Strategy Risks pleaded in paragraphs 41 to 42, and 61A to 72 above, whether separately or any combination thereof, the Appendix 4E PSD Goodwill Asset and/or the PSD Goodwill Asset ought to have been subject to impairment testing and a material impairment as at 30 June 2015.

Particulars

- i) *The Appendix 4E PSD Goodwill Asset and/or the PSD Goodwill Asset was subject to a material risk of material impairment by reason of the existence of the Growth Strategy Risk Indicators (or any of them) and/or the Growth Strategy Risks (or any of them).*
- ii) *Pursuant to AASB136, impairment testing was required at the balance date (which, for SGH, was 30 June 2015).*
- iii) *The required impairment was approximate to at least \$673.85 million, and more appropriately \$1,027,722,000 (alternatively, \$548,506,530). And the Applicant relies upon the particulars to paragraph 74 below.*
- iv) *Further, the Applicant also relies upon the Expert Report of Wayne Basford dated 22 September 2020 (**Basford Report**), sections 2.6, 2.7, 2.8, 2.9 and 3.4, in particular [2.9.12] to [2.9.18] and [3.4.25] to [3.4.85], and [3.4.126].*

74A. The Appendix 4E did not:

- (a) impair the value of the Appendix 4E PSD Goodwill Asset as required by AASB136; and/or

- (b) recognise the expense arising from the impairment of the Appendix 4E PSD Goodwill Asset (referred to in subparagraph (b) above) as required by AASB101.

Particulars

- i) *The required impairment referred to in sub-paragraph (a) above was approximate to at least \$673.85 million, and more appropriately \$1,027,722,000 (alternatively, \$548,506,530). And the Applicant relies upon the particulars to paragraph 74 below.*

Further, the Applicant also relies upon the Basford Report, sections 2.8, 2.9 and 3.4.

- ii) *The required recognition of the expense referred to in sub-paragraph (b) above arose as a consequence of the matters referred to in sub-paragraph (a) above, and ought to have been in the approximate sum of at least \$673.85 million, and more appropriately \$1,027,722,000 (alternatively, \$548,506,530). And the Applicant relies upon the particulars to paragraph 74 below.*

74B. By reason of the matters referred to in paragraphs 73 and 74A above, the Appendix 4E materially overstated:

- (a) the value of SGH's (and its controlled entities') intangible assets (\$1,229,398,000), and the value of the Appendix 4E PSD Goodwill Asset (\$1,082,519,000);
- (b) the profit before income tax expense generated by SGH (and its controlled entities).

Particulars

- i) *The material overstatement referred to in sub-paragraph (a) was approximate to at least \$673.85 million, and more appropriately \$1,027,722,000 (alternatively, \$548,506,530). The Applicant repeats the particulars at sub-paragraph (i) to paragraph 74A above.*

- ii) *The material overstatement referred to in sub-paragraph (b) was approximate to at least \$673.85 million, and more appropriately \$1,027,722,000 (alternatively, \$548,506,530). The Applicant repeats the particulars at sub-paragraph (ii) to paragraph 74A above.*

74C. By reason of the matters pleaded in paragraphs 73, and 74A to 74B as at 28 August 2015, there was not a reasonable basis for SGH not to raise any impairment charge against the carrying value of goodwill associated with the acquisition of PSD.

74D Further and alternatively to paragraphs 73 to 74C above, the Appendix 4E was required to, and did not disclose:

- (a) that the impairment review of the Appendix 4E PSD Goodwill Asset had not been conducted;
- (b) that the impairment review of the Appendix 4E PSD Goodwill Asset was a 'critical issue' and/or had a 'high magnitude of risk'; and
- (c) there existed indicators of impairment to the Appendix 4E PSD Goodwill Asset which might be material.

Particulars

- i) As to the matters in subparagraph (b), the Applicant refers to the matters pleaded in paragraph 56B;*
- ii) As to the matters in subparagraph (c), the Applicant refers to the matters pleaded in paragraphs 56B(c), 56C(c), 56F(c), and 56G(d).*

74E. Further and alternatively to paragraphs 73 to 74D above, the Appendix 4E was required to, and did not, disclose:

- (a) the key assumptions associated with the impairment review of the Appendix 4E PSD Goodwill Asset; and
- (b) the reasonably possible changes to the assumptions that could lead to an impairment of the Appendix 4E PSD Goodwill Asset.

Particulars

- i) The Appendix 4E was required to disclose, at least, that the value of the Appendix 4E PSD Goodwill Asset was dependent upon the following assumptions:*
 - A) the intake volumes for RTA Claims that were a Fast Track PI Case, and the significant year-on-year growth in those case intake volumes;*
 - B) the case success rates (being the proportion of new cases which are successful and therefore generate fee revenue) for RTA Claims that were a Fast Track PI Case;*
 - C) the case settlement volumes and significant year-on-year growth for RTA Claims that were a Fast Track PI Case;*
 - D) the average fees and significant growth in average fees for RTA Claims that were a Fast Track PI Case;*

- E) *the total fee revenue from and significant year-on-year growth in total fee revenue from RTA Claims that were a Fast Track PI Case;*
- F) *that NIHL case settlement volumes were to exceed 14,000 cases per year for at least two years and contribute pre-discount NIHL fee revenue in excess of £100,000,000 within the FY16 to FY18 forecast period;*
- ii) *The Appendix 4E was required to disclose, at least, that, as at 28 August 2015:*
 - A) *the discount rate used for the SGS CGU was 10.45%.as 28 August 2015 and that discount rate was below the range considered acceptable by EY UK (10.5-13.0%);*
 - B) *a change in the discount rate from 10.45% 13.0%, which was within the range considered acceptable by EY UK, would lead to an impairment of the Appendix 4E PSD Goodwill Asset; and*
 - C) *a reasonably possible risk-based scenario of a one-off investment in the business of £10M, a discount rate of 11.75%, and a lag of cash flows of six month would lead to an impairment of the Appendix 4E PSD Goodwill Asset;*
- iii) *The Appendix 4E was required to disclose, at least, that changes to the assumptions referred to in i) above were reasonably possible by reason of the existence of the Growth Strategy Risks and could lead to an impairment of the Appendix 4E PSD Goodwill Asset*
- iv) *The Applicant relies upon:*
 - A) *Final EY Report (PIP.002.001.0183 at _0043)*
 - B) *the matters pleaded in in paragraphs 41 and 46(b);*
 - C) *draft versions of note 13 to the FY15 Statutory Accounts: PIP.002.001.0410; PIP.002.001.0270 at 0080-81; and PIP.002.001.0468 at 0121-26; and*
 - D) *AASB101, AASB3 and AASB136;*
 - E) *Basford Report, sections 2.8, 2.9 and 3.4, and in particular, [3.4.1], [3.4.3], [3.4.7], [3.4.8], [3.4.34], [3.4.42] to [3.4.85], [3.4.86] to [3.4.125]*

74F. By reason of the matters in paragraphs 73 to 74C above, further and alternatively, the matters in paragraph 74D above, ~~and~~, further and alternatively, the matters in paragraph 74E above, the Appendix 4E:

- (a) was not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and
- (b) did not give a true and fair view of SGH's financial position and financial performance in FY2015.

Particulars

The Appendix 4E was not prepared in compliance with AASB136, AASB3, AASB101, and ss 296 and 297 of the Corporations Act.

74. The FY15 Financial Report did not:
- (a) attribute fair value to the PSD Assets as required by AASB3, and in consequence, did not attribute fair value to the PSD Goodwill Asset as required by AASB3 (which would then require the PSD Goodwill Asset to be impaired by reason of the matters in subparagraph (b) below);
 - (b) impair the value of the PSD Goodwill Asset as required by AASB136; ~~and/or~~
 - (c) recognise the expense arising from the impairment of the PSD Goodwill Asset (referred to in subparagraph (b) above) as required by AASB101.

Particulars

- i) *The fair value that ought to have been attributed to the PSD Assets, before impairment, was approximate to:*
 - A) *\$266,359,000 for 'trade and other receivables' (a reduction of \$92,597,000);*
 - B) *\$121,941,000 for 'work in progress' (a reduction of \$31,408,000); and*
 - C) *\$0 for 'intangible assets' (a reduction of \$71,299,000);*
 - D) *\$6,236,000 for 'deferred tax assets' (a reduction of \$38,484,000).*

The applicant relies upon SGH's restatement of the PSD Assets in its Financial Report for the year ended 30 June 2016, p 83 (MHL.005.001.0005), and the financial report within its Annual Report for the year ended 30 June 2016, p 92 (MHL.002.001.0010_0094). The Applicant further relies on the Basford Report at section 3.3, in particular [3.3.6], [3.3.7] and [3.3.15], [3.3.16], [3.3.17] and [3.3.21] and [3.3.24].

- ii) *Additional adjustments ought also to have been made in the form of*
 - A) *an increase of \$5,443,000 to the value recorded for the 'current tax assets' asset (from \$29,041,000 to \$34,484,000);*
 - B) *a reduction of \$930,000 to the value recorded for the 'other assets' asset (from \$8,010,000 to \$7,080,000);*
 - C) *a reduction of \$17,084,000 to the value recorded for the 'payables' liability (from \$348,182,000 to \$331,098,000);*

- D) an increase of 2,710,000 to the value recorded for the 'provisions' liability (from \$4,794,000 to \$7,504,000);
- E) a reduction of \$4,053,000 to the value recorded for the 'deferred tax liabilities' liability (from \$13,357,000 to \$9,304,000); and
- F) a reduction of \$2,399,000 to the total consideration for the PSD, by reason of the repayment of cash consideration.

The Applicant relies upon SGH's restatement of the items listed in A) to F) above in SGH's Financial Report for the year ended 30 June 2016 p 83 (MHL.005.001.0005), and the financial report within its Annual Report for the year ended 30 June 2016, p 92 (MHL.002.001.0010_0094). The Applicant further relies upon the Basford Report at section 3.3, in particular [3.3.24].

iii) The Applicant further notes the adjustments made by SGH in the FY15 Financial Report of:

- A) an increase of \$27,998,000 to the amount of the PSD goodwill recognised at acquisition from \$999,724,000 to \$1,027,722,000 as at 30 June 2015; and
- B) a reduction of \$2,643,000 to the value of PSD intangibles from \$71,299,000 to \$68,656,000 as at 30 June 2015.

The Applicant refers to pages 77 (MHL.001.001.0027_0078) and 98 (MHL.001.001.0027_0099) of the FY15 Financial Report and the Basford Report [3.3.24], in particular footnotes 120 and 121.

iv) As a result of the matters particularised in i), ii) and iii) above, the PSD Goodwill Asset ought to have been recorded at a value at least \$202,738,000 higher than that which was recorded by SGH before being impaired. The Applicant relies upon the Basford Report at sections 3.3 and 3.4, in particular [3.3.24], [3.3.26], [3.4.2] and [3.4.5].

v) The required impairment referred to in sub-paragraph (b) above was approximate to:

- A) at a minimum, \$673.85 million from the value of the PSD Goodwill Asset recorded, and more appropriately \$1,027,722,000 from the value of the PSD Goodwill Asset recorded; or
- B) at a minimum, \$876.24 million (\$673.85 million + \$202,738,000) from the value of the PSD Goodwill Asset that ought to have been recorded before impairment, and more appropriately \$1,230,460,000 from the value of the PSD Goodwill Asset that ought to have been recorded before impairment.

Basford Report, at section 3.4, in particular, [3.4.86] to [3.4.99] and [3.4.125].

vi) Alternatively to particular v), the required impairment referred to in sub-paragraph (b) above was approximate to at least \$548,506,530.

On 31 March 2016, Slater & Gordon (UK) 1 Limited published its Directors' Report and Consolidated Financial Statements for the year ended 30 June 2015 (the **SGH UK Financial Statements**)(MHL.005.001.0004). The Notes to the Financial Statements in the SGH UK Financial Statements recorded that the PSD Goodwill Asset was impaired in the sum of £401.6 million as at 31 December 2015, with:

- A) £269.1 million of that impairment being recorded as at 30 June 2015 (p 37) (MHL.005.001.0004 at _0037);
- B) £132.5 million of that impairment relating to the proposed changes to UK law and other changes arising after 30 June 2015 (MHL.005.001.0004 at _0037).

Further, the Consolidated Statement of Comprehensive Income recognised a £269.1 million expense for goodwill impairment at 30 June 2015 (p 11) (MHL.005.001.0004 at _0011), and the Consolidated Statement of Financial Position recorded an accumulated impairment for goodwill in the sum of £269.1 million at 30 June 2015 (pp 11 and 35) (MHL.005.001.0004 at _0011 and _0035).

The figure of £269.1 million is converted into AUD548,506,530 at the spot rate applicable on 30 June 2015.

- vii) The required recognition of the expense referred to in sub-paragraph 74(c) above arose as a consequence of the matters referred to in sub-paragraphs 74(a) and (b) above, and ought to have been in the approximate sum of at least \$673.85 million, and more appropriately \$1,027,722,000 (alternatively, \$548,506,530). The Consolidated Statement of Comprehensive Income in the SGH UK Financial Statements recorded a 'goodwill impairment' expense for the impairment.

75. By reason of the matters referred to in paragraphs 73 to 74 above, the FY15 Financial Report materially overstated:

- (a) the value of the PSD Assets;
- (b) the value of SGH's (and its controlled entities') intangible assets (\$1,244,964,000), and the value of the PSD Goodwill Asset (\$1,027,722,000); and
- (c) the profit before income tax expense generated by SGH (and its controlled entities).

Particulars

- i) The material overstatement referred to in sub-paragraph (a) was approximate to \$233,788,000. The Applicant repeats the particulars at sub-paragraph (i) to paragraph 74 above.*
- ii) The material overstatement referred to in sub-paragraph (b) was approximate to at least \$673.85 million, and more appropriately \$1,027,722,000, (alternatively, \$548,506,530). The Applicant repeats the particulars at sub-paragraph (ii) to paragraph 74 above.*
- iii) The material overstatement referred to in sub-paragraph (c) was approximate to at least \$673.85 million, and more appropriately \$1,027,722,000, (alternatively, \$548,506,530). The Applicant repeats the particulars at sub-paragraph (iii) to paragraph 74 above.*

76. By reason of the matters pleaded in paragraphs 73 and/or 74 to 75, as at 30 September 2015, there was not a reasonable basis for SGH not to raise any impairment charge against the carrying value of goodwill associated with the acquisition of PSD.

77A. Further and alternatively, to paragraphs 73 to 76 above, the FY15 Financial Report was required to, and did not, disclose:

- (a) the key assumptions associated with the impairment review of the PSD Goodwill Asset; and
- (b) that reasonably possible changes to the assumptions could lead to an impairment of the PSD Goodwill Asset.

Particulars

- i) The FY15 Financial Report was required to disclose, at least, that the value of the PSD Goodwill Asset was dependent upon the following assumptions:*
 - A) the intake volumes for RTA Claims that were a Fast Track PI Case, and the significant year-on-year growth in those case intake volumes;*
 - B) the case success rates (being the proportion of new cases which are successful and therefore generate fee revenue) for RTA Claims that were a Fast Track PI Case;*
 - C) the case settlement volumes and significant year-on-year growth for RTA Claims that were a Fast Track PI Case;*
 - D) the average fees and significant growth in average fees for RTA Claims that were a Fast Track PI Case;*

- E) *the total fee revenue from and significant year-on-year growth in total fee revenue from RTA Claims that were a Fast Track PI Case;*
 - F) *that NIHL case settlement volumes were to exceed 14,000 cases per year for at least two years and contribute pre-discount NIHL fee revenue in excess of £100,000,000 within the FY16 to FY18 forecast period.*
- ii) *The FY15 Financial Report was required to disclose, at least, that, as at 30 September 2015:*
- A) *the discount rate used for the SGS CGU was 10.45%.as 28 August 2015 and that discount rate was below the range considered acceptable by EY UK (10.5-13.0%);*
 - B) *a change in the discount rate from 10.45% 13.0%, which was within the range considered acceptable by EY UK, would lead to an impairment of the PSD Goodwill Asset; and*
 - C) *a reasonably possible risk-based scenario of a one-off investment in the business of £10M, a discount rate of 11.75%, and a lag of cash flows of six month would lead to an impairment of the PSD Goodwill Asset;*
- iii) *The FY15 Financial Report was required to disclose, at least, that changes to the assumptions referred to in i) above were reasonably possible by reason of the existence of the Growth Strategy Risks and could lead to an impairment of the PSD Goodwill Asset*
- iv) *The Applicant relies upon:*
- A) *Final EY Report (PIP.002.001.0183 at _0043)*
 - B) *the matters in paragraphs 41 and 46(b);*
 - C) *draft versions of note 13 to the FY15 Statutory Accounts: PIP.002.001.0410; PIP.002.001.0270 at 0080-81; and PIP.002.001.0468 at 0121-26.*
 - D) *AASB101, AASB3, and AASB136.*
 - E) *Basford Report, sections 2.8, 2.9 and 3.4, and in particular, [3.4.1], [3.4.3], [3.4.7], [3.4.8], [3.4.34], [3.4.42] to [3.4.85], [3.4.86] to [3.4.125].*

77. By reason of the matters in paragraphs 73 to 76 above, further and alternatively, the matters in paragraph 77A above, the FY15 Financial Report:

- (a) was not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and
- (b) did not give a true and fair view of SGH's financial position and financial performance in FY2015.

Particulars

The FY15 Financial Report was not prepared in compliance with AASB136, AASB3, AASB101, and ss 296 and 297 of the Corporations Act.

E.7. Required Impairment Testing and Material Impairment

78AA Further to paragraph 73, pursuant to AASB136, impairment testing was required at 30 June 2015 and the Appendix 4E PSD Goodwill Asset and/or the PSD Goodwill Asset ought to have been subject to impairment testing and a material impairment as at 30 June 2015.

Particulars

i) Basford Report, section 2.9 and paragraphs [3.4.32] to [3.3.34], and [4.7.40] to [4.7.47].

78AB. The Appendix 4E did not:

- (a) impair the value of the Appendix 4E PSD Goodwill Asset as required by AASB136; and/or
- (b) recognise the expense arising from the impairment of the Appendix 4E PSD Goodwill Asset (referred to in subparagraph (b) above) as required by AASB101.

Particulars

The particulars to paragraph 74A are repeated

78AC By reason the matters referred to in paragraph 78AA and 78AB above, the Appendix 4E materially overstated:

- (a) the value of SGH's (and its controlled entities') intangible assets (\$1,229,398,000), and the value of the Appendix 4E PSD Goodwill Asset (\$1,082,519,000);
- (b) the profit before income tax expense generated by SGH (and its controlled entities).

Particulars

The particulars to paragraph 74B are repeated

78AD By reason of the matters pleaded in paragraphs 78AA, and 78AB to 78AC as at 28 August 2015, there was not a reasonable basis for SGH not to raise any impairment charge against the carrying value of goodwill associated with the acquisition of PSD.

78AE Further to paragraph 74D, and further and alternatively to paragraphs 78AA and/or 78AB to 78AD, the Appendix 4E was required to, and did not disclose:

- (a) that the impairment review of the Appendix 4E PSD Goodwill Asset had not been conducted;
- (b) that the impairment review of the Appendix 4E PSD Goodwill Asset was a 'critical issue' and/or had a 'high magnitude of risk'; and
- (c) there existed indicators of impairment to the Appendix 4E PSD Goodwill Asset which might be material.

Particulars

The particulars to paragraph 74D are repeated

78AF Further to paragraph 74E, and further and alternatively to paragraphs 78AA and/or 78AB to 78AE above, the Appendix 4E was required to, and did not, disclose:

- (a) the key assumptions associated with the impairment review of the Appendix 4E PSD Goodwill Asset; and
- (b) the reasonably possible changes to the assumptions that could lead to an impairment of the Appendix 4E PSD Goodwill Asset.

Particulars

The particulars to paragraph 74E are repeated

78AG. Further or alternatively to paragraph 74F, by reason of the matters in paragraphs 78AA and/or 78AB to 78AD above, further and alternatively, the matters in paragraph 78E above, and, further and alternatively, the matters in paragraph 78F above, the Appendix 4E:

- (a) was not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and
- (b) did not give a true and fair view of SGH's financial position and financial performance in FY2015.

Particulars

The Appendix 4E was not prepared in compliance with AASB136, AASB3, AASB101, and ss 296 and 297 of the Corporations Act.

78AH The FY15 Financial Report did not:

- (a) attribute fair value to the PSD Assets as required by AASB3, and in consequence, did not attribute fair value to the PSD Goodwill Asset as required by AASB3 (which would then require the PSD Goodwill Asset to be impaired by reason of the matters in subparagraph (b) below);
- (b) impair the value of the PSD Goodwill Asset as required by AASB136; and/or
- (c) recognise the expense arising from the impairment of the PSD Goodwill Asset (referred to in subparagraph (b) above) as required by AASB101.

Particulars

The particulars to paragraph 74 are repeated

78AI. Further and alternatively to paragraph 75 above, by reason of the matters referred to in paragraphs 73 and/or 78AA to 78AH above the FY15 Financial Report materially overstated:

- (a) the value of the PSD Assets;
- (b) the value of SGH's (and its controlled entities') intangible assets (\$1,244,964,000), and the value of the PSD Goodwill Asset (\$1,027,722,000); and
- (c) the profit before income tax expense generated by SGH (and its controlled entities).

Particulars

i) The particulars to paragraph 75 are repeated

78AJ. By reason of the matters pleaded in paragraphs 73, and/or 78AA and/or 78AH to 78AI, as at 30 September 2015, there was not a reasonable basis for SGH not to raise any impairment charge against the carrying value of goodwill associated with the acquisition of PSD.

78AK. Further to paragraph 77A, and further or alternatively to paragraphs 78AA, and 78AH to 78AJ, the FY15 Financial Report was required to, and did not, disclose:

- (a) the key assumptions associated with the impairment review of the PSD Goodwill Asset;
- (b) that reasonably possible changes to the assumptions could lead to an impairment of the PSD Goodwill Asset.

Particulars

The particulars to paragraph 77A are repeated

78AL. Further or alternatively to paragraph 77, by reason of the matters in paragraphs 73 and/or 78AA, and 7A8H to 78AJ above, further and alternatively, the matters in paragraph 78AK above, the FY15 Financial Report:

- (a) was not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and
- (b) did not give a true and fair view of SGH's financial position and financial performance in FY2015.

Particulars

The FY15 Financial Report was not prepared in compliance with AASB136, AASB3, AASB101, and ss 296 and 297 of the Corporations Act.

E.8. Going Concern Uncertainty

78AM Further and alternatively, pursuant to AASB101, as at 30 June 2015, alternatively 28 August 2015, alternatively 30 September 2015, there existed a material uncertainty as to SGH's ability to continue as a going concern.

Particulars

- i) *On 29 May 2015, in order to finance the acquisition of PSD and the company's continued operations, SGH entered into a syndicated banking facility agreement, which was amended on 19 June 2015 (PIP.002.001.0219). As at 30 June 2015, SGH had drawn down \$711m of the facilities.*
- ii) *Clause 23 of the amended banking facility agreement (PIP.002.001.0219_0121) provided that both a Material Adverse Effect (as defined at PIP.002.001.0219_0039) and a breach of the financial covenants contained in the agreement constituted an "Event of Default". Clause 23.16 of the agreement (PIP.002.001.0219_0124)*

provided that on or at any time after the occurrence of an Event of Default, SGH's lenders could declare that the facilities be immediately due and payable, whereupon they became immediately due and payable.

- iii) *The matters in sub-paragraphs i) and ii) above, and the impact of the matters alleged in paragraphs 61A to 73 and 78A above, resulted in significant uncertainty as to whether SGH could continue as a going concern: Basford Report, paragraph [3.7.11].*
- iv) *The Applicant further relies upon the Basford Report, sections 2.9, 3.7, 3.8 and 4.10.*

78AN. Further and alternatively to paragraphs 73 to 74F and 78AA to 78AG and further to paragraph 78AM above, the Appendix 4E was required to, and did not, disclose that:

- (a) the FY15 Financial Report was in the process of being audited and was likely to be subject to audit qualification, which included that there were likely material consequences in respect of SGH's ability to continue as a going concern;
- (b) alternatively, there was a material uncertainty as to SGH's ability to continue as a going concern.

Particulars

- i) *Basford Report, paragraphs [1.2.9], [1.2.27(c)], [1.2.33(d)], [1.2.34], [2.11.20], [4.12.36], and [4.13.11(a)].*

78AO. Further or alternatively to paragraphs 74F and/or 78AG, and further to paragraph 78AN above, the Appendix 4E:

- (a) was not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and;
- (b) did not give a true and fair view of SGH's financial position and financial performance in FY2015.

Particulars

The Appendix 4E was not prepared in compliance with AASB136, AASB3, AASB101, and ss 296 and 297 of the Corporations Act.

78AP. Further and alternatively to paragraphs 73 to 77 and/or 78AA to 78AL above, and further to paragraph 78AM above, the FY15 Financial Report was required to, and did not, disclose that there was a material uncertainty as to SGH's ability to continue as a going concern.

Particulars

- i) *Basford Report, sections 2.9 and 3.7, and paragraphs [4.4.38]-[4.4.39], [4.4.43]-[4.4.44], [4.4.57]-[4.4.58], [4.4.63]-[4.4.64], [4.4.68]-[4.4.70], [4.4.73]-[4.4.75], [4.4.78]-[4.4.80], [4.4.82]-[4.4.83], [4.4.87]-[4.4.95], [4.4.102], [4.4.110], [4.4.115], [4.4.121], and [4.13.10]-[4.13.11],*

78AQ. Further or alternatively to paragraphs 77 and/or 78AL, by reason of the matters in paragraphs 73 to 76, further or alternatively 78AA to 78AK, further or alternatively the matters in paragraph 78AP above, the FY15 Financial Report

- (a) was not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and
- (b) did not give a true and fair view of SGH's financial position and financial performance in FY2015.

Particulars

The FY15 Financial Report was not prepared in compliance with AASB136, AASB3, AASB101, and ss 296 and 297 of the Corporations Act.

F. PITCHERS' CONTRAVENING CONDUCT

F.1. Pitcher Partners' Appendix 4E Misleading Conduct Contraventions

78A. On or about 28 August 2015, by reason of the matters in paragraphs 56J to 56O, Fitzpatrick and Pitchers (through Fitzpatrick and/or Harrison):

- (a) represented to the directors of SGH, or alternatively, to the members of SGH's Audit, Compliance and Risk Management Committee, that, or to the effect that in Pitchers' opinion:
 - (i) the financial information contained in the financial statements upon which the draft Appendix 4E was based, was prepared in compliance with the Australian Accounting Standards and gave a true and fair view of the financial position and performance of SGH (and of the consolidated group comprising SGH and its controlled entities); and
 - (ii) it was not likely that the further audit work Pitchers was performing (including the assessment of PSD for indications of impairment) would

lead Pitchers acting reasonably to make any material change to those financial statements,

(the **Pitchers Appendix 4E Opinion**).

- (b) that the Pitchers Appendix 4E Opinion was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**Pitchers Appendix 4E Representation**).

Particulars

- i) *The Pitchers Appendix 4E Opinion was implied by the following:*
- A) *the statement at Item 29 of the Appendix 4E that “[t]he financial report is in the process of being audited and is not likely to be subject to audit dispute or qualification” (MHL.001.001.0026 at _0022);*
 - B) *The Pitcher Partners Retainer and the Statutory Auditing Obligations; and*
 - C) *The Audit, Compliance and Risk Management Committee Charter.*
 - D) *The matters in paragraphs 56J to 56O.*
 - E) *The fact that the statement referred to in paragraph 56Q(b) was not corrected by Pitchers.*
- ii) *Insofar as the Pitchers Appendix 4E Opinion was in relation to future matters, s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- iii) *The Pitchers Appendix 4E Representation was implied from the conduct of Pitchers (through Fitzpatrick and/or Harrison) in giving the Pitchers Appendix 4E Opinion, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

78B. At the time Fitzpatrick and Pitchers (through Fitzpatrick and/or Harrison) expressed the Pitchers Appendix 4E Opinion:

- (a) the financial information contained in the Appendix 4E was not prepared in compliance with Australian Accounting Standards and/or did not give a true and fair view of SGH by reason of the matters pleaded in paragraphs 74F, 78AG and/or 78AN; and/or
- (b) Pitchers was aware of information that made it likely that the further audit work Pitchers was performing (including the assessment of PSD for indications of impairment) would lead Pitchers to be unable to issue an unqualified audit opinion that the financial statements upon which the draft Appendix 4E was

based were prepared in compliance with Australian Accounting Standards and/or gave a true and fair view of SGH until a material change to those financial statements was made.

Particulars

- i) As to the matters in subparagraph (a):
- A) Paragraphs 73 to 74F, (and the particulars thereto) are repeated. The consolidated financial statements of Slater & Gordon (UK) 1 Limited published on 31 March 2016 for the year ended 30 June 2015 (that is, the SGH UK Financial Statements) indicate an impairment of £269.1 million existed as at 30 June 2015 (MHL.005.001.0004 at _0037), and such an impairment could not have been recognised as at 30 June 2015 in the absence of an impairment as at that time.
 - B) There existed impairment indicators relating to the financial period completing on 30 June 2015, including the following matters:
 - a) the Market Capitalisation Information;
 - b) the Inadequate PSD Financial Reporting Information;
 - c) the Negative Cash Flow Information;
 - d) the Unachievable Forecast Information;
 - e) the Unachieved Forecast Information; and
 - f) the Dilution Rate Information,
 - C) The existence of impairment indicators necessitated the performance of impairment testing under AASB136 paragraph 9, which impairment testing ought to have resulted in the recognition of an impairment as at 30 June 2015, as particularised in sub-paragraph (i) above.
 - D) ~~Further or alternatively, SGH was required to test the PSD Goodwill Asset for impairment as at the balance date regardless as to whether there was an indicator of impairment paragraphs 78AA to 78AG and/or 78AM to 78AO (and the particulars thereto) are repeated.~~
 - E) Basford Report, [1.2.2], [1.2.4], [1.2.5], [1.2.7], [1.2.8], [3.1.2], [3.2.2].
- ii) As to the matters in subparagraph (b), as at 28 August 2015:
- A) Pitchers had identified the potential for PSD impairment as a 'High magnitude risk' (as alleged in paragraph 56B(a) above) as the Appendix 4E PSD Goodwill Asset was a very large asset and had come under strong media scrutiny, and as such had a

significant potential to impact the final results (see paragraphs 56B(b) and 56C(b) above),

- B) Pitchers was aware by reason of the matters in paragraphs 46(b)(v) and 56G(d) that the Appendix 4E PSD Goodwill Asset was calculated by reference to project revenue for NIHL cases which could not be reliably estimated or valued;*
- C) Pitchers was aware by reason of the matters in paragraphs 56B(c) and 56F(c), that there had been a significant decrease in SGH's market capitalisation; and*
- D) by reason of the matters particularised in A) and B) and/or C) above, Pitchers acting reasonably would have required the Appendix 4E PSD Goodwill Asset to be impaired before it could provide an unqualified audit opinion that the financial statements were prepared in compliance with Australian Accounting Standards and/or gave a true and fair view of SGH.*
- E) Basford Report, [4.13.6], [4.13.11], [4.13.12].*

78C. At the time Fitzpatrick and Pitchers (through Fitzpatrick and/or Harrison) expressed the Pitchers Appendix 4E Opinion, Pitchers had not performed any substantive audit work on the Appendix 4E PSD Goodwill Asset.

Particulars

- i) A document entitled 'Further Report to the Audit, Compliance & Risk Management Committee' and dated 21 September 2015 in which Pitchers noted that the 'PSD assessment for indications of impairment and review' was 'in progress' noting that the 'relevant information [was] received from management on 19/20 September'. (PIP.002.001.0245 at _0005)*
- ii) The Applicant repeats the matters referred to in paragraphs 56E(b), 56G(a) to (c), 56H, 56M(b)(ii), and 56N(b)*
- iii) Basford Report, [4.7.22] and [4.7.38].*

78D. As at 28 August 2015, by reason of the matters pleaded in paragraphs 74F, 78B and/or 78C, the Pitchers Appendix 4E Opinion was not the product of an exercise of reasonable skill and care:

Particulars

- i) The particulars to paragraph 78B and 78C are repeated.*
- ii) Pitchers failed to ascertain that the intangible assets (including the PSD Goodwill Asset), the PSD Assets, and the profit before tax expense of SGH as at 30 June 2015 were materially misstated (refer paragraph 74E) and thereby breached ASA200, ASA300, ASA315, ASA330, ASA500, and ASA540.*

- iii) *Pitchers failed to obtain sufficient appropriate audit evidence upon which to justify the value of the intangible assets (including the PSD Goodwill Asset), the PSD Assets, and the profit before tax expense of SGH and thereby breached ASA230, ASA300, ASA315, ASA330, ASA500, and ASA540.*
- iv) *Pitchers failed to conduct the audit of the FY15 Financial Report in relation to the valuation of the intangible assets (including the PSD Goodwill Asset) and the PSD assets with a sufficient level of professional scepticism, recognising that circumstances may exist that cause the financial report to be materially misstated and thereby breached ASA200.*
- v) *Basford Report, sections 4.4, 4.7, 4.13 and 4.14, in particular [4.4.14] to [4.4.17], [4.4.96] to [4.4.98], [4.4.116], [4.5.5] to [4.5.18], [4.7.9] to [4.7.16], [4.13.6]-[4.13.9], [4.14.9].*

78E. At no time prior to 28 August 2015, did Fitzpatrick and Pitchers (through Fitzpatrick and/or Harrison) inform SGH (and/or SGH's Audit, Compliance and Risk Management Committee) that:

- (a) Pitchers had identified the potential for PSD impairment as a high magnitude risk (or significant issue), given the size of the PSD goodwill asset and its corresponding potential to impact the final results reported for SGH, as pleaded in paragraph 56B(a)-(b) above;
- (b) there were indicators of impairment to the PSD asset, as pleaded in paragraph 78B(b) above;
- (c) ~~that~~ it was not possible to make an assessment of the likelihood that the audit opinion would be subject to dispute or qualification in circumstances where Pitchers had performed insufficient work on the impairment testing of the Appendix 4E PSD Goodwill Asset to allow any such assessment to be made, as pleaded in paragraph 78C above; and/or
- (d) ~~that~~ the Appendix 4E should not be released to the market containing a positive statement that the financial report is not likely to be subject to audit dispute or qualification.

Particulars

- i) *As to the matters pleaded in subparagraph (a) above, the Applicant relies upon the Basford Report, [4.4.2(c)], [4.4.7(c)].*
- ii) *As to the matters pleaded in subparagraph (b) above, the Applicant relies upon the Basford Report, [4.13.6].*

- iii) *As to the matters pleaded in subparagraph (c) above, the Applicant relies upon the Basford Report, [4.7.22] and [4.7.38].*
- iv) *As to the matters pleaded in subparagraph (d) above, the Applicant relies upon the Basford Report, [4.4.2(c)], [4.4.7(c)], [4.13.6], [4.7.22] and [4.7.38].*

78F. The conduct of Fitzpatrick and Pitchers (through Fitzpatrick and/or Harrison) as pleaded in paragraphs 56J to 56Q, 73 to 74F, 78AA to 78AG, 78AM to 78AO and 78A to 78E in expressing the Pitchers Appendix 4E Opinion was conduct which:

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

78G. As at 28 August 2015, by reason of the matters pleaded in paragraphs 78B, 78C and/or 78D, the Pitchers Appendix 4E Opinion was not based on reasonable grounds.

Particulars

The Particulars to paragraphs 78B, 78C and 78D are repeated.

78H. As at 28 August 2015, by reason of the matters pleaded in paragraphs 56J to 56Q, 73 to 74F, 78AA to 78AG, 78AM to 78AO and 78A to 78E, Fitzpatrick and Pitchers (through Fitzpatrick and/or Harrison) engaged in conduct which was misleading or deceptive or likely to mislead or deceive, in contravention of:

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

(each such contravention of such provisions being a **Pitchers Appendix 4E Misleading Conduct Contravention**).

78I. Further or alternatively, as at 28 August 2015, the conduct of Fitzpatrick and Pitchers (through Fitzpatrick and/or Harrison) as pleaded in paragraphs 56J to 56Q, 73 to 74F, 78AA to 78AG, 78AM to 78AO and 78A to 78E:

- (a) was conduct which was misleading or deceptive or likely to mislead or deceive;
- (b) was conduct engaged in on behalf of, and as agent of, every other partner of Pitchers and the firm Pitchers, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of Pitchers and the firm Pitchers as pleaded in paragraph 52(a);
- (c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of Pitchers, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Fitzpatrick, being a partner of Pitchers who was party to the act of expressing the Pitchers Appendix 4E Opinion (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 4(d); and
- (d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of Pitchers,

(each such contravention of such provisions being a **Pitchers Appendix 4E Misleading Conduct Contravention**).

78J. As at 28 August 2015, by reason of the matters pleaded in paragraphs 78D and/or 78G, the conduct of Fitzpatrick in making the Pitchers Appendix 4E Representation (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a Pitchers Appendix 4E Misleading Conduct Contravention.

78K. Further, or alternatively, as at 28 August 2015 the conduct of Fitzpatrick in making the Pitchers Appendix 4E Representation (and in failing to correct or qualify that representation):

- (a) was conduct which was, by reason of the matters pleaded in paragraph 78D and/or 78G, misleading or deceptive or likely to mislead or deceive;
- (b) was conduct engaged in on behalf of, and as agent of, every other partner of

Pitchers and the firm Pitchers, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of Pitchers and the firm Pitchers as pleaded in paragraph 52(a);

(c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of Pitchers, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Fitzpatrick, being a partner of Pitchers who was party to the act of making the Pitchers Representation to ASX (and the omission of failing to correct or qualify that representation), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 4(d); and

(d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of Pitchers,

(each such contravention of such provisions being a **Pitchers Appendix 4E Misleading Conduct Contravention**).

F.2. Pitcher Partners' 30 September Misleading Conduct Contraventions

78. Further or alternatively, on or about 30 September 2015, by reason of the matters pleaded in paragraphs 56 to 58, Fitzpatrick and Pitchers (through Fitzpatrick):

(a) stated to the members of SGH, and to the Affected Market, that in their opinion, the FY15 Financial Report:

(i) gave a true and fair view of the financial position and performance of SGH (and of the consolidated group comprising SGH and its controlled entities) in FY2015; and

(ii) complied with Australian Accounting Standards,

(Pitchers Opinion to ASX);

(b) represented to the members of SGH, and to the Affected Market, that the Pitchers Opinion to ASX was based upon reasonable grounds and was the product of an exercise of reasonable skill and care (**Pitchers Representation to ASX**).

Particulars

- i) *The Pitches Opinion to ASX was express, and was contained in writing in the Pitches' Audit Report.*
- ii) *The Pitches Representations to ASX was implied from the conduct of Pitches (through Fitzpatrick) in giving the Pitches Opinion to ASX, coupled with the absence of any or any adequate reservation or qualification to that opinion.*

79. At the time Fitzpatrick and Pitches (through Fitzpatrick) expressed the Pitches Opinion to ASX and made the Pitches Representation to ASX, the financial information contained in the 2015 Report was not prepared in compliance with Australian Accounting Standards and/or did not give a true and fair view of SGH by reason of the matters pleaded in paragraph 74 above.

Particulars

- i) *Paragraphs 73, ~~and-74~~ to 77, 78AH to 78AL, and/or 78AP to 78AQ above (and the particulars thereto) are repeated. The consolidated financial statements of Slater & Gordon (UK) 1 Limited published on 31 March 2016 for the year ended 30 June 2015 (that is, the SGH UK Financial Statements) indicate an impairment of £269.1 million existed as at 30 June 2015 (MHL.005.001.0004 at _0037), and such an impairment could not have been recognised as at 30 June 2015 in the absence of an impairment as at that time.*
- ii) *There existed impairment indicators relating to the financial period completing on 30 June 2015, including the following matters:*
 - AA) *the Market Capitalisation Information;*
 - AB) *the Inadequate PSD Financial Reporting Information;*
 - A) *the Negative Cash Flow Information;*
 - B) *the Unachievable Forecast Information;*
 - C) *the Unachieved Forecast Information; and*
 - D) *the Dilution Rate Information.*
- iii) *The existence of impairment indicators necessitated the performance of impairment testing under AASB136 paragraph 9, alternatively, AASB136 paragraph 96 required impairment testing at balance date, which impairment testing ought to have resulted in the recognition of an impairment as at 30 June 2015, as particularised in sub-paragraph (i) above.*

80. As at 29 September 2015, the Pitches Opinion to ASX was not the product of an exercise of reasonable skill and care by reason of the matters pleaded in paragraph 74 above.

Particulars

- i) *The particulars to paragraph 79 are repeated.*
- ii) *Pitchers failed to ascertain that the intangible assets (including the PSD Goodwill Asset), the PSD Assets, and the profit before tax expense of SGH as at 30 June 2015 were materially misstated (refer paragraph 74) and thereby breached ASA200, ASA300, ASA315, ASA330, ASA500, and ASA540.*
- iii) *Pitchers failed to obtain sufficient appropriate audit evidence upon which to justify the value of the intangible assets (including the PSD Goodwill Asset), the PSD Assets, and the profit before tax expense of SGH and thereby breached ASA230, ASA300, ASA315, ASA330, ASA500, and ASA540.*
- iv) *Pitchers failed to conduct the audit of the FY15 Financial Report in relation to the valuation of the intangible assets (including the PSD Goodwill Asset) and the PSD Assets with a sufficient level of professional scepticism, recognising that circumstances may exist that cause the financial report to be materially misstated and thereby breached ASA200.*
- v) *The Applicant relies upon the Basford Report at:*
 - (A) *[4.1.7] to [4.1.16], [4.3.7], [4.3.17] and [4.3.20] to [4.3.21] in relation to client acceptance and continuance phase failures;*
 - (B) *[4.1.17] to [4.1.66], [4.4.14], [4.4.16], [4.4.18]-[4.4.96], [4.4.99] to [4.4.116], and [4.4.122] in relation to planning phase failures;*
 - (C) *[4.1.67] to [4.1.115], [4.7.3] to [4.7.184], [4.10.1], [4.10.15], [4.10.24], [4.10.25], [4.10.30] to [4.10.35], [4.11.3], [4.11.5] in relation to execution phase failures.*
 - (D) *[4.1.116] to [4.1.133], [4.12.1] to [4.12.40] in relation to concluding phase failures.*

81. The conduct of Fitzpatrick and Pitchers (through Fitzpatrick) in expressing the Pitchers Opinion to ASX and making the Pitchers Representation to ASX was conduct which was:

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

82. As at 29 September 2015, by reason of the matters pleaded in paragraphs 79 and/or 80, the Pitchers Opinion to ASX was not based upon reasonable grounds.
83. As at 29 September 2015, by reason of the matters pleaded in paragraphs 79 to 82, the conduct of Fitzpatrick in expressing the Pitchers Opinion to ASX (and in failing to correct or qualify that opinion) was misleading or deceptive or likely to mislead or deceive, in contravention of:
- (a) s 1041H of the Corporations Act;
 - (b) s 12DA(1) of the ASIC Act; and/or
 - (c) s 18 of the Australian Consumer Law,
- (each such contravention of such provisions being a **Pitchers 30 September Misleading Conduct Contravention**).
84. Further, or alternatively, as at 29 September 2015 the conduct of Fitzpatrick in expressing the Pitchers Opinion to ASX (and in failing to correct or qualify that opinion):
- (a) was conduct which was, by reason of the matters pleaded in paragraph 79 to 82, misleading or deceptive or likely to mislead or deceive;
 - (b) was conduct engaged in on behalf of, and as agent of, every other partner of Pitchers and the firm Pitchers, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in also by each other partner of Pitchers and the firm Pitchers as pleaded in paragraph 52(a);
 - (c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of Pitchers, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Fitzpatrick, being a partner of Pitchers who was party to the act of expressing the Pitchers Opinion to ASX (and the omission of failing to correct or qualify that opinion), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 4(d); and
 - (d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of Pitchers,

(each such contravention of such provisions being a **Pitchers 30 September Misleading Conduct Contravention**).

85. As at 29 September 2015, by reason of the matters pleaded in paragraphs 80 and/or 82, the conduct of Fitzpatrick in making the Pitchers Representation to ASX (and in failing to correct or qualify that representation), was misleading or deceptive or likely to mislead or deceive, and comprised a Pitchers 30 September Misleading Conduct Contravention.
86. Further, or alternatively, as at 29 September 2015 the conduct of Fitzpatrick in making the Pitchers Representation to ASX (and in failing to correct or qualify that representation):
- (a) was conduct which was, by reason of the matters pleaded in paragraph 80 and/or 82, misleading or deceptive or likely to mislead or deceive;
 - (b) was conduct engaged in on behalf of, and as agent of, every other partner of Pitchers and the firm Pitchers, within the meaning of s 769B(4) of the Corporations Act, and so is taken to have been conduct engaged in by each other partner of Pitchers and the firm Pitchers as pleaded in paragraph 52(a);
 - (c) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act on the part of Pitchers, which is taken by reason of s 761F(b) of the Corporations Act to be a contravention by Fitzpatrick, being a partner of Pitchers who was party to the act of making the Pitchers Representation to ASX (and the omission of failing to correct or qualify that representation), within the meaning of s 761F(1)(b) of the Corporations Act, as pleaded in paragraph 4(d); and
 - (d) by reason of sub-paragraphs (a) and (b), gave rise to a contravention of s 1041H(1) of the Corporations Act by every other partner of Pitchers,

(each such contravention of such provisions being a **Pitchers 30 September Misleading Conduct Contravention**).

F.3. Continuing nature of the Pitchers Misleading Conduct Contraventions

87. Each of the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time

as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market.

GA. EY UK'S ROLE

88A. Further or alternatively, on or about 6 July 2015, EY UK was engaged by Pitchers to perform a component audit of SGH UK and its controlled entities for FY15 (**FY15 Component Audit Retainer**).

Particulars

- i) *The Applicant repeats the particulars to paragraph 7 of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii) below.*
- ii) *The FY15 Component Audit Retainer is partly in writing and partly to be inferred:*
 - a. *Insofar as it was in writing, it was contained in email chains dated 6 to 8 July 2015 (including attachments) between Fitzpatrick (of Pitchers), Michelle Straubinger (of Pitchers), Howarth (of EY UK) and Kevin Harkin (of EY UK)(PIP.002.001.0758) and email chains dated 6 to 13 July 2015 (including attachments) between Fitzpatrick (of Pitchers), Michelle Straubinger (of Pitchers), and Howarth (of EY UK) (PIP.002.001.0757).*
 - b. *Insofar as it is to be inferred, such inference arises by the conduct of the parties including as alleged in paragraph 88F below.*

88B. At all material times, the relevant terms of the FY15 Component Audit Retainer were that:

- (a) EY UK would undertake, inter alia, a full audit of and provide information concerning the financial report of SGH UK and its controlled entities with the objective of expressing an audit opinion on the financial report to Pitchers;
- (b) the work to be performed by EY UK was to be conducted in accordance with International Financial Reporting Standards (**IFRS**), including the International Federation of Accountants (IFAC) released standard ISA 600 "Special

Considerations - Audits of Group Financial Statements (Including the Work of Component Auditors) (**ISA 600**);

- (c) EY UK was required to perform all audit procedures relevant to SGH UK and its controlled entities, including performing a goodwill impairment review of PSD; and
- (d) EY UK was required to perform specific testing of the valuation of disbursement receivables in respect of PSD.

Particulars

- i) The Applicant repeats the particulars to paragraph 8(a)-(d) of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii)-(v) below.*
- ii) In relation to the term referred to in subparagraph (a) above, the Applicant relies upon the FY15 Component Audit Retainer, email dated 6 July 2015 (PIP.006.001.0667) and email dated 8 July 2015 (PIP.002.001.0758).*
- iii) In relation to the term referred to in subparagraph (b) above, the Applicant relies upon the FY15 Component Audit Retainer, email dated 6 July 2015 (PIP.006.001.0667) and attached questionnaire (PIP.006.001.0668).*
- iv) In relation to the term referred to in subparagraph (c) above, the Applicant relies upon the FY15 Component Audit Retainer, email dated 8 July 2015 (PIP.002.001.0758) and email dated 13 July 2015 (PIP.002.001.0757).*
- v) In relation to the term referred to in subparagraph (d) above, the Applicant relies upon the FY15 Component Audit Retainer, email dated 13 July 2015 (PIP.002.001.0757).*

88C. It was an implied term of the FY15 Component Audit Retainer that EY UK would exercise reasonable care, skill and diligence in performing all work required to be performed under the FY15 Component Audit Retainer, including performing a goodwill impairment review of PSD.

Particulars

- i) The Applicant repeats the particulars to paragraph 9 of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii) below.*
- ii) The term was implied in fact to give business efficacy to the FY15 Component Audit Retainer, and, further or alternatively, implied in law as a necessary and/or normal incident of the FY15 Component Audit Retainer.*

88D. By engagement letters dated 10 July 2015, EY UK was engaged by SGH UK and Slater & Gordon (UK) LLP to audit and report on the financial statements of Slater & Gordon (UK) 1 Ltd, its controlled entities, and of the Slater & Gordon (UK) LLP partnership for the year ended 30 June 2015 (**UK Audit Retainer**).

Particulars

- i) The Applicant repeats the particulars to paragraph 10 of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii) below.*
- ii) Engagement letters dated 10 July 2015.*

88E. At all material times, the relevant terms of the UK Audit Retainer included that EY UK would report, in accordance with instructions from the group auditor, on the financial information of SGH UK (and its controlled entities) and Slater & Gordon (UK) LLP, in accordance with IFRS for SGH consolidated purposes.

Particulars

- i) The Applicant repeats the particulars to paragraph 11 of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii) below.*
- ii) UK Audit Retainer, engagement letters dated 10 July 2015.*

GB. EY UK'S FY15 COMPONENT AUDIT AND CONTRAVENING CONDUCT

GB.1. EY UK's FY15 Representations

88F. Between about 10 July 2015 and about 28 or 29 September 2015, EY UK undertook an audit of the financial information of SGH UK and its controlled entities and the Slater & Gordon (UK) LLP partnership for the year ended 30 June 2015 (the **EY UK Audit**).

Particulars

- i) EY UK was acting pursuant to the Component Audit Retainer and/or the UK Audit Retainer.*

88G. On 28 or 29 September 2015:

- (a) EY UK provided Pitchers with the FY15 EY UK Audit Letter which stated, among other things, the following:

- (i) "We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion. The conclusions reached in forming our opinion are based on the component materiality level specified by you in the context of the audit of the consolidated financial statements of the group."
- (ii) "In our opinion the accompanying special purpose financial information for Slater & Gordon (UK) 1 Limited and controlled entities as of 30 June 2015 for the year then ended has been prepared in all material respects, in accordance with the policies contained in Slater & Gordon Limited's group accounting policies dated 30 April 2015. This opinion should be read in conjunction with the audit results update dated 28 September 2015 which describes the results of our audit procedures."

Particulars

- i) PIP.002.001.0438*
- ii) The FY15 EY UK Audit Letter was addressed to Pitchers at Level 19, 15 William Street Melbourne, Victoria, and transmitted by email sent by John Howarth (of EY UK) to Mark Harrison, Adrian Fitzpatrick and Michelle Straubinger (of Pitchers),*

copied to Tim West and Kevin Harkin (of EY UK), which were dated in the version discovered by Pitchers 29 September at 656PM (PIP.005.003.0260, PIP.005.003.0264, which is identical to the copy contained in Pitchers' audit file, as referred to in particular (i)).

- (b) EY UK provided Pitchers with the Final EY Report which contained EY UK's key audit findings with respect to, *inter alia*, the PSD acquisition, and which stated *inter alia* the following:
- (i) "... management has performed an impairment review of the PSD business - in accordance with the accounting standards. Management's assumptions noted that there is £150.3m of headroom over the carrying value of goodwill of £529.4m. The key assumptions are the discount rate of 10.5% - which is at the lower end of the EY acceptable range - and the underlying cashflows have not significantly altered since the acquisition date. Clearly there is risk to the achievement of these cashflows and we have flexed the assumptions - which could result in an impairment. IAS36 requires disclosure of these assumptions and also requires disclosure where a reasonably possible change could erode the headroom. These factors should be considered by the group auditor in terms of disclosures in the annual report";
 - (ii) "The discount rate (10.5%) used by the client is at the lower end of the EY considered acceptable range (10.5%-13%)";
 - (iii) "The underlying cash flows have been prepared for funding from banks and therefore have been under significant scrutiny. Our discussions with management have noted risk around timings and also integration costs and some conservatism in certain other assumptions - for instance removal of the NIHL revenue stream after FY 19";
 - (iv) "The terminal growth rate is considered appropriate";
 - (v) "These assumptions have been flexed - with a worst case scenario of a 13% discount rate calculating an impairment and risk based scenario of a one-off £10m investment in the business, a discount rate of 11.75% and a lag of cash flow of six months showing a minor impairment";

(vi) "The work performed has provided evidence that the goodwill carrying value associated with PSD at 30 June is supported by the underlying cashflows. The group auditor should consider the bridge between the client's valuation and the current market capitalisation and the disclosures associated with the impairment review in the annual report"; and

(vii) "We request the following specific representations from the directors [of SGH]:

... the assumptions associated with the impairment testing are considered appropriate - including the cash flow projections and discount rate. These assumptions have enabled us to conclude that the carrying value of goodwill can be supported".

Particulars

- i) *Final EY Report (PIP.002.001.0183).*
- ii) *The Final EY Report was transmitted to Pitchers by email sent by John Howarth (of EY UK) to Adrian Fitzpatrick, Mark Harrison and Michelle Straubinger (of Pitchers), copied to Elizabeth Jones, Kevin Harkin, Tim West and Delene Nee (of EY UK) which were dated in the version discovered by Pitchers 29 September at 629PM (PIP.006.004.0497, PIP.006.004.0498, which is identical to the copy contained in Pitchers' audit file, as referred to in particular (i)).*

88H. On or about 28 September 2015, EY UK represented to Pitchers that the PSD Goodwill Asset was not impaired.

Particulars

- i) *The Applicant repeats the particulars to paragraph 14 of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii) below.*
- ii) *The representation was oral and constituted by statements conveyed to Adrian Fitzpatrick (of Pitchers), Michelle Straubinger (of Pitchers) and Mark Harrison (of Pitchers) by*

representatives of EY UK during a telephone conference on or about 28 September 2015. The substance of the statements was to the effect alleged.

iii) Paragraph 56Y(a) is repeated.

88I. By reason of the matters pleaded in paragraphs 88F to 88H above, EY UK represented to Pitchers, *inter alia*, that:

- (a) SGH had performed an impairment review of PSD in accordance with accounting standards (**FY15 EY UK Goodwill Accounting Representation**); and
- (b) the goodwill associated with PSD at 30 June 2015 was not impaired (**FY15 EY UK Goodwill Impairment Representation**).

88J. Further, and in the alternative to paragraph 88I, if the FY15 EY UK Goodwill Accounting Representation, and the FY15 EY UK Goodwill Impairment Representation were representations of opinion, in respect of which by reason of the matters pleaded in paragraphs 88F to 88H above, EY UK represented to Pitchers that EY UK had reasonable grounds for making the:

- (a) FY15 EY UK Goodwill Accounting Representation (**FY15 EY UK Goodwill Accounting Reasonable Grounds Representation**); and
- (b) FY15 EY UK Goodwill Impairment Representation (**FY15 EY UK Goodwill Impairment Reasonable Grounds Representation**).

Particulars

- i) The Applicant repeats the particulars to paragraph 16 of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii) below.*
- ii) The FY15 EY UK Goodwill Accounting Reasonable Grounds Representation, and the FY15 EY UK Goodwill Impairment Reasonable Grounds Representation are to be implied from the terms of the FY15 EY UK Audit Report and the Audit Results Update Report, read as a whole.*

GB.2. SGH's approach to goodwill impairment in FY15

88K. As at early 2015 and in any event by 30 March 2015, information as to the matters

pleaded in paragraphs 12, and 19 to 40 above (**Reform Affected Claims Information**) ought reasonably to have come into the possession of EY UK.

Particulars

- i) *The Applicant repeats the particulars to paragraph 21 of Pitchers' Amended Statement of Cross-Claim against EY UK, as set out in (ii) below.*
- ii) *The Applicant repeats the matters in paragraphs 10 to 12, 15, and 19 to 40 above, and says that it can be inferred that EY UK knew or ought to have known of the Reform Affected Claims Information by reason of the following matters:*
 - a. *paragraphs 15 and 19 above, where it is alleged that at all material times from 2012 up to and including the Relevant Period, PI Work was the core business of and contributed the majority of revenue to SGH in, inter alia, the UK and that from 3 November 2008, the UK Government was engaged in a process of reform of personal injuries litigation in the legal marketplace in which SGH operated in the UK;*
 - b. *SGH made the 30 March Announcement, such that it can be inferred that SGH had or ought to have conducted appropriate due diligence prior to making and in order to make that announcement;*
 - c. *EY UK was engaged by SGH to undertake a due diligence investigation with respect to the proposed acquisition of the operations of Quindell, including PSD, and therefore was a person who had participated in, performed and taken responsibility for the due diligence conducted into PSD: letters from EY UK to Slater & Gordon Limited dated 9 January 2015 and 16 May 2014 (sic).*
 - d. *EY UK was located and conducted its business in the UK.*
- iii) *The Applicant will rely upon Pitcher Partners' expert evidence, as referred to in the particulars to paragraph 21 of Pitchers' Amended Statement of Cross-Claim against EY UK.*

88L. At all relevant times, EY UK did not make available to Pitchers the Reform Affected Claims Information.

88M. The Reform Affected Claims Information would have:

- (a) affected the significant assumptions used by SGH in performing its impairment review of PSD, including the discount rate of 10.5% and the underlying cashflows, such that the value SGH attributed to identifiable intangibles for the acquisition of PSD were not complete;
- (b) affected the forecasts and underlying assumptions utilised in the goodwill impairment calculations of the cash generating units, including PSD; and
- (c) materially altered reasonable expectations as to the future results of PSD and led to an impairment of PSD's goodwill on acquisition.

Particulars

- i) The Applicant will rely upon Pitcher Partners' evidence, as referred to in the particulars to paragraph 23 of Pitchers' Amended Statement of Cross-Claim against EY UK.*

88N. By reason of the matters pleaded in paragraphs 88K to 88M:

- (a) significant assumptions used by SGH in performing its impairment review of PSD, including the discount rate of 10.5% and the underlying cashflows, would not have been reasonable and, in particular, the value attributed to identifiable intangibles for the acquisition of PSD would not have been complete and would not have been valued using appropriate valuation assumptions and models;
- (b) the forecasts, and underlying assumptions utilised in the goodwill impairment calculations of the cash generating units, including relevantly, PSD, and the assumptions in relation to growth rates and working capital improvements would not have represented a reasonable estimate by SGH; and
- (c) SGH's increased understanding of the PSD business since acquisition ought to have included an understanding of the Reform Affected Claims Information, which would have materially altered its expectations of the future results of PSD and led to an impairment of PSD's goodwill on acquisition; and
- (d) EY UK's audit of the financial report of SGH UK and its controlled entities ought

to have included an understanding of the Reform Affected Claims Information, which would have materially altered its expectations of the future results of PSD and led to an impairment of PSD's goodwill on acquisition.

88O Further or alternatively, the EY UK Audit was not the product of an exercise of reasonable skill and care.

Particulars

- i) The Applicant relies upon the Expert Report of Wayne Basford dated 22 September 2020 at:
 - a. [4.3.8], and [4.3.18] to [4.3.21], in relation to EY UK's competency and self-review failures;*
 - b. [4.4.6], [4.4.18] to [4.4.25], [4.4.37] to [4.4.39], [4.4.50] to [4.4.73], [4.4.76] to [4.4.80], [4.4.87] to [4.4.95] in relation to EY UK's planning phase failures;*
 - c. [4.6.4] to [4.6.15], [4.7.134], [4.7.172] to [4.7.173], [4.8], and [4.9] in relation to EY UK's execution phase failures.**

88P. Further, by reason of the matters pleaded in paragraphs 88K to 88N and/or 88O above, there were no reasonable grounds for the making of the FY15 EY UK Goodwill Accounting Representation, and/or the FY15 EY UK Goodwill Impairment Representation.

88Q. In the premises, by reason of the matters pleaded in paragraphs 88K to 88P above, the FY15 Financial Report:

- (a) was not prepared in compliance with Australian Accounting Standards and/or the Corporations Act; and
- (b) did not give a true and fair view of SGH's financial position and financial performance in FY2015.

Particulars

- i) Paragraphs 74 to 77, 78AH to ~~78L~~ 78AJ, ~~and 78AM~~, and 78AP to 78AQ are repeated.*

GB.3 EY UK's Misleading or Deceptive Conduct

88R. By making each of the FY15 EY UK Goodwill Accounting Representation, the FY15 EY UK Goodwill Impairment Representation, the FY15 EY UK Goodwill Accounting Reasonable Grounds Representation, and the FY15 EY UK Goodwill Impairment Reasonable Grounds Representation (collectively, the **FY15 EY UK Representations**), EY UK engaged in conduct:

- (a) In Australia (by reason that those representations were made to Pitchers in Australia) in relation to a financial product or a financial service within the meaning of section 1041H of the Corporations Act;
- (b) in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act; and/or
- (c) in trade or commerce within the meaning of section 18 of the Australian Consumer Law, as it applies as a law of either Victoria, NSW or the Commonwealth (including, so far as the latter is concerned, by the use of postal, telegraphic and/or telephonic services between the United Kingdom and Australia, within the meaning of s 6 of the *Competition and Consumer Act 2010* (Cth)).

88S. In the circumstances set out in paragraphs 88K to 88R above, EY UK engaged in conduct which was misleading or deceptive, or likely to mislead or deceive by:

- (a) making each or any of the FY15 EY UK Representations; and/or
- (b) failing to correct or qualify each or any of the FY15 EY UK Representations;

88T. By reason of the matters pleaded in paragraphs 88Q to 88S above, EY UK contravened:

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

(the **FY15 EY UK Contraventions**).

88U. Each of the FY15 EY UK Contraventions was a continuing contravention which of its nature continued during the Relevant Period until such time as the inaccuracy or the falsity of the representations underlying the contraventions was revealed to the Affected Market.

GB.4 Causation

88V. Pitcher Partners provided:

(a) the Pitchers Independent Audit Opinion, as pleaded in paragraph 56;

(b) the "Pitchers Opinion to ASX" or made the "Pitchers Representation to ASX".

in reliance on the purported truth, accuracy and completeness of each and/or all of the FY15 EY UK Representations.

Particulars

i) The Applicant repeats paragraph 30 of Pitchers' Amended Statement of Cross-Claim against EY UK.

88W. But for the FY15 EY UK Representations, Pitchers would not have made the representations or taken the actions pleaded in paragraph 78 above.

Particulars

i) The Applicant repeats paragraph 32(a) of Pitchers' Amended Statement of Cross-Claim against EY UK.

88X. By reason of the matters pleaded in paragraphs 88V to 88W above, the FY15 EY UK Contraventions caused or materially contributed to the publication of the FY15 Financial Report in the form in which it was published as pleaded in paragraphs 56 to 60 above, when the true position was as pleaded in paragraphs 74 to 77, ~~78AA~~ 78AH to 78AI and 78AM and 78AP to 78AQ and 88Q above.

G. LOSS & DAMAGE ARISING FROM PITCHERS' CONTRAVENTIONS AND EY UK'S CONTRAVENTIONS

G.1. The 26 November Announcement, and its consequences

88. On 25 November 2015 (UK time, being a time after the close of the ASX on 25 November 2015) the following matters were published:

(a) the UK Government (HM Treasury) published the "Spending Review and Autumn Statement 2015" (Cm 9162), which stated:

- (i) the UK Government was determined to crack down on the fraud and claims culture in motor insurance. Whiplash claims cost the country £2 billion a year, an average of £90 per motor insurance policy, which is out of all proportion to any genuine injury suffered; and
- (ii) the UK Government intended to introduce measures to end the right to cash compensation for minor whiplash injuries, and would consult on the details in the New Year.

Particulars

Cm 9162, at [1.143]. p.40 (MHL.003.001.0016 at _0004).

(b) the UK Government (HM Treasury) published a document entitled "Spending Review and Autumn Statement 2015: key announcements", which stated more injuries will also be able to go to the small claims court as the upper limit for these claims will be increased from £1,000 to £5,000.

Particulars

<https://www.gov.uk/government/news/spending-review-and-autumn-statement-2015-key-announcements> (MHL.002.001.0004)

(c) the Chancellor of the Exchequer (the Rt Hon George Osborne) publicly stated in remarks published by the international financial press that the UK Government intended to cut legal costs by transferring personal injury claims of up to £5,000 to the small claims court.

Particulars

Bloomberg article published on 26 November 2015, 3:02AM AEDT (<http://www.bloomberg.com/news/articles/2015-11-25/u-k-insurers-welcome-osborne-pledge-to-tackle-whiplash-fraud>) (MHL.002.001.0005)

89. On 26 November 2015, at about 11:43AM, following the announcements pleaded in paragraph 88, SGH published and lodged with the ASX an announcement entitled "UK Government Announcement" (**26 November Announcement**) (MHL.003.001.0017).

90. By the 26 November Announcement, SGH stated:

- (a) the UK Government had overnight announced proposals, which if implemented, would impact on the rights of people injured in road traffic accidents;
- (b) SGH did not expect there to be any impact on its FY2016 performance, or the guidance recently confirmed at the 2015 AGM, from the UK Government's announcement;
- (c) the UK Government's proposal if implemented would restrict the right of people injured in road traffic accidents to obtain compensation for pain and suffering in minor soft tissue injury claims;
- (d) the UK Government had proposed to increase the limit of the Small Claims Court from £1,000 to £5,000;
- (e) SGH would participate in the foreshadowed consultation process with MoJ and provide further information on the impact (if any) on its financial performance in FY2017 and beyond; and
- (f) the UK Government's announcement was unexpected by SGH.

91. On 26 November 2015, SGH Shares:

- (a) opened at a price of \$1.92 per share; and
- (b) closed at a price of \$0.94 per share (being a total daily decline of \$0.98 (51%)), on a traded volume of 77,023,160 shares.

G.2. The suspension of SGH Shares

92. On 24 February 2016, SGH Shares were suspended from quotation on the ASX at the request of SGH.

G.3. The 29 February Publications, and their consequences

93. On 29 February 2016, between about 9:00AM and 9:01AM SGH published and lodged with ASX (and published on SGH's website):

- (a) an announcement entitled "FY16 H1 Financial Results" (that is, the **29 February Announcement**) (MHL.005.001.0007);

- (b) an announcement entitled “FY16 H1 Results Investor Presentation” (**29 February Presentation**) (MHL.002.001.0009);
 - (c) SGH’s Financial Report for the half-year ended 31 December 2015 (**1H16 Report**) (MHL.002.001.0008); and
 - (d) SGH’s Appendix 4D (Half Year Information for the year ended 31 December 2015) (MHL.002.001.0007),
- (together, **29 February Publications**).

94. On 29 February 2016, ASIC issued the ASIC 29 February Media Release (which media release was lodged by SGH with ASX at about 9:47AM) (MHL.002.001.0006).

95. In the 29 February Announcement, the 29 February Presentation and the ~~FY16 Half Year~~1H16 Report, SGH stated:

- (a) SGH had ended 1H FY2016 with total revenue and other income of \$487.5 million (and had restated its 1H FY2015 revenue and other income to \$267.7 million) (29 February Announcement, p.1 (MHL.005.001.0007 at _0001); 29 February Presentation Slide 5 (MHL.002.001.0009 at _0005); 1H16 Report, p.1 (MHL.002.001.0008 at _0003));
- (b) SGH had made a net loss after tax of \$958.3 million (and had restated its 1H FY2015 net profit to \$49.3 million) (29 February Announcement p.1 (MHL.005.001.0007 at _0001), 29 February Presentation, Slide 4 (MHL.002.001.0009 at _0004); 1H16 Report, p.1 ((MHL.002.001.0008 at _0003));
- (c) SGH’s reported net operating cashflow for 1H FY2016 was –\$83.3 million (29 February Presentation, Slide 4 (MHL.002.001.0009 at _0004); 1H16 Report, p.7 (MHL.002.001.0008 at _0009));
- (d) SGH’s reported EBITDAW for 1H FY2016 was –\$58.3 million (-\$17.8 million on a “normalised” basis, being as adjusted for AASB3 adjustments, goodwill impairment and additional debtor/disbursement provisioning) (29 February Presentation, Slide 4 (MHL.002.001.0009 at _0004); 1H16 Report, p.1 (MHL.002.001.0008 at _0003));
- (e) The half year result was impacted by, inter alia:

- (i) an \$876.4 million impairment charge against the carrying value of goodwill;
- (ii) underperformance in SGH's UK operations in relation to both intake and resolution of personal injuries claims in SGH UK and SGS;
- (iii) A\$21.3 million of additional provisioning for debtors and disbursements across the UK and Australia; and
- (iv) early adoption of new accounting standard AASB 15 – Revenue from Contracts with Customers,

(29 February Announcement p.1 (MHL.005.001.0007 at _0001), 1H16 Report, p.1 (MHL.002.001.0008 at _0003));

- (f) the impairment charge raised by SGH comprised:
 - (i) \$814,245,000 against SGS (which downward revision was due to poorer than anticipated financial performance to date and potential impact of the foreshadowed UK Government legislative changes on future cash flows);
 - (ii) \$9,458,000 against SGH UK (which related to SGH UK's Non-PI Work practice, and was on the basis that the forecast cash flow did not support the goodwill balance); and
 - (iii) \$52,745,000 against SGH Australia, of which:
 - (A) \$38.8 million was in respect of the PI Work practice (being a goodwill impairment assessed at State cash generating unit level rather than national level); and
 - (B) \$13.9 million was in respect of the Non-PI Work practice (on the basis that the forecast cash flow did not support the goodwill balance),

(29 February Announcement, p.4 (MHL.005.001.0007 at _0004); 29 February Presentation, Slide 8 (MHL.002.001.0009 at _0008), 1H16 Report, pp.18-19 (Note 7) (MHL.002.001.0008 at _0020 to _0021));

- (g) SGH had remeasured and reduced the fair value of its work in progress:

- (i) carried as at the end of FY2014 from \$467,334,000 to \$381,521,000 (a \$85,813,000 reduction) (1H16 Report, p.9 (Note 1) (MHL.002.001.0008 at _0011), by reason of the application of AASB15); and
- (ii) carried as at the end of FY2015 from \$825,890,000 to \$693,616,000 (a \$45,576,000 reduction in addition to a reduction of \$86,706,000 attributable to prior year re-measurement) (1H16 Report, p.9 (Note 1) (MHL.002.001.0008 at _0011)), by reason of the application of AASB15);
- (h) the value of SGH's work in progress at the end of 1H2016 was less than the remeasured and reduced fair value amount as at the end of FY2015 (from \$676,693,000 (current and non-current) to \$663,359,000 (current and non-current) (1H16 Report, p.5 (MHL.002.001.0008 at _0007)); and
- (i) SGH had reduced the provisional fair value of SGS's work in progress by \$31.4 million (to \$121,941,000), as the provisional fair value of work in progress had been updated since SGH's disclosures in its financial report at 30 June 2015 (1H16 Report, p.25 (Note 12) (MHL.002.001.0008 at _0027)).

96. In the ASIC 29 February Media Release, ASIC stated:

- (a) ASIC noted SGH's decision to reduce asset values in its financial report for 1HFY2016;
- (b) ASIC had made inquiries of SGH in relation to its financial reports for FY2014, and FY2015;
- (c) ASIC's inquiries mainly concerned the recoverable value of goodwill attributable to SGH's Australian and UK businesses, the recognition of fee revenue and related WIP, provisioning against debtors and disbursement assets, and the basis for classifying WIP and disbursement assets as current assets;
- (d) ASIC's inquiries on revenue recognition and WIP focussed on the appropriateness of accounting policies adopted and the testing of WIP estimates and assumptions against historical data;
- (e) Given SGH had transitioned to AASB 15, ASIC has not approved or disapproved of SGH's use of the percentage of completion basis of accounting for fee revenue under AASB 118 in its previous financial reports; and

- (f) ASIC has now discontinued its inquiries in relation to SGH's financial reports for FY2014 and FY2015.
97. On 29 February 2016, SGH Shares were reinstated to official quotation on the ASX following the release of the FY16 Half Year Report.
98. On 29 February 2016, SGH Shares:
- (a) opened at a price of \$0.53 per share (being a decline of \$0.30 (36%) as against the closing price on 23 February 2016 of \$0.83, being the price at which SGH Shares last traded before the suspension pleaded in paragraph 92); and
 - (b) closed at a price of \$0.58 per share (being a total daily decline of \$0.25 (30%) as against the closing price on 23 February 2016),
- on a traded volume of 28,947,240 shares.
99. On 1 March 2016, SGH Shares:
- (a) opened at a price of \$0.51 per share; and
 - (b) closed at a price of \$0.315 per share (being a total daily decline of \$0.19 (44%) as against the closing price on 29 February 2016, and a total decline of \$0.51 (61.4%) as against the closing price on 23 February 2016),
- on a traded volume of 45,273,670 shares.

G.4. Market-based causation

[Note: amendments in this section are made only for the purposes of the Applicant's claim against EY UK, pending leave to amend the claim against Pitches]

100. At all material times, SGH Shares traded in a market of investors or potential investors in SGH Shares:
- (a) operated by the ASX;
 - (b) regulated by, inter alia, sections 674(2) of the Corporations Act and ASX Listing Rules 3.1 and 4.5;
 - (c) where the price or value of SGH Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with sections 674(2) of the Corporations Act and ASX Listing Rules 3.1, 4.3A and 4.5,

including the Appendix 4E, FY15 Financial Report, FY15 Statutory Accounts and the 2015 Report;

(d) where misleading or deceptive statements had been made by Pitchers, namely:

(i) the statements the subject of the Pitchers Appendix 4E Misleading Conduct Contraventions (or any of them), that:

(A) by reason of the matters pleaded in paragraph 56P ~~had~~ resulted in SGH lodging the Appendix 4E with ASX, but for which no investors or potential investors in SGH Shares would have been in a position to read or rely upon the Appendix 4E (in the form in which it was lodged, as pleaded in paragraph 56Q), and which by reason thereof a reasonable person would expect to have a material effect on price or value of SGH shares;

(B) further or alternatively, had they not been made would have resulted in Pitchers informing SGH of the matters pleaded in paragraphs 74C to 74E, further or alternatively paragraphs 78AA to 78AF, further or alternatively paragraphs 78AM to 78AN, and the true position being revealed to the market either on 28 August 2015, or shortly afterwards (with there being no trading in SGH Shares between 28 August 2015 and when that true position was revealed).

Particulars

The true position would have been revealed to the market in one of the following ways:

1. the Appendix 4E not being published by SGH on 28 August 2015 in the form in which it was lodged (as pleaded in paragraph 56Q), and instead being published by SGH on 28 August 2015 with the disclosures pleaded in paragraphs 74C to 74E, further or alternatively paragraphs 78AA to 78AF, further or alternatively paragraph 78AM (including the matters described in particular iii) to paragraph 78AM) and 78AN;

2. alternatively, the Appendix 4E being published by SGH on 28 August 2015 in the form in which it was lodged (as pleaded in paragraph 56Q), save for a disclosure that the FY15 Financial

Report was in the process of being audited and was likely to be subject to audit qualification, and accompanied by a further announcement by SGH that SGH Shares had been suspended from quotation on the ASX at SGH's request pending resolution of material issues identified by its auditor in respect of the accounting treatment of the goodwill associated with the acquisition of PSD;

3. alternatively, the Appendix 4E being published by SGH on 28 August 2015 in the form in which it was lodged (as pleaded in paragraph 56Q), with Pitchers issuing a notice to the Australian Securities and Investment Commission under s 311 of the Corporations Act that the Appendix 4E was materially misstated and such notice being published on the ASX accompanied by an announcement that SGH Shares had been suspended from quotation on the ASX pending publication of accounts which were not materially misstated.

4. alternatively, the Appendix 4E not being published by SGH on 28 August 2015, and SGH instead announcing no later than 31 August 2015 (being the date that the Appendix 4E was due to be provided to ASX under Listing Rule 4.3A) that SGH Shares had been suspended from quotation on the ASX at SGH's request pending publication of SGH's Appendix 4E or FY15 Financial Report, which when published was (in the case of an Appendix 4E) in a form which contained the disclosures pleaded in paragraphs 74C to 74E, further or alternatively paragraphs 78AA to 78AF, further or alternatively paragraph 78AM (including the matters described in particular iii) to paragraph 78AM) and 78AN, or (in the case of the FY15 Financial Report) in a form which contained the disclosures pleaded in paragraphs 74, 76 and 77A, further or alternatively paragraphs 78AH to 78AK, further or alternatively paragraphs 78AM and 78AP (as pleaded in sub-paragraph (C) below);

The Applicant refers to the Basford Report, paragraphs [1.2.9], [1.2.27], [1.2.33] to [1.2.34], [2.11.20], [4.12.36], 4.14.7 to 4.14.13.

- (ii) the statements the subject of the Pitchers 30 September Misleading Conduct Contraventions (or any of them), that:
- (A) by reason of the matters pleaded in paragraph 57 resulted in SGH lodging the FY15 Financial Report with the ASX, but for which no investors or potential investors in SGH Shares would have been in a position to read or rely upon the FY15 Financial Report (in the form in which it was lodged, as pleaded in paragraphs 58 to 60); and
 - (B) were made to the ASX directly by the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX, and which a reasonable person would expect to have a material effect on the price or value of SGH Shares, in that if they had not been made no investors or potential investors in SGH Shares would have been in a position to read or rely upon them; and
 - (C) further or alternatively, had they not been made would have resulted in Pitchers informing SGH of the matters pleaded in paragraphs 74, 76 and 77A, further or alternatively paragraphs 78AH to 78AK, further or alternatively paragraphs 78AM and 78AP, and the true position being revealed to the market.

Particulars

The true position would have been revealed to the market in one of the following ways

1. the FY15 Financial Report not being published by SGH on 30 September 2015 in the form in which it was lodged (as pleaded in paragraph 57), and instead being published by SGH on 30 September 2015 with the disclosures pleaded in paragraphs 74, 76 and 77A, further or alternatively paragraphs 78AH to 78AK, further or alternatively paragraphs 78AM and 78AP;
2. alternatively, the FY15 Financial Report being published by SGH on 30 September 2015 in the form in which it was lodged (as pleaded in paragraph 57), save for a qualified audit opinion of Pitchers disclosing the matters pleaded in paragraphs 74, 76 and

77A, further or alternatively paragraphs 78AH to 78AK, further or alternatively paragraphs 78AM and 78AP;

3. alternatively, the FY15 Financial Report being published by SGH on 30 September 2015 in the form in which it was lodged (as pleaded in paragraph 57), with Pitchers issuing a notice to the Australian Securities and Investment Commission under s 311 of the Corporations Act that the Appendix 4E was materially misstated and such notice being published on the ASX accompanied by an announcement that SGH Shares had been suspended from quotation on the ASX pending publication of accounts which were not materially misstated;

The Applicant refers to the Basford Report, paragraphs 1.2.9, 1.2.27, 1.2.33 to 1.2.34, 2.11.20, 4.12.36, 4.14.7 to 4.14.13.

- (e) where misleading or deceptive statements had been made by EY UK, namely each of the statements the subject of the FY15 ~~EU~~EY UK Contraventions, that:
- (i) by reason of the matters pleaded in paragraphs 88U to 88V resulted in:
 - (A) Pitchers publishing the Pitchers' Audit Report, as pleaded in paragraph 88V(a); and
 - (B) Pitchers making the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX as pleaded in paragraph 88V(b),which a reasonable person would expect Pitchers to do;
 - (ii) accordingly were statements that a reasonable person would expect to have a material effect on the price or value of SGH Shares, in that if they had not been made, the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX would not have been made, and no investors or potential investors in SGH Shares would have been in a position to read or rely upon them; and
 - (iii) further or alternatively, had they not been made would have resulted in the matters pleaded in paragraph 100(d)(ii)(C) being disclosed to the market.

101. In the Relevant Period:

(a) on and after:

(i) 28 August 2015, each of the Pitchers Appendix 4E Misleading Conduct Contraventions; and/or

(ii) 30 September 2015, the Pitchers 30 September Misleading Conduct Contraventions

caused, or materially contributed to causing, the market price of SGH Shares to be substantially greater than their true value, and/or the market price that would have prevailed but for the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions respectively; and/or

(b) on and after 30 September 2015, each of the FY15 EY UK Contraventions caused, or materially contributed to causing, the market price of SGH Shares to be substantially greater than their true value, and/or the market price that would have prevailed but for the FY15 EY UK Contraventions.

Particulars

i) *The extent to which (i) the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions and/or (ii) the FY15 EY UK Contraventions caused or materially contributed to the market price of SGH Shares to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, and the Applicant relies upon the Report of Dr Torben Voetmann dated 21 August 2020, and repeats paragraphs 100(d) and (e) and the particulars thereto.*

102. The declines in the price of SGH Shares pleaded in paragraphs 91 and 98 to 99:

(a) were caused or materially contributed to by:

(i) the market's reaction to the information communicated to the Affected Market in the 26 November Announcement and 29 February Publications, in the context of what had been communicated to the Affected Market prior to those announcements;

(ia) the Pitchers Appendix 4E Misleading Conduct Contraventions; and

(ii) the Pitchers 30 September Misleading Conduct Contraventions;

- (iii) further or alternatively, the FY15 EY UK Contraventions; and/or
 - (b) would, to the extent they removed inflation from the price of SGH Shares, have occurred earlier, and/or have been of lesser magnitude when they in fact occurred, if:
 - (i) Pitchers and/or Fitzpatrick had not engaged in the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions;
 - (ii) further or alternatively, EY UK had not engaged in the FY15 EY UK Contraventions.
- 103. The Applicant and some Group Members, that is, those Group Members who ~~acquired an interest in SGH Shares~~:
 - (a) on or after 28 August 2015 acquired an interest in SGH Shares:
 - (i) in a market that had the features pleaded in paragraph 100(a)-(c) and (d)(i) above; and
 - (ii) at a price which was inflated by reason of the matters pleaded in paragraph 101(a)(i) above.
 - (b) on or after 30 September 2015 acquired an interest in SGH Shares:
 - (i) in a market that had the features pleaded in paragraph 100(a) to (e) above; and
 - (ii) at a price which was inflated by reason of the matters pleaded in paragraph 101(a) and (b) above.
- 104. Further or alternatively to paragraph 103 above, the Applicant and some Group Members (that is, those Group Members who acquired interests in SGH Shares between 30 March and 27 August 2015) retained their interests in SGH Shares:
 - (a) in a market of investors or potential investors in SGH Shares that had the features pleaded in paragraph 100 above; and
 - (b) where they could, were it not for the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct

Contraventions, further or alternatively, the FY15 EY UK Contraventions, have sold their SGH Shares at a price which was:

- (i) not inflated as pleaded in paragraph 101 above, but
- (ii) not deflated to the extent which occurred, as pleaded in paragraph 102 above.

G.5. Reliance

~~[Note: amendments in this section are made only for the purposes of the Applicant's claim against EY UK, pending leave to amend the claim against Pitchers]~~

105. Further or alternatively to paragraphs 100 to 104, in the decision to acquire an interest in SGH Shares the Applicant and some Group Members (that is, those Group Members who acquired an interest in SGH Shares on or after 28 August 2015) relied:
- (a) directly or indirectly on the Pitchers Appendix 4E Opinion, the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX;
 - (b) further or alternatively, indirectly on the FY15 EY UK Representations.

Particulars

- i) The Applicant relied upon each of the Appendix 4E (which would not have been published in the form in which it was published, or at all, were it not for the Pitchers Appendix 4E Opinion), the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX (Affidavit of Matthew Hall affirmed 8 March 2019, [82] to [95] (MHL.005.001.0008 at _0018 to _0021)).*
 - ii) The Applicant indirectly relied on the FY15 EY UK Representations to the extent that Pitchers relied upon them and would not have made the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX had EY UK not made the FY15 EY UK Representations, as pleaded in paragraph 88V to 88X above.*
106. Further or alternatively to paragraphs 100 to 102 and 104, in the decision to retain an interest in SGH Shares the Applicant and some Group Members (that is, those Group Members who acquired interests in SGH Shares between 30 March and 27 August 2015) relied:
- (a) directly or indirectly on the Pitchers Appendix 4E Opinion, the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX;
 - (b) further or alternatively, indirectly on the FY15 EY UK Representations.

Particulars

- i) *The Applicant relied upon each of the Appendix 4E (which would not have been published in the form in which it was published, or at all, were it not for the Pitchers Appendix 4E Opinion), the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX (Affidavit of Matthew Hall affirmed 8 March 2019, [82] to [95]).*
- ii) *The Applicant indirectly relied on the FY15 EY UK Representations to the extent that Pitchers relied upon them and would not have made the Pitchers Opinion to ASX and/or the Pitchers Representation to ASX had EY UK not made the FY15 EY UK Representations, as pleaded in paragraph 88V to 88X above.*

G.6. Loss or damage suffered by the Applicant and Group Members

~~[Note: amendments in this section are made only for the purposes of the Applicant's claim against EY UK, pending leave to amend the claim against Pitchers]~~

107. ~~By reason of the matters pleaded in paragraphs 100 to 103 and/or 105 the Applicant and some Group Members (that is, those Group Members who acquired an interest in SGH Shares on or after 28 August 2015) have suffered loss and damage by and resulting from:~~

- (a) the Applicant and some Group Members (that is, those Group Members who acquired an interest in SGH Shares on or after 28 August 2015 have suffered loss and damage by and resulting from the Pitchers Appendix 4E Misleading Conduct Contraventions (or any one or combination of them); and/or
- (b) the Applicant and some Group Members (that is, those Group Members who acquired an interest in SGH Shares on or after 30 September 2015 have suffered loss and damage by and resulting from the Pitchers 30 September Misleading Conduct Contraventions (or any one or combination of them) further or alternatively, the FY15 EY UK Contraventions (or any one or combination of them).

Particulars

The loss suffered by the Applicant in respect of SGH Shares acquired on or after 28 August 2015 will be calculated by reference to:

- i) *the difference between the price at which SGH Shares were acquired by the Applicant during the Relevant Period and the true value of that interest; or*
- ii) *the difference between the price at which the Applicant acquired an interest in SGH Shares and the market price that would have prevailed had the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions not occurred; or*

- iii) *alternatively, the days during the Relevant Period where the traded price of SGH Shares fell as a result of the disclosure information which had not previously been disclosed because of the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions, the quantum of that fall; or*
- iv) *alternatively, the days after the Relevant Period when the traded price of SGH Shares fell as a result of the disclosure of information which had not previously been disclosed because of the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions, the quantum of that fall.*

108. Further or alternatively, by reason of the matters pleaded in paragraphs 100 to 102 and 104, and/or 106, the Applicant and some Group Members (that is, those Group Members who acquired interests in SGH Shares between 30 March and 27 August 2015) have suffered loss and damage by and resulting from:

- (a) the Pitchers Appendix 4E Misleading Conduct Contraventions (or any one or combination of them, and/or the Pitchers 30 September Misleading Conduct Contraventions (or any one or combination of them));
- (b) further or alternatively, the FY15 EY UK Contraventions (or any one or combination of them).

Particulars

The loss suffered by the Applicant in respect of SGH Shares acquired before 28 August 2015, but retained after that time, will be calculated by reference to the difference between the market price which would have prevailed had the Pitchers Appendix 4E Misleading Conduct Contraventions and/or the Pitchers 30 September Misleading Conduct Contraventions, further or alternatively, the FY15 EY UK Contraventions not occurred, and the market price which in fact prevailed on and after the dates when the corrective disclosures occurred as pleaded in paragraphs 92 and 98 to 99.

This second further amended pleading was prepared by D.J. Fahey and W.A.D. Edwards of counsel.

Certificate of lawyer

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

Date: ~~2 November 2020~~ 14 December 2020

A handwritten signature in black ink, appearing to read 'Lee Taylor', with a long horizontal flourish extending to the right.

Signed by Lee Taylor
Lawyer for the Applicant

SCHEDULE A (Particulars to paragraphs 19, 20 & 21)

- A1. On or about 3 November 2008, the Master of the Rolls (Sir Anthony Clarke), with the support of the MoJ appointed the Right Honourable Lord Justice (Sir Rupert) Jackson (**Lord Justice Jackson**) to carry out an independent review of the rules and principles governing the costs of civil litigation and to make recommendations in order to promote access to justice at proportionate cost (**Civil Justice Costs Review**).

Document reference

Terms of Reference, being Appendix to the Announcement made by Sir Anthony Clarke MR dated 3 November 2008 (MHL.003.001.0018).

- A2. Between 31 January 2009 and 30 July 2009, Lord Justice Jackson conducted the Civil Justice Costs Review, during which submissions were lodged by interested parties (including RJW, Pannone and Fentons).

Document reference

*Report entitled "Review of Civil Litigation Costs" dated 21 December 2009, authored by the Right Honourable Lord Justice Jackson (**Jackson Report**), pp.473-484 (MHL.003.001.0019 at _0067 to _0078).*

- A3. As at the time the Civil Justice Costs Review was conducted, the monetary limits applicable to contested PI Work in the UK were:

- (a) Small Claims Track PI Cases – claims for personal injury damages up to £1,000 (for pain, suffering and loss of amenity) (**Small Claims PI Threshold**), and otherwise £5,000 (**Small Claims General Threshold**);
- (b) Fast Track PI Cases – claims above the threshold for Small Claims Track PI Cases, up to £25,000 (**Fast Track Threshold**); and
- (c) Multi-Track PI Cases – claims above the Fast Track Threshold.

- A4. As at the time Civil Justice Costs Review was conducted, the following rules and practices governed the recoverability of costs by successful claimants:

- (a) a successful claimant with a Small Claims Track PI Case was generally only able to recover:

- (i) stipulated fixed recoverable costs (**FRC**), which did not include any costs for legal representation (**Non-Legal FRC**) – if proceedings had been commenced; or
 - (ii) any amount offered by an insurer (which amount was no more than about £80) – if the case resolved before proceedings had been commenced;
- (b) a successful claimant with a Fast Track PI Case which was a RTA Claim with agreed damages at up to £10,000 (**Low Value RTA Agreed Damages PI Case**) was generally able to recover fixed recoverable costs which did include costs of legal representation up to a specified limit of £800 plus 20% of the damages agreed up to £5,000 plus 15% of the damages agreed up to £10,000 plus a 12.5% uplift if the claimant instructs a lawyer who practises in London and stipulated surrounding areas where the claimant lives in those areas (**Low Value RTA Agreed Damages FRC**, often called **Predictable Costs**), which costs were recoverable where proceedings had not been commenced.

Document reference

Civil Procedure Rules, Part 45, Section VI (as then in force).

- (c) a successful claimant with a Fast Track PI Case (other than a Low Value RTA Agreed Damages PI Case) was generally not subject to fixed recoverable costs (except in respect of the costs of an advocate preparing for and appearing at the trial of the claim), but was generally able to recover costs according to scales and other rules of Court (including, where the claimant's lawyers were operating on a CFA Basis, fee uplifts stipulated by the *Courts and Legal Services Act 1990* (UK) (**Fast Track Costs**); and

Document reference

Civil Procedure Rules, Part 44 and Part 45, Section VI (as then in force).

- (d) a successful claimant with a Multi-Track PI Case was generally not subject to fixed recoverable costs but was generally able to recover costs according to rules of Court (including, where the claimant's lawyers were operating on a CFA Basis, fee uplifts stipulated by the *Courts and Legal Services Act 1990* (UK) (**Multi-Track Costs**).

Document reference

Civil Procedure Rules, Part 44 (as then in force).

A5. On or about 21 December 2009, the Jackson Report was published by the MoJ, and stated:

- (a) Lord Justice Jackson recommended that costs recoverable in all Fast Track PI Cases be fixed (i.e., FRC);
- (b) Lord Justice Jackson could see considerable force in the arguments for raising the limit for Small Claims Track PI Cases from £1,000, but did not think that now was the right time to review that limit, because:
 - (i) In Lord Justice Jackson's view, the top priority at the moment was to (a) fix all costs on the fast track and (b) to establish an efficient and fair process for handling personal injury claims (which constitute the major part of fast track work);
 - (ii) if a satisfactory scheme of fixed costs is established for fast track personal injury cases (both contested and uncontested) and if the process reforms bed in satisfactorily, then all that will be required in due course will be an increase in limit for Small Claims Track PI Cases to reflect inflation since 1999; and
 - (iii) If a satisfactory scheme of fixed costs is not established or if the process reforms prove unsatisfactory, then the question of raising the limit for Small Claims Track PI Cases will have to be revisited at the end of 2010.

Document reference

Jackson Report at [2.9] (p.xviii), Pt 3, Chap. 15 (pp.146-163), and Recommendation 18 (p.464), Pt 4, Chap. 18, [3.1]-[3.5] (p. 183).

A6. On or about 30 April 2010, the UK Government introduced the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (that is, the RTA PI Protocol) which was a streamlined electronic process (that is, the Portal) which applied to claims arising out of a road traffic accident valued between £1,000 and £10,000 where liability was not contested (**Low Value RTA PI Cases**) (which would otherwise be Fast Track PI Cases).

Document reference

- i) *MoJ Report "Low Value Personal Injury Claims in Road Traffic Accidents" (October 2009) (MHL.003.001.0020);*

- ii) *Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents; CPR Part 45, Section III and Practice Direction 8B (Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents – Stage 3 Procedure).*

- A7. After the introduction of the RTA PI Protocol:
- (a) a successful claimant with a Small Claims Track PI Case was only able to obtain Non-Legal FRC;
 - (b) a successful claimant with a Low Value RTA PI Case whose claim:
 - (i) did not leave the Portal was generally only able to recover FRC of: £400 (at Stage 1 – completion of the claim notification form), plus £800 (at Stage 2 – obtaining medical reports), plus £250 or £500 (Stage 3 (paper or oral hearing, respectively), with success fees of 12.5% payable at each stage (**Portal FRC**); or
 - (ii) did leave the Portal was generally only able to recover Low Value RTA Agreed Damages FRC (with a credit for any Portal FRC already paid);
 - (c) a successful claimant with a Fast Track PI Case (other than a Low Value RTA PI Case) was able to recover Fast Track Costs;
 - (d) a successful claimant with a Multi-Track PI Case was able to recover Multi-Track Costs.
- A8. On or about 6 May 2010, a general election was held in the UK, and on 12 May 2010 the Rt Honourable David Cameron (**Cameron**) was invited by Her Majesty Queen Elizabeth II to form a government in her name, as leader of a coalition between the Conservative Party and the Liberal Democrat Party (pursuant to the Conservative-Liberal Democrat coalition agreement of 11 May 2010).
- A9. In or about June 2010, the Right Honourable Lord Young of Graffham (**Lord Young**) was appointed as adviser to the UK Government to investigate and report back to Cameron on the rise of the compensation culture over the last decade coupled with the current low standing that health and safety legislation now enjoys and to suggest solutions, and following the agreement of the report, to work with appropriate departments across government to bring the proposals into effect.

Document reference

Terms of Reference, being Annex A to the Report entitled "Common Sense Common Safety" dated 15 October 2010 (Young Report) (MHL.003.001.0021).

A10. On or about 15 October 2010, the UK Government published the Young Report, in which:

- (a) in a Foreword, Cameron stated:
 - (i) a damaging compensation culture has arisen, as if people can absolve themselves from any personal responsibility for their own actions, with the spectre of lawyers only too willing to pounce with a claim for damages on the slightest pretext;
 - (ii) Lord Young has come forward with a wide range of far reaching proposals which this Government fully supports;
 - (iii) we're going to curtail the promotional activities of claims management companies and the compensation culture they help perpetuate;
 - (iv) we need to act on this report and Lord Young has agreed to remain as Cameron's advisor on these important issues, to work with departments and all those with an interest in seeing his recommendations put into effect;

Document reference

Young Report, Foreword by Cameron, p.5 (MHL.003.001.0021 at _0005).

- (b) Lord Young recommended that:
 - (i) a simplified claims procedure for personal injury claims similar to that for road traffic accidents under £25,000 on a fixed costs basis should be introduced;
 - (ii) extending the upper limit for road traffic accident personal injury claims to £25,000 should be examined;
 - (iii) the recommendations in the Jackson Report should be introduced;
 - (iv) the operation of referral agencies and personal injury lawyers should be restricted.

Document reference

Young Report, Summary of recommendations, p.15 (MHL.003.001.0021 at _0015).

- A11. On or about 15 November 2010, MoJ published a report entitled “Proposals for Reform of Civil Litigation Funding and Costs on England and Wales: Implementation of Lord Justice Jackson’s Recommendations” (**2010 MoJ Report**) (MHL.003.001.0022), which stated:
- (a) the Government was considering the Jackson Report’s recommendation that costs recoverable in the fast track be fixed in conjunction with the experience of the new process for low value personal injury claims in road traffic accidents (that is, the RTA PI Protocol);
 - (b) Lord Young had strongly recommended extending the new process (that is, the RTA PI Protocol) to all Fast Track PI Cases;
 - (c) the Government aimed to introduce the new extended process by April 2012, subject to consultation and as part of wider civil justice reform.

Document reference

Cm 7947 (MHL.003.001.0022).

- A12. As at 31 May 2011, the business plan of the MoJ for 2011 to 2015 stated that the MoJ would take the following actions:
- (a) implement the recommendations in the Jackson Report into the funding and costs of civil litigation, including by consulting on Lord Justice Jackson’s proposals and analyse consultation responses; and
 - (b) extend the RTA PI Protocol to cover cases other personal injury accident claims, subject to consultation.

Document reference

MoJ Business Plan 2011-2015 dated 12 May 2011, p.16 (MHL.003.001.0023 at _0017).

- A13. On or about 14 February 2012, Cameron met with the Association of British Insurers and following the meeting Cameron’s office published a “Statement on outcomes following the Downing Street Insurance Summit”, which stated:

- (a) the UK Government was committed to take action to tackle the compensation culture, reduce legal costs and cut health and safety red tape (and the insurance industry committed to pass savings made on to consumers);
- (b) the UK Government and the insurance industry agreed to work together in future to make progress on this;
- (c) the measures agreed included:
 - (i) industry commitment to pass savings onto customers resulting from a Government commitment to reduce the current £1,200 fee that lawyers can earn from small value personal injury claims;
 - (ii) industry commitment to adjust premiums to reflect any reductions in legal costs created through the Jackson reforms that will reform 'no win, no fee' and ban referral fees; and extending the road traffic accident claims process to cover employers' liability and public liability;
 - (iii) the UK Government and insurance industry committed to work together to identify effective ways to reduce the number and cost of whiplash claims. Options include improved medical evidence, technological breakthroughs, the threshold for claims or the speed of accidents. Progress on this will be made in the coming months.

Document reference

- i) *The meeting was attended by Cameron, the Rt Hon Oliver Letwin (Minister of State, Cabinet Office) The Rt Hon Justine Greening (Secretary of State for Transport), Nick Herbert (Minister of State for Justice), Otto Thoresen (Director General, ABI), David Stevens (COO, Admiral), Trevor Matthews (Chief Executive, Aviva UK), Paul Evans, Group CEO (Axa UK and Ireland), David Riches (Director of Ops, British Chamber of Commerce), John Cridland (Director General, CBI), David Neave (Director of General Insurance, Co-operative Insurance), Judith Hackitt (Chair, Health and Safety Executive), Paul Geddes (Chief Executive, RBS Insurance), Ann Robinson (Uswitch), Stephen Lewis, (CEO, Zurich UK);*
- ii) *Prime Minister's Office, "Statement on outcomes following the Downing Street Insurance Summit", dated 14 February 2012 (MHL.003.001.0024).*

A14. In February 2012, the MoJ announced that the UK Government had determined to increase the monetary limit applicable to the Small Claims Track (for claims other

than personal injury claims) to £10,000 with effect from April 2013, with the aim to increase it further to £15,000 after further evaluation.

Document reference

MoJ Report "Solving disputes in the county courts: creating a simpler, quicker and more proportionate system: A consultation on reforming civil justice in England and Wales. The Government Response, Cm 8274, February 2012, p.11 [21] (MHL.003.001.0025 at _0015).

A15. As at 31 May 2012, the business plan of the MoJ for 2012 to 2015 stated that the MoJ would take the following actions:

- (a) increase the Small Claims Track Threshold to £10,000 by April 2013;
- (b) implement the recommendations in the Jackson Report into the funding and costs of civil litigation, including by banning referral fees in personal injury cases by April 2013;
- (c) implement proposals to extend the RTA PI Protocol to cover cases up to £25,000 and to other personal injury accident claims by April 2013; and
- (d) review FRC available within the RTA PI Protocol, and implement reform by April 2013.

Document reference

MoJ Business Plan 2012-2015 dated 31 May 2012, pp.12-13 (MHL.003.001.0026 at _0012 to _0013).

A16. As at 30 July 2012:

- (a) the policy of MoJ (and the UK Government) included:
 - (i) to reduce the cost of contesting road traffic accident personal injury claims through court;
 - (ii) to discourage people from bringing less meritorious personal injury claims or from making exaggerated claims; and
 - (iii) overall, to lower the cost of road traffic personal injury claims to insurers, which given insurers' commitment to pass on savings to policy holders, would result in downward pressure on the cost of motor insurance;
- (b) the policy options being considered (apart from doing nothing) were:

- (i) to introduce independent medical panels to assess whiplash injuries (**Independent Medical Assessment Reform**);
 - (ii) to increase the small claims track limit of the county court for road traffic accident personal injury claims from to £1,000 to £5,000 (that is, the Small Claims Track Threshold Reform);
 - (iii) to implement both the Independent Medical Assessment Reform and the Small Claims Track Threshold Reform;
- (c) the MoJ's (and the UK Government's) preferred option was to implement both the Independent Medical Assessment Reform and the Small Claims Track Threshold Reform.

Document reference

MoJ Impact Assessment No MoJ163 ("Reducing the number and costs of personal injury claims") dated 30 July 2012 – impact assessment at the consultation stage, pp.1, 11-12 (2012 MoJ Whiplash IA) (MHL.003.001.0007 at _0001 and _0011 to _0012).

- A17. Between about 19 November 2012 and February 2013, the MoJ undertook a consultation on the extension of the RTA PI Protocol to higher value RTA Claims, and the reduction of FRC available under it, during which submissions were lodged by interested parties (including Pannone and Fentons).

Document reference

Report entitled "Extension of the Road Traffic Accident Personal Injury Scheme: proposals on fixed recoverable costs", published on 27 February 2013 by MoJ, pp.6-7 and Annex C (2013 MoJ RTA Report) (MHL.003.001.0027 at _0006 to _0007 and _0037 to _0042).

- A18. On 11 December 2012, the MoJ published a consultation paper entitled "Reducing the number and costs of whiplash claims: a consultation on arrangements concerning whiplash injuries in England and Wales": Consultation Paper 17/2012 (**2012 MoJ Whiplash Consultation Paper**) (MHL.003.001.0028), which stated:

- (a) in the Foreword written by the Parliamentary Under Secretary of State for Justice (Helen Grant):
 - (i) between 2006 and 2012 road traffic accident claims increased by 60%;

- (ii) the UK Government shared the widespread concerns over this totally disproportionate growth in claims;
- (iii) Cameron has recognised the pressing need to tackle the rising cost of insurance premiums, and the effect this has on individuals, families and businesses;
- (iv) insurers estimate that the cost of whiplash claims from road traffic accidents, which comprise 90% of relevant personal injury claims, to the average policy-holder is £90 per annum;
- (v) The measures in this consultation look to remedy two areas where the current arrangements are imperfect: the difficulties in diagnosing the injury and the nature and cost of the court system that can work against insurers challenging suspect claims.
- (vi) The 2012 MoJ Whiplash Consultation Paper looked at the small claims track threshold for personal injury claims arising from road traffic accidents, which provides a more cost effective route for straightforward claims and self-represented litigants;

Document reference

2012 MoJ Whiplash Consultation Paper, pp.3-4 (MHL.003.001.0028 at _0007 to _0008).

- (b) in the balance of the 2012 MoJ Whiplash Consultation Paper:
 - (i) there was some evidence to suggest that the majority of whiplash and many other PI RTA claims are valued between £1,000 and £5,000 and therefore were highly likely to be considered under the Fast Track if they are contested [57];
 - (ii) The UK Government was of the view that many small value whiplash claims are relatively straight forward and that the Small Claims Track might be a more suitable venue in which to determine them than the Fast Track;
 - (iii) The UK Government was consulting on options that would bring more PI or whiplash claims arising from road traffic accidents into the Small Claims track. The options were to:

- (A) increase the threshold for RTA whiplash claims to £5,000;
 - (B) increase the threshold for all RTA PI claims (including whiplash) to £5,000;
 - (C) retain the current threshold;
- (iv) The UK Government was increasing the threshold for general Small Claims track matters to £10,000 from April 2013, but this consultation did not consider increasing the limit for PI or whiplash injury to that level.

Document reference

*2012 MoJ Whiplash Consultation Paper, pp. 19-20 [57]-[62]
(MHL.003.001.0028 at _0023 to _0024).*

- A19. Between about 11 December 2012 and 8 March 2013, the MoJ conducted a consultation on arrangements concerning whiplash injuries in England and Wales (**2013 Whiplash Consultation**), during which submissions were lodged by interested parties (including Pannone).

Document reference

- i) 2012 MoJ Whiplash Consultation Paper (MHL.003.001.0028);*
- ii) Paper entitled “Reducing the number and costs of whiplash claims: A Government response to consultation on arrangements concerning whiplash injuries in England and Wales, dated October 2013; Cost of motor insurance – whiplash: A Government response to the House of Commons Transport Committee (Cm 8738) (2013 MoJ Whiplash Report), Annex B (MHL.003.001.0029 at _0033 to _0038).*

- A20. On or about 27 February 2013, the MoJ published the 2013 MoJ RTA Report, which stated that it was the UK Government’s intention to request the Civil Procedure Rule Committee to make rules which:
- (a) with effect from 30 April 2013, amended the RTA PI Protocol by reducing the quantum of fixed recoverable costs;
 - (b) with effect from 31 July 2013:
 - (i) extended the RTA PI Protocol to all RTA Claims with a value of up to £25,000, with effect from 31 July 2013;

- (ii) implemented a new fixed recoverable cost regime for cases falling out of the extended RTA PI Protocol.

Document reference

2013 MoJ RTA Report, pp.3-4 (MHL.003.001.0027 at _0003 to _0004).

- A21. On or about 15 March 2013, the Transport Select Committee of the House of Commons (**TSC**) initiated an inquiry into the cost of motor insurance: whiplash, during which submissions were lodged and evidence given by interested parties.

Document reference

*Report published by the House of Commons on 31 July 2013 entitled “Cost of Motor Insurance: whiplash” (Fourth Report of Session 2013-14) (**2013 TSC Report**), pp.33 (MHL.003.001.0030 at _0035).*

- A22. With effect from 1 April 2013, the UK Government increased the Small Claims Track Threshold for general matters (but not personal injury claims) to £10,000 (effective 1 April 2013).

Document reference

Civil Procedure (Amendment) Rules 2013.

- A23. With effect from 30 April 2013, the UK Government reduced Portal FRC applicable to Low Value RTA PI Cases to: £200 (at Stage 1 – completion of the claim notification form), plus £300 (at Stage 2 – obtaining medical reports), plus £250 or £500 (Stage 3 (paper or oral hearing, respectively), with success fees of 12.5% payable at each stage (**Reduced Portal FRC**) (effective 30 April 2013).

Document reference

Civil Procedure (Amendment No.3) Rules 2013.

- A24. With effect from 31 July 2013, the UK Government:
- (a) extended the RTA PI Protocol so that it applied to claims arising out of a road traffic accident valued between £1,000 and £25,000 where liability was not contested (**Extended Low Value RTA PI Cases**) (all of which would otherwise be Fast Track PI Cases);
 - (b) introduced a Pre-Action Protocol for Low Value Personal Injury (Employers’ Liability And Public Liability Claims (**EL/PL Protocol**) so that it applied to many

employers' liability and public liability claims valued between £1,000 and £25,000 (**Low Value EL/PL Case**).

Document reference

- i) Civil Procedure (Amendment No.6) Rules 2013;*
- ii) Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents from 31 July 2013 (MHL.003.001.0032);*
- iii) Pre-Action Protocol for Low Value Personal Injury (Employers' Liability And Public Liability Claims) (MHL.003.001.0034).*

A25. After the introduction of the Extended RTA PI Protocol and the EL/PL Protocol:

- (a) a successful claimant with a Small Claims Track PI Case was only able to obtain Non-Legal FRC;
- (b) a successful claimant with a Low Value RTA PI Case:
 - (i) arising out of a road traffic accident in respect of which a claim was lodged in the Portal before 30 April 2013:
 - (A) whose claim did not leave the Portal was generally only able to recover from a defendant Portal FRC;
 - (B) whose claim did leave the Portal was generally only able to recover from a defendant Low Value RTA Agreed Damages FRC (with a credit for any Portal FRC already paid);
 - (ii) arising out of a road traffic accident in respect of which a claim was lodged in the Portal after 30 April 2013 and before 31 July 2013:
 - (A) whose claim did not leave the Portal was generally only able to recover Reduced Portal FRC;
 - (B) whose claim did leave the Portal was generally only able to recover from the unsuccessful defendant Low Value RTA Agreed Damages FRC (with a credit for any Reduced Portal FRC already paid);

- (c) a successful claimant with an Extended Low Value RTA PI Case (being all Fast Track PI Cases which were RTA Claims) in respect of which a claim was lodged in the Portal after 31 July 2013):
 - (i) whose claim did not leave the Portal was generally only able to recover Reduced Portal FRC;
 - (ii) whose claim did leave the Portal was generally only able to recover FRC assessed in accordance with CPR Part 45, Section IIIA, with a credit for any Reduced Portal FRC already paid (**Post-Portal FRC**);
- (d) a successful claimant with a Fast Track PI Case (other than an Extended Low Value RTA PI Case) was able to recover Fast Track Costs;
- (e) a successful claimant with a Multi-Track PI Case was able to recover Multi-Track Costs.

A26. On 31 July 2013, the 2013 TSC Report was published, which stated that:

- (a) there are good arguments for and against switching whiplash claims of between £1,000 and £5,000 to the Small Claims Track, but on balance the TSC did not support that proposal at this time;
- (b) the £1,000 threshold for personal injury claims using the small claims track was set in 1991 and cannot be left at that level indefinitely. However, the TSC considered that any proposal to change the threshold should be informed by a fuller understanding of the impact of the new electronic portal for claims on how claims are managed and on costs.

Document reference

2013 TSC Report, pp.20-21 [50]-[54] (MHL.003.001.0030 at _0022 to _0023).

A27. In October 2013, the MoJ published the 2013 MoJ Whiplash Report (in response to both the 2013 Whiplash Consultation and the 2013 TSC Report), and stated:

- (a) in the foreword by the Lord Chancellor and Secretary of State for Justice (the Rt Honourable Chris Grayling):
 - (i) in this response the Government sets out what action we intend to take following consultation to reduce the number and costs of whiplash claims;

- (ii) on the consultation options to increase the Small Claims Track Threshold, the Government believes that there are good arguments for increasing the Small Claims Track to £5,000 for all road traffic accidents;
- (iii) at this stage the Government has decided to defer any increase in the Small Claims Track Threshold;

Document reference

2013 MoJ Whiplash Report, pp.6 (MHL.003.001.0029 at _0010).

- (b) in the balance of the report:
 - (i) the UK Government remains of the view that extending the Small Claims track would be beneficial in providing a low cost route to bringing a claim through the courts, with each side bearing its own costs;
 - (ii) the UK Government has carefully considered the full range of consultation responses from the 2013 Whiplash Consultation and the 2013 TSC Report and is persuaded that on balance it would not be appropriate to increase the Small Claims limit for RTA-related personal injury at this stage;
 - (iii) while the Government believes that an increase in the Small Claims Track Threshold in this sector would provide additional benefits, it regards it as sensible and pragmatic to consider the combined impact of earlier reforms before embarking on any further change now.

Document reference

2013 MoJ Whiplash Report, p. 17 [38], [41], p. 18 [45] (MHL.003.001.0029 at _0021 to _0022).

- A28. Between late December 2013 and mid-2014, the TSC conducted further inquiries into the cost of motor insurance: whiplash, during which submissions were lodged and evidence given by interested parties, including SGH UK t/as Slater & Gordon LLP (which lobbied against increasing the Small Claims Track Threshold).

Document reference

- i) *Report published by the House of Commons on 30 June 2014 entitled "Driving premiums down: fraud and the cost of motor insurance" (First Report of Session 2014-15) (2014 TSC Report) (MHL.003.001.0036).*

- ii) *SGH's written submission was dated December 2013 (CMI0017), and in [8]-[9] SGH lobbied against increasing the Small Claims Track Threshold) (MHL.003.001.0037 at _0003).*

A29. On 30 June 2014, the TSC published the 2014 TSC Report.

A30. On 20 October 2014, the UK Government and the Association of British Insurers published a response to the 2014 TSC Report, which stated, inter alia, that:

- (a) the UK Government believed there was evidence to support raising the small claims limit but its main focus for now was the implementation of the reforms to medical evidence and reporting announced on 23 October 2013 (ie in the 2013 MoJ Whiplash Report); and
- (b) Further consideration will be given to the issue of raising the small claims limit in due course.

Document reference

Report published by the House of Commons Transport Committee (HC716) entitled "Driving premiums down: fraud and the cost of motor insurance: Government and Association British Insurers Responses to the Committee's First Report of Session 2014-15, at p.3 (MHL.003.001.0038 at _0005).

A31. As at 16 September 2014:

- (a) the policy of MoJ (and the UK Government) included to ensure that road traffic accident personal injury claims, especially in relation to whiplash, were founded upon credible medical reports and to ensure that the cost of such medical reports was proportionate;
- (b) the policy option being considered for immediate introduction by MoJ and the UK Government was to reform medical examination and reporting in motor accident soft tissue injury cases (namely, the Independent Medical Assessment Reform);
- (c) the implementation of the policy option of increasing the Small Claims Track Threshold for personal injury claims had been deferred.

Document reference

MoJ Impact Assessment No MoJ163 ("Reducing the number and costs of personal injury claims") dated 16 September 2014 – impact assessment at

the final stage, pp. 1, 3 (2014 MoJ Whiplash IA) (MHL.003.001.0039 at _0001 and _0003).

- A32. Between September 2014 and December 2014 the UK Government implemented the Independent Medical Assessment Reform (so as to take effect from 6 April 2015).

Document reference

- i) *Amendments to the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents made with effect from 31 July 2013;*
- ii) *Civil Procedure (Amendment No.8) Rules 2014.*

- A33. On 11 March 2015, Aviva Insurance Limited (**Aviva**) published a document entitled “Road to reform: Driving out the compensation culture”, in which it stated:

- (a) Aviva had commissioned a report from Frontier Economics which found that the UK should:
 - (i) ban or lower allowable contingency fees for lawyers;
 - (ii) lower the cap on legal fees from £500 to a lower amount;
 - (iii) increase the Small Claims Track Threshold from £1,000 to allow more whiplash/soft tissue injury claims to be settled without solicitors.
- (b) Aviva had formed recommendations to address the UK’s burgeoning compensation culture and outlined a roadmap of what a potential package of reforms could look like, which Aviva would urge the next UK Government to consider.

Document reference

Aviva, “Road to Reform: driving out the compensation culture”, pp.7-9 (MHL.003.001.0041 at _0006 to _0007).

SCHEDULE B (DEFINED TERMS)

<p>1</p> <p>1H16 Report 104</p> <p>2</p> <p>20 March Board Report 19</p> <p>2010 MoJ Report 123</p> <p>2012 MoJ Whiplash Consultation Paper 126</p> <p>2012 MoJ Whiplash IA 126</p> <p>2012 Report 10</p> <p>2013 MoJ RTA Report 126</p> <p>2013 MoJ Whiplash Report 128</p> <p>2013 Report 10</p> <p>2013 TSC Report 129</p> <p>2013 Whiplash Consultation 128</p> <p>2014 MoJ Whiplash IA 134</p> <p>2014 Report 10</p> <p>2014 TSC Report 132</p> <p>2015 HY Report 10</p> <p>2015 Report 10</p> <p>26 November Announcement 102</p> <p>29 February Announcement 103</p> <p>29 February Presentation 104</p> <p>29 February Publications 104</p> <p>29 January Board Paper 27</p> <p>3</p> <p>3 Year Financial Model 15</p> <p>30 March Announcement 11</p> <p>30 March Presentation 11</p> <p>30 March Publications 11</p> <p>A</p> <p>AASB101 7</p> <p>AASB118 7</p> <p>AASB136 7</p> <p>AASB3 7</p> <p>Affected Market 7</p> <p>Appendix 4E 47</p> <p>Appendix 4E PSD Goodwill Asset 48</p> <p>Applicant 1</p> <p>ASA200 35</p> <p>ASA230 35</p> <p>ASA300 35</p> <p>ASA315 35</p> <p>ASA330 35</p> <p>ASA500 36</p> <p>ASA540 36</p> <p>ASA600 36</p> <p>ASIC 8</p> <p>ASIC Act 5</p> <p>ASX 7</p> <p>Auditor's Report 8</p> <p>Australian Consumer Law 6</p> <p>Aviva 134</p> <p>C</p> <p>Cameron 121</p> <p>Case Intake Growth Strategy 13</p> <p>CFA Basis 10</p>	<p>Civil Justice Costs Review 118</p> <p>Claims Pipeline Assumptions 22</p> <p>Claims Resolution Rate Assumption 22</p> <p>Claims Success Rate Assumptions 22</p> <p>Corporations Act 3</p> <p>Cox 37</p> <p>D</p> <p>Dilution Rate Information 63</p> <p>Draft EY UK Audit Results Report 44</p> <p>E</p> <p>EL/PL Protocol 129</p> <p>Extended Low Value RTA PI Cases 129</p> <p>EY UK 3</p> <p>EY UK Audit 93</p> <p>EY UK Status Report 45</p> <p>EY UK Transaction Insights Report 32</p> <p>F</p> <p>Fast Track 17</p> <p>Fast Track Costs 119</p> <p>Fast Track PI Cases 17</p> <p>Fast Track Threshold 118</p> <p>Financial Report 7</p> <p>Fitzpatrick 5</p> <p>Forecast Dilution Rates 62</p> <p>FRC 119</p> <p>FY15 Component Audit Retainer 90</p> <p>FY15 EY UK Audit Letter 53</p> <p>FY15 EY UK Contraventions 100</p> <p>FY15 EY UK Goodwill Accounting Reasonable Grounds Representation 96</p> <p>FY15 EY UK Goodwill Accounting Representation 96</p> <p>FY15 EY UK Goodwill Impairment Reasonable Grounds Representation 96</p> <p>FY15 EY UK Goodwill Impairment Representation 96</p> <p>FY15 EY UK Representations 100</p> <p>FY15 Financial Report 34</p> <p>FY15 Statutory Accounts 57</p> <p>G</p> <p>Group Members 4</p> <p>Growth Strategy 12</p> <p>Growth Strategy Risk Indicators 30</p> <p>Growth Strategy Risks 30</p> <p>H</p> <p>Harkin 41</p> <p>Harrison 5</p> <p>Howarth 41</p> <p>I</p> <p>IFRS 90</p> <p>Inadequate PSD Financial Reporting Information 59</p> <p>Independent Medical Assessment Reform 126</p> <p>Instinctif Report 19</p>
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