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Commercial List Statement

COURT DETAILS

Court Supreme Court of NSW
Division Equity
List Commercial
Registry Supreme Court Sydney
Case number 2021/00224418

TITLE OF PROCEEDINGS

First Plaintiff Dariusz Koper
First Defendant Zurich Insurance Company Ltd
Second Defendant Aspen Insurance UK Limited (Company Number 01184193, ARBN 128 637 650)

FILING DETAILS

Filed for Dariusz Koper, Plaintiff 1

Legal representative Martin Del Gallego
Legal representative reference (02) 9253 9999
Telephone (02) 9253 9999
Your reference MDG. 425121

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Statement (231009 Further Amended Commercial List Statement (signed).pdf)

[attach.]

Form 3A (version 3)
UCPR 6.2

FURTHER AMENDED COMMERCIAL LIST STATEMENT

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2021/00224418

TITLE OF PROCEEDINGS

Plaintiff	Dariusz Koper
First Defendant	Zurich Insurance PLC Company Limited
Second Defendant	Aspen Insurance UK Limited
Number of Defendants	11

FILING DETAILS

Filed for	Plaintiff
Legal representative	Martin del Gallego Piper Alderman
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A NATURE OF DISPUTE

1. This proceeding is commenced as a representative proceeding under Part 10 of the *Civil Procedure Act 2005 (NSW)* by the Plaintiff on his own behalf and on behalf of other persons who:
 - 1.1 are a judgment creditor of the New Zealand High Court proceedings CIV 2012-404-6290 (**New Zealand Proceedings**);
 - 1.2 have received an assignment of a judgment creditor's interest in the New Zealand Judgment and/or Unpaid Judgment Sum (as defined at paragraph 3) below; or
 - 1.3 have, as at the date of filing this Further Amended Commercial List Statement (**FACLS**), applied for and been accepted as members of the managed investment scheme known as 'The Certain Underwriters at Lloyds Group Litigation Funding Scheme' (ARN 647 497 229),
(Group Members).

2. As at the date of commencement of this proceeding, there are seven or more Group Members who have claims against the Defendants in respect of, or arising out of, the matters alleged in this FACLS-Amended Commercial List Statement.
3. On 22 March 2017, in the New Zealand Proceedings, the Court delivered a judgment in favour of the Plaintiff and Group Members against Brookfield Multiplex Constructions (NZ) Limited (In Liquidation) (**BMX**) and KNZ International Co Limited (formerly known as Ganada Development Company Limited) (**KNZ**) for NZD53,124,719.76 (**New Zealand Judgment**). As at the date of commencement of this proceeding, NZD23,124,719.76 of the New Zealand Judgment sum remains unpaid (**Unpaid Judgment Sum**).
4. Multiplex Constructions Pty Ltd (formerly known as 'Brookfield Multiplex Pty Ltd') (**BMPL**) was insured under a professional indemnity insurance policy provided by the Defendants and others, which extended cover to any BMPL subsidiary, including BMX. The Defendants have denied indemnity to BMX. On 3 December 2012, BMX entered liquidation.
5. On 8 December 2021, in Supreme Court of New South Wales proceeding 2021/91398 (**Leave Proceeding**), Justice Rein made an order granting the Plaintiff leave, pursuant to section 5 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW)* (**Third Party Claims Act**), to proceed with this current proceeding (Rein Decision). The Rein Decision was upheld by the NSW Court of Appeal on 20 July 2022 and the High Court of Australia on 8 August 2023.
6. The Plaintiff challenges the denial of indemnity and, pursuant to the Third Party Claims Act, seeks to recover the Unpaid Judgment Sum or the amount of the loss and damage resulting from BMX's negligence directly from the Defendants, as alleged below.

B ISSUES LIKELY TO ARISE

1. The issues likely to arise in the proceeding are:
 - 1.1 whether BMX is liable to the Plaintiff and Group Members for the defects in the Victopia Apartments;
 - 1.2 whether the professional indemnity insurance policies effected on behalf of BMX for the period 31 March 2012 to 31 March 2013, being policies numbered B0901LB1218581000 (**Primary Policy**), B0901LB1218582000 (**First Excess Policy**), B0901LB1218583000 (**Second Excess Policy**) and B0901LB1218584000 (**Third Excess Policy**) (together the **Policies**), respond to

and cover BMX's liability to the Plaintiff and Group Members in respect of the Unpaid Judgment Sum; and

- 1.3 whether the Plaintiff and Group Members may recover the amount of the Unpaid Judgment Sum or the amount of the loss and damage resulting from BMX's negligence directly from the Defendants under section 4(1) of the Third Party Claims Act.

C PLAINTIFF'S CONTENTIONS

PARTIES

1. The Plaintiff is, and at all material times was:

- 1.1 a natural person capable of suing in his own name;
- 1.2 the registered proprietor of apartment 13P in the 203-apartment complex at 135 Victoria Street West, Auckland Central, New Zealand, situated on the corner of Victoria and Nelson Streets (**Victopia Apartments**);
- 1.3 a judgment creditor of the New Zealand Proceedings; and
- 1.4 a party with a claim against BMX for the cost of repairing his apartment within the Victopia Apartments and associated losses to the apartment.

Particulars

*Decision of Thomas J delivered in the New Zealand Proceedings on 22 March 2017 (**Decision of Thomas J**).*

2. The First Defendant is, and at all material times was:

- 2.1 entitled to sue and be sued in its corporate name and style;
- 2.2 a Public Limited Company incorporated pursuant to the laws of Switzerland Ireland;
- 2.3 carried on business as an insurer; and
- 2.4 subscribed to the Primary Policy.

2A. The Second Defendant is, and at all material times was:

- 2A.1 entitled to sue and be sued in its corporate name and style;
- 2A.2 a registered foreign company with a registered office in Australia;
- 2A.3 carried on business as an insurer; and
- 2A.4 subscribed to the Primary Policy, the Second Excess Policy and the Third Excess Policy.

2B. The Third Defendant is, and at all material times was:

- 2B.1 entitled to sue and be sued in its corporate name and style;
- 2B.2 a European Company (SE) incorporated pursuant to the laws of Luxembourg;
- 2B.3 carried on business as an insurer; and
- 2B.4 subscribed to the Primary Policy, the First Excess Policy and the Third Excess Policy.

2C. The Fourth Defendant is, and at all material times was:

- 2C.1 entitled to sue and be sued in its corporate name and style;
- 2C.2 a European Company (SE) incorporated pursuant to the laws of Germany;
- 2C.3 carried on business as an insurer; and
- 2C.4 subscribed to the Primary Policy, the First Excess Policy, the Second Excess Policy and the Third Excess Policy.

2D. The Fifth Defendant is, and at all material times was:

- 2D.1 entitled to sue and be sued in its corporate name and style;
- 2D.2 a Private Limited Company incorporated pursuant to the laws of the United Kingdom;
- 2D.3 carried on business as an insurer; and
- 2D.4 subscribed to the Primary Policy, the First Excess Policy and the Third Excess Policy.

2E. The Sixth Defendant is, and at all material times was:

- 2E.1 entitled to sue and be sued in its corporate name and style;
- 2E.2 a Private Limited Company incorporated pursuant to the laws of the United Kingdom;
- 2E.3 carried on business as an insurer; and
- 2E.4 subscribed to the First Excess Policy and the Third Excess Policy.

2F. The Seventh Defendant is, and at all material times was:

- 2F.1 entitled to sue and be sued in its corporate name and style;
- 2F.2 a European Company (SE) incorporated pursuant to the laws of Germany;
- 2F.3 carried on business as an insurer; and
- 2F.4 subscribed to the First Excess Policy and the Second Excess Policy.

2G. The Eighth Defendant is, and at all material times was:

- 2G.1 entitled to sue and be sued in its corporate name and style;
- 2G.2 a European Company (SE) incorporated pursuant to the laws of Luxembourg;
- 2G.3 carried on business as an insurer; and
- 2G.4 subscribed to the First Excess Policy and the Second Excess Policy.

2H. The Ninth Defendant is, and at all material times was:

- 2H.1 entitled to sue and be sued in its corporate name and style;
- 2H.2 a Private Limited Company incorporated pursuant to the laws of the United Kingdom;
- 2H.3 carried on business as an insurer; and
- 2H.4 subscribed to the First Excess Policy and the Second Excess Policy.

2I. The Tenth Defendant is, and at all material times was:

- 2I.1 entitled to sue and be sued in its corporate name and style;

2I.2 a Private Limited Company incorporated pursuant to the laws of the United Kingdom;

2I.3 carried on business as an insurer; and

2I.4 subscribed to the First Excess Policy and the Second Excess Policy.

2J. The Eleventh Defendant is, and at all material times was:

2J.1 entitled to sue and be sued in its corporate name and style;

2J.2 a Private Limited Company incorporated pursuant to the laws of the United Kingdom;

2J.3 carried on business as an insurer; and

2J.4 subscribed to the Second Excess Policy and the Third Excess Policy.

3. BMPL is, and at all material times was:

3.1 a company incorporated pursuant to the *Corporations Act 2001* (Cth); and

3.2 the parent company of BMX.

4. BMX was at all material times:

4.1 the company responsible for the design and construction of the Victopia Apartments; and

4.2 a wholly-owned subsidiary of BMPL.

Particulars

i. *Contract Agreement dated 1 November 2003 between KNZ and BMX, Clause 1;*

ii. *Company search of BMXPL.*

CLAIM IN NEGLIGENCE

The Victopia Apartments

5. Prior to 2005, the undeveloped site of the Victopia Apartments was owned by property development company KNZ.
6. In or around 2002, KNZ engaged architectural firm ADC Architects to prepare designs and specifications for the building work necessary to construct the Victopia Apartments (the **Architectural Plans**).
7. The Architectural Plans were completed by ADC Architects in or around November 2002.

Particulars

- i. *Plans and specifications prepared by ADC Architects dated November 2002, Job Number 2002/J95; and*
- ii. *Decision of Thomas J at [7].*
8. On 1 November 2003, KNZ engaged BMX to design, construct, complete and deliver the Victopia Apartments (the **D&C Contract**).

Particulars

- i. *Contract Agreement dated 1 November 2003 between KNZ and BMX, Clause 1; and*
- ii. *Decision of Thomas J at [10].*
9. Under the D&C Contract:
 - 9.1 BMX was to carry out and fulfill all obligations imposed on it by the Contract Documents, being:
 - (a) Volume 1 – Special Conditions of Contract;
 - (b) Volume 1 – Amendments to the General Conditions of Contract;
 - (c) Volume 1 – General Conditions of Contract; NZ53910:1998;
 - (d) Volume 1 – Annexures 1-7; and
 - (e) Volume 2 – Contractor's Proposal.

9.2 Contract Works was defined as all the work to be executed in accordance with the Contract Documents whether supplied or performed by BMX or any subcontractor.

9.3 BMX warranted that it would exercise reasonable skill, care and diligence in producing the Contract Works including, without limitation, the design of the Contract Works and that it would perform all design services exercising reasonable skill and care.

9.4 BMX was required to provide all necessary supervision during the D&C Contract and all work was required to be carried out under the supervision of BMX's nominated representative.

Particulars

i. *General Conditions of Contract including amendments thereto, clause 5.1.5; and*

ii. *General Conditions of Contract, clause 5.2.*

9.5 BMX covenanted to KNZ that:

- (a) all materials used in the Contract Works would be fit for purpose;
- (b) all work involved in carrying out the Contract Works would be carried out in a good and workmanlike manner and in accordance with the provisions of the Contract;
- (c) where BMX undertook design work as part of the Contract Works, it would have the same liability to KNZ as would an Architect or other appropriate professional designer; and
- (d) BMX would not be excused in whole or in part in respect of its liability by reason of any default on the part of a subcontractor.

Particulars

D&C Contract, Annexure 3 form of guarantee, clauses 1 and 8.

10. On 21 July 2003, ADC Architects applied to the Auckland City Council (**ACC**) on behalf of KNZ for building consent for stage one of the Victopia Apartments, being the basement structure up to the podium level (**Stage One Works**).

Particulars

Decision of Thomas J at [11].

11. On 15 September 2003, ACC issued a building consent for the Stage One Works.

Particulars

- i. *Decision of Thomas J at [11]; and*
- ii. *Building Consent Approval dated 15 September 2003.*

12. On 22 September 2003, BMX applied to the ACC on behalf of KNZ for a building consent for stage two of the Victopia Apartments, being the structure and fire report (**Stage Two Works**).

Particulars

Decision of Thomas J at [12].

13. On 7 November 2003, ACC issued a building consent for the Stage Two Works.

Particulars

- i. *Decision of Thomas J at [12]; and*
- ii. *Building Consent Approval dated 7 November 2003.*

14. On 8 December 2003, BMX applied to the ACC on behalf of KNZ for a building consent for stage three of the Victopia Apartments, being the architectural building services and balance of structure (roof and canopies) (**Stage Three Works**).

Particulars

Decision of Thomas J at [13].

15. On 27 May 2004, the ACC issued a building consent for the Stage Three Works.

Particulars

- i. *Decision of Thomas J at [13]; and*
- ii. *Building Consent Approval dated 27 May 2004.*

16. From July 2003 until May 2005 BMX designed, constructed, delivered and completed the Victopia Apartments.

Particulars

Decision of Thomas J at [14].

17. On 17 May 2005, the ACC issued Code Compliance Certificates in respect of the Stage One Works, Stage Two Works and Stage Three Works pursuant to section 95 of the *Building Act 2004* (NZ).

Particulars

- i. *Code Compliance Certificate AC/03/05394;*
- ii. *Code Compliance Certificate AC/03/07706;*
- iii. *Code Compliance Certificate BLD36030770602; and*
- iv. *Decision of Thomas J at [15].*

Building Code

18. Pursuant to the *Building Act 1991* (NZ) (**Building Act**), BMX was required to undertake its Building Work on the Victopia Apartments in accordance with the provisions of the *New Zealand Building Code* (the **Code**).

Particulars

- i. *the particulars to paragraphs 11, 13 and 15 are repeated;*
- ii. *Building Work is defined under the Building Act to mean work for or in connection with the construction, alteration, demolition, or removal of a building and includes sitework; and*
- iii. *the Code is Schedule 1 to the Building Regulations 1992 (NZ).*

19. Under the Code:

- 19.1 **B1.3.1** – Buildings, building elements and sitework shall have a low probability of rupturing, becoming unstable, losing equilibrium, or collapsing during construction or alteration and throughout their lives;
- 19.2 **B1.3.2** – Buildings, building elements and sitework shall have a low probability of causing loss of amenity through undue deformation, vibratory response, degradation, or other physical characteristics throughout their lives or during construction or alteration when the building is in use;
- 19.3 **B1.3.3** – account is to be taken of all physical conditions likely to affect the stability of buildings, building elements and siteworks including water and other liquids;
- 19.4 **B2.3.1** – the building envelope must, with only normal maintenance, continue to satisfy the performance requirements of the code for 15 years;
- 19.5 **C2.3.3(d)** – escape routes shall be ... resistant to the spread of fire as required by clause C3 "spread of fire";
- 19.6 **C3.3.2** – fire separation shall be provided within the building to avoid the spread of fire and smoke to other fire-cells, spaces intended for sleeping, household units within the same building or adjacent buildings and other property;
- 19.7 **C3.3.3** – Fire separations shall:
 - (a) where openings occur, be provided with fire resisting closures to maintain the integrity of the fire separations for an adequate time;
 - (b) where penetrations occur, maintain the fire resistance rating of the fire separation.
- 19.8 **C3.3.4** – Concealed spaces and cavities within buildings shall be sealed and subdivided where necessary to inhibit the unseen spread of fire and smoke;
- 19.9 **C3.3.7** – Air conditioning and mechanical ventilation systems shall be constructed to avoid circulation of smoke and fire between fire-cells;
- 19.10 **E2.2** – Buildings shall be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside; and

19.11 **E2.3.2** – Roofs and exterior walls shall prevent the penetration of water that could cause undue dampness, or damage to building elements.

Victopia Apartments – Design Elements

20. As designed and constructed, the Victopia Apartments have the following design elements, amongst others:

- 20.1 203 residential apartments across 16 levels;
- 20.2 a cladding system called the Eterpanel cladding system which covers most of the northern and southern elevations, part of the western elevation and which forms the majority of the façade on the building (the **Eterpanel Cladding**);
- 20.3 each of the 203 apartments has one balcony with the exception of three apartments on level 14 which have three balconies. Each balcony consists of:
 - (a) the balcony concrete slab (structure);
 - (b) a layer of screed (cement based);
 - (c) a waterproofing membrane called ASA Dampfix 3;
 - (d) a tile adhesive and acoustic barrier called ASA Asaphonic; and
 - (e) ceramic tiles including grouted joints(the **Balconies**);
- 20.4 fire-stopping systems including:
 - (a) sealants, foam on cables, small plastic pipes and metal pipes;
 - (b) fire collars on plastic pipes;
 - (c) fire dampers in air conditioning ducts;
 - (d) the construction of doors; and
 - (e) the plasterboard(the **Fire-Stopping**); and

20.5 two levels of car parking below the ground floor podium which is located immediately in front of the main entrance to the building. The podium has an asphalt surface applied over a bituminous sheet membrane, (the **Podium**).

Particulars

Decision of Thomas J at [7], [38], [39], [48].

Victopia Apartments – Defects

Eterpanel Cladding

21. The Eterpanel Cladding system design did not adequately allow for thermal and moisture movement.

Particulars

Decision of Thomas J at [34], [36].

22. As a result of the defect in paragraph 21:

22.1 there has been systematic cracking of the Eterpanel fibre cement panels used in the Eterpanel Cladding system as installed on the Victopia Apartments; and

22.2 the Eterpanel Cladding system does not comply with clauses B1 and B2 of the Code.

Particulars

- i. *Decision of Thomas J at [34], [35], [36], [37];*
- ii. *There was insufficient allowance for movement in the Eterpanel Cladding system to cater for the thermal movement in the Eterpanel rain screen sheets and the underlying aluminium rails;*
- iii. *The presence of a countersunk screw in the design of the Eterpanel Cladding system does not allow the sheet to move at the fixings, under the expansion and contraction caused by thermal moisture movement;*
- iv. *Figure 104 of the Eterpanel Cladding manual identified the use of a countersunk screw in the sheets as appropriate;*

- v. *The Eterpanel Cladding system did not fall within the construction methods set out in the acceptable solutions that were deemed to comply with the Code and was being treated as an "alternative solution". The Plaintiff refers to the Building Consent Approval dated 27 May 2004; and*
- vi. *At the time of construction of the Victopia Apartments, the Eterpanel Cladding system was new to the market and did not have a satisfactory performance in service or any confirmed durability capabilities. The Eterpanel Cladding system did not come with any technical literature or any appraisals which verified that the system performed in accordance with the requirements of the Code.*

Balconies

- 23. The Balconies were designed with ASA Dampfix 3 waterproof membrane and the ASA Asaphonic tile adhesive which were incompatible with one another and should not have been selected as appropriate materials for use on the Balconies.
- 24. As a result of the defects in paragraph 23:
 - 24.1 the waterproof membrane under the tiles has disintegrated and/or failed to adhere to either the concrete/screed substrate or the tile adhesive; and
 - 24.2 the waterproof membrane to each of the Balconies constitutes a breach of clauses B1.3.1, B1.3.2 and E2.2 of the Code.

Particulars

- i. *Decision of Thomas J at [41], [42], [43]; and*
- ii. *ASA Dampfix 3 and ASA Asaphonic are incompatible with one another as ASA Dampfix 3 is a water based membrane which cannot be used under a solvent based tile adhesive, such as ASA Asaphonic.*

Podium

- 25. The Podium was designed and constructed with the following defects:
 - 25.1 the lack of an adequate upstand at the junction with the wall;
 - 25.2 the lack of a protective flashing at the top of the membrane upstand at the junction with the wall;

- 25.3 the lack of a transitional fillet at the junction where the membrane changes from horizontal to vertical; and
- 25.4 poor detailing at the junctions between:
 - (a) the podium entry threshold membrane and the balcony and front entrance tiled areas; and
 - (b) the junction at the lower level balconies where an overflow is incorporated between the concrete balustrades.

26. As a result of the defects in paragraph 25:

- 26.1 moisture has migrated to the carpark beneath the Podium causing damage to plasterboard wall linings and undue dampness in the carpark; and
- 26.2 the Podium waterproofing breaches clauses E2.2, E2.3.2 and B2 of the Code.

Particulars

- i. *Decision of Thomas J at [48], [49], [50], [96], [97]; and*
- ii. *The ADC consented plan “Details: Podium Sheet (21) 01 Rev:02” does not show a transitional fillet at the junction where the membrane changes from horizontal to vertical.*

Fire-Stopping

27. The Fire-Stopping installed throughout the Victopia Apartments was defective as the walls, floors, doors, mechanical installations, plumbing, fire protection services and electrical installations did not comply with clauses C2.3.3(d), C3.3.2, C3.3.3, C3.3.4 and C3.3.7 of the Code.

Particulars

- i. *Decision of Thomas J at [98], [99]; and*
- ii. *Brief of Evidence of Geoffrey Merryweather and the Schedule of defects at Schedule 1.*

BMX – Breach of Duty of Care

28. At all material times, BMX owed a non-delegable duty of care to the Plaintiff and Group Members to exercise reasonable skill and care in designing and constructing the Victopia Apartments.

Particulars

- i. *Decision of Thomas J at [89];*
- ii. *The Plaintiff refers to the matters in paragraph 9; and*
- iii. *The duty of care arises under New Zealand law, particulars of which will be provided following the exchange of evidence.*

29. In breach of its duty of care, BMX failed to ensure that:

- 29.1 the Eterpanel Cladding system:
 - (a) was suitable for use on the Victopia Apartments;
 - (b) allowed for adequate thermal and moisture movement; and
 - (c) complied with clauses B1 and B2 of the Code.
- 29.2 the ASA Dampfix 3 waterproof membrane:
 - (a) was suitable for use on the Victopia Apartments in combination with the ASA Asaphonic tile adhesive;
 - (b) was compatible with the ASA Asaphonic tile adhesive; and
 - (c) complied with clauses B1.3.1, B1.3.2 and E2.2 of the Code.
- 29.3 the Podium:
 - (a) was designed with a transitional fillet at the junction where the membrane changes from horizontal to vertical; and
 - (b) complied with clauses E2.2, E2.3.2 and B2 of the Code.
- 29.4 the Fire-Stopping complied with clauses C2.3.3(d), C3.3.2, C3.3.3, C3.3.4 and C3.3.7 of the Code.

Particulars

- i. *Decision of Thomas J at [92], [95], [97], [99]; and*
- ii. *The particulars to paragraphs 21 to 27 above are repeated.*

Loss and Damage

30. By reason of BMX's negligence, the Plaintiff and Group Members have suffered loss and damage.

Particulars

- i. *The amount of the loss and damage is set out in the Decision of Thomas J at Schedule 1.*
- ii. *Further particulars of loss will be provided following the exchange of evidence.*

INSURANCE POLICIES

The Primary Policy

31. On or around 31 March 2012, the following insurers issued the Primary Policy in their respective proportions:

- 31.1 the First Defendant, described in the policy as Zurich Insurance Public Limited Company, as to 38.89%;
- 31.2 the Third Defendant, described in the policy as Liberty Mutual Insurance Europe Limited, as to 30.00%;
- 31.3 the Fourth Defendant, described in the policy as Allianz Global Corporate & Specialty AG, as to 15.56%;
- 31.4 the Second Defendant, described in the policy as Aspen Insurance UK Limited, as to 7.78%; and
- 31.5 the Fifth Defendant, described in the policy as Chartis Europe Limited, as to 7.78%, (together, the **Primary Insurers**).

Particulars

The Primary Policy, which comprises a Schedule, policy wording, 19 Exclusions, 22 Conditions, a written proposal and 37 Memoranda.

32. BMPL, together with its subsidiaries and associated companies is an “Insured” under the Primary Policy.

Particulars

The Insured named in the Schedule to the Primary Policy being Brookfield Multiplex Pty Ltd and any subsidiary or associated company and/or any company associated by shareholding, and any company which was previously a subsidiary or parent of, or associated by shareholding to the aforementioned Insureds.

33. BMX, by reason of its relationship as a wholly owned subsidiary of BMPL, is an “Insured” under the Primary Policy.

Particulars

The Particulars to paragraph 32 above are repeated.

34. The Primary Policy is the primary layer of a professional indemnity insurance arrangement effected on behalf of BMPL together with its subsidiaries and associated companies for the period 31 March 2012 to 31 March 2013.

35. The Primary Policy has a “Limit of Indemnity” of GBP10,000,000, with a self-insured excess of GBP750,000 for any one Claim or series of Claims arising out of one single incident which is in excess of GBP300,000 for any one Claim or series of Claims arising from one single incident.

Particulars

Primary Policy, pages 34 to 36.

36. The Primary Policy was issued on a claims made and notified basis in which BMX was required to, as soon as reasonably practicable and by no later than 30 days, notify the Defendants:

36.1 of any Claim made against BMX;

- 36.2 of the receipt of a notice from any person of an intention to make a Claim against BMX;
- 36.3 of any loss or damage or expense sustained by BMX which was likely to give rise to indemnity under the Primary Policy; or
- 36.4 of any action taken or to be taken in respect of which BMX may claim indemnity under the Insuring Clause (b) of the Policy,

which were likely to exceed GBP300,000 in value.

Particulars

Primary Policy Condition 5, page 10.

- 37. The Primary Insurers' Liability under the Primary Policy was several and not joint, depending upon the proportions underwritten by each Insurer.

Particulars

Primary Policy pages 38 and 40.

- 38. By the Insuring Clause in the Primary Policy the Primary Insurers agreed to indemnify the Insured for any sum which the Insured is or may become liable to pay in respect of any Claim or Claims first made against the Insured and notified to Insurers during the Period of Insurance where such liability arises out of:

- 38.1 any breach or alleged breach of contract or agreement or guarantee or warranty;
 - (a) entered into by the Insured; and
 - (b) for the provision of or carrying out of Professional Activities and Duties (as defined at paragraph 40 below) anywhere within the Territorial Limits stated in the Schedule,

where such breach results from an act of neglect or error or omission or negligence; and/or

- 38.2 any other act of neglect or error or omission or negligence or breach of warranty of authority by:
 - (a) the Insured or of any party present or previously employed or engaged by the Insured; and/or

- (b) any sub-contractors or sub-suppliers or sub-consultant in any tier not directly engaged or employed by the Insured; and/or
- (c) any specialists, consultants or subcontractors of the Insured prior to the novation to the Insured of the agreements under which such work was undertaken,

arising from the carrying out of Professional Activities and Duties (as defined at paragraph 40 below) anywhere within the Territorial Limits stated in the Schedule, (the **Insuring Clause**).

Particulars

Primary Policy, page 2.

39. The Primary Policy defines Claim as:

- 39.1 any writ or summons or other form of legal or arbitral process served upon the Insured; or
- 39.2 any written or oral demand for compensation received by the Insured; or
- 39.3 any matter and/or action taken that would have likely been a Claim but for Insuring Clause (b) of the Policy.

Particulars

Primary Policy, page 4.

40. The Primary Policy defines Professional Activities and Duties as those activities and duties undertaken by or under the supervision of:

- 40.1 persons or personnel who are professionally qualified; or
- 40.2 persons or personnel having not less than 5 years relevant experience,

in carrying out professional activities that would normally be undertaken by a professionally qualified person and includes the duty to warn of defects in professional activities and duties of others, but does not include:

- 40.3 the day to day supervision of manual operatives, labour and construction work usually undertaken by building, engineering or business support services providers; or
- 40.4 those activities duties or services performed or required to be performed by:
 - (a) a Responsible Entity, or
 - (b) the officers, employees and compliance committee members of a Responsible Entity.

Particulars

Primary Policy, page 4.

- 41. It was a term of the Primary Policy that coverage would extend to:
 - 41.1 employees or individuals working under the control of or under contract with BMX in respect of work undertaken in BMX's name or on behalf of BMX provided any payment from such work was for the benefit of BMX; and
 - 41.2 BMX's liability arising out of work undertaken by specialist designers, consultants, sub-consultants or other professionals appointed by BMX and BMX's liability arising out of their modifications to design work undertaken by others.

Particulars

Primary Policy Memoranda 10 and 11, page 18.

- 42. The Primary Policy provided that the insolvency or bankruptcy of BMX shall not release the Primary Insurers from any of their obligations under the Primary Policy.

Particulars

Primary Policy Condition 22, page 15.

The Excess Policies

- 43. On or around 31 March 2012, the following insurers issued the First Excess Policy in their respective proportions as follow form excess of loss professional indemnity insurance:
 - 43.1 the Sixth Defendant, described in the policy as Arch Insurance Company (Europe) Ltd, as to 25%;

- 43.2 the Seventh Defendant, described in the policy as Great Lakes Reinsurance (UK) PLC, as to 20%;
- 43.3 the Third Defendant, described in the policy as Liberty Mutual Insurance Europe Limited, as to 25%;
- 43.4 the Eighth Defendant, described in the policy as Swiss Re International SE, UK branch, as to 25%;
- 43.5 the Ninth Defendant, described in the policy as Allied World Syndicate 2232, as to 10%;
- 43.6 the Fourth Defendant, described in the policy as Allianz Global Corporate & Specialty AG, as to 10%;
- 43.7 the Tenth Defendant, described in the policy as Chubb Syndicate 1882, as to 10%;
and
- 43.8 the Fifth Defendant, described in the policy as Chartis Europe Limited, as to 6%, (First Excess Insurers).

Particulars

The First Excess Policy described as a follow form of the Primary Policy with a policy period of 31 March 2012 to 31 March 2013.

The First Excess Policy contained a provision in the following terms: "In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the Insurers."

Further particulars as to the signed down proportions of the First Excess Insurers may be provided after discovery and/or evidence.

- 44. BMPL, together with its subsidiaries and associated companies is an "Insured" under the First Excess Policy.
- 45. BMX, by reason of its relationship as a wholly owned subsidiary of BMPL, is an "Insured" under the First Excess Policy.

46. The liability of the First Excess Insurers for any sum which the Insured is or may become legally liable to pay in respect of any Claim or Claims as defined in the Primary Policy:

46.1 attaches in circumstances that include when the Limit of Indemnity under the Primary Policy is eroded; and

46.2 is limited to GBP10,000,000.

47. It is a term of the First Excess Policy that, except as otherwise provided in the First Excess Policy, it is subject to the same terms, exclusions, conditions and definitions as the Primary Policy.

Particulars

First Excess Policy, clause 7.

48. On or around 31 March 2012, the following insurers issued the Second Excess Policy in their respective proportions as follows from excess of loss professional indemnity insurance:

48.1 the Eleventh Defendant, described in the policy as Starr Underwriting Agents Limited on behalf of Lloyds Syndicate 1919, as to 20%;

48.2 the Seventh Defendant, described in the policy as Great Lakes Reinsurance (UK) PLC, as to 20%;

48.3 the Second Defendant, described in the policy as Aspen Insurance UK Limited, as to 20%;

48.4 the Eighth Defendant, described in the policy as Swiss RE International SE, UK Branch, as to 25%;

48.5 the Tenth Defendant, described in the policy as Chubb Syndicate 1882, as to 10%;

48.6 the Fourth Defendant, described in the policy as Allianz Global Corporate & Specialty AG, as to 10%; and

48.7 the Ninth Defendant, described in the policy as Allied World Syndicate 2232, as to 15%,

(Second Excess Insurers).

Particulars

The Second Excess Policy described as a follow form of the Primary Policy with a policy period of 31 March 2012 to 3124 March 20132.

The Second Excess Policy contained a provision in the following terms: "In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the Insurers."

Further particulars as to the signed down proportions of the Second Excess Insurers may be provided after discovery and/or evidence.

49. BMPL, together with its subsidiaries and associated companies is an "Insured" under the Second Excess Policy.
50. BMX, by reason of its relationship as a wholly owned subsidiary of BMPL, is an "Insured" under the Second Excess Policy.
51. The liability of the Second Excess Insurers for any sum which the Insured is or may become legally liable to pay in respect of any Claim or Claims as defined in the Primary Policy:
 - 51.1 attaches in circumstances that include when the Limit of Indemnity under the Primary Policy and the First Excess Policy is eroded; and
 - 51.2 is limited to GBP10,000,000.
52. It is a term of the Second Excess Policy that, except as otherwise provided in the Second Excess Policy, it is subject to the same terms, exclusions, conditions and definitions as the Primary Policy.

Particulars

Second Excess Policy, clause 7.

53. On or around 31 March 2012, the following insurers issued the Third Excess Policy in their respective proportions as follow form excess of loss professional indemnity insurance:
 - 53.1 the Sixth Defendant, described in the policy as Arch Insurance Company (Europe) Ltd, as to 25%;

- 53.2 the Third Defendant, described in the policy as Liberty Mutual Insurance Europe Limited, as to 33.3%;
- 53.3 the Second Defendant, described in the policy as Aspen Insurance UK Limited, as to 20%;
- 53.4 the Eleventh Defendant, described in the policy as Starr Underwriting Agents Limited on behalf of Lloyd's Syndicate 1919, as to 15%;
- 53.5 the Fourth Defendant, described in the policy as Allianz Global Corporate & Speciality AG, as to 10%; and
- 53.6 the Fifth Defendant, described in the policy as Chartis Europe Limited, as to 10%, (Third Excess Insurers).

Particulars

The Third Excess Policy described as a follow form of the Primary Policy with a policy period of 31 March 2012 to 31 March 2013.

The Third Excess Policy contained a provision in the following terms: "In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the Insurers."

Further particulars as to the signed down proportions of the Third Excess Insurers may be provided after discovery and/or evidence.

- 54. BMPL, together with its subsidiaries and associated companies is an "Insured" under the Third Excess Policy.
- 55. BMX, by reason of its relationship as a wholly owned subsidiary of BMPL, is an "Insured" under the Third Excess Policy.
- 56. The liability of the Third Excess Insurers for any sum which the Insured is or may become legally liable to pay in respect of any Claim or Claims as defined in the Primary Policy:
 - 56.1 attaches in circumstances that include when the Limit of Indemnity under the Primary Policy, First Excess Policy and Second Excess Policy is eroded; and

56.2 is limited to GBP10,000,000.

57. It is a term of the Third Excess Policy that, except as otherwise provided in the Third Excess Policy, it is subject to the same terms, exclusions, conditions and definitions as the Primary Policy.

Particulars

Third Excess Policy, clause 7.

58. An "Insured" under the Primary Policy has the benefit of insurance in excess of the Primary Policy's Limit of Liability on relevantly the same terms pursuant to the First, Second and Third Excess Policies.

Particulars

- i. *First Excess Policy, Risk Details;*
- ii. *Second Excess Policy, Risk Details; and*
- iii. *Third Excess Policy, Risk Details.*

NEW ZEALAND PROCEEDINGS

Judgment in New Zealand Proceedings

59. On 22 March 2017, following a trial in the New Zealand Proceedings, the Plaintiff and Group Members obtained the New Zealand Judgment against BMX and KNZ in respect of the building defects outlined in paragraphs 21 to 27.

Particulars

Decision of Thomas J, paragraphs 77 to 99.

60. By the New Zealand Judgment, the High Court of New Zealand found that:

- 60.1 BMX was solely in control of the aspects of design and construction in respect of which defects occurred;
- 60.2 BMX owed a non-delegable duty of care to the Plaintiffs in the New Zealand Proceedings in respect of the defects;

- 60.3 BMX should have recognised that the proposed Eterpanel Cladding system was not verified as complying with the Code. BMX breached its duty of care by applying for building consent for and installing this Cladding system;
- 60.4 BMX failed to identify that the waterproofing products installed on the Balconies were not in accordance with the building consent. Alternatively, it was aware of this fact and allowed the Asaphonic and Dampfix 3 to be installed regardless;
- 60.5 In breach of its duty of care BMX installed the podium waterproofing with the defects identified by Mr Paykel; and
- 60.6 In breach of its duty of care BMX allowed the Fire-Stopping to be undertaken in a defective manner.

Particulars

Decision of Thomas J at [86], [89], [92], [95], [96], [99].

- 61. The award made to the Plaintiff and Groups Members is set out at Annexure A to the Judgment of the High Court of New Zealand dated 22 March 2017 (**Judgment of the Court**).

APPLICATION OF THE INSURANCE POLICIES

Application of the Primary Policy

- 62. The D&C Contract was a contract or agreement entered into by the Insured (BMX).

Particulars

D&C Contract dated 1 November 2003 between KNZ and BMX.

- 63. Under the terms of the D&C Contract, BMX undertook to perform, or supervise (amongst other things) the performance of, specialist design services including cladding design, fire engineering design, membrane design and engineering design (the **Services**).

Particulars

- i. *Contract Agreement dated 1 November 2003 between KNZ and BMX, Clause 1;*
- ii. *the Decision of Thomas J at [83], [84], [85], [86], [87] and [88];*

- iii. *Building consent application dated 22 September 2003 for the Stage Two Works; and*
- iv. *Building consent application dated 8 December 2003 for the Stage Three Works.*

64. The Services were activities and duties undertaken by or under the supervision of:

- 64.1 persons or personnel who are professionally qualified; or
- 64.2 persons or personnel having not less than 5 years relevant experience, in carrying out professional activities that would normally be undertaken by a professionally qualified person.

Particulars

The Services were undertaken by persons with professional qualifications in cladding design, fire engineering, membrane design and engineering including further to BMX's own personnel, Beca Carter Hollings & Ferner Limited, PBS Contracting Limited and Façade Design Services Limited. Cladding design, fire engineering, membrane design and engineering would normally be undertaken by persons with professional qualifications in façade engineering, fire engineering, plumbing and engineering.

65. The D&C Contract was breached by reason of the breaches alleged at paragraphs 28 to 30 above.

66. Further or alternatively to paragraphs 62 to 65 above, the negligence of BMX as alleged at paragraphs 28 to 30 was an act of neglect or error or omission or negligence by the Insured (BMX) or sub-contractors engaged by the Insured (BMX) arising from the carrying out of Professional Activities and Duties including the Services.

Particulars

The Plaintiff refers to the particulars to paragraphs 62 to 64 above.

67. On or around 21 December 2012, BMX notified the Defendants under the Primary Policy that a Claim had been made against it by the Plaintiff and Group Members in relation to the Victoria Apartments and the matters the subject of the New Zealand Proceedings.

Particulars

Letter from Buddle Findlay to Gallagher Broking Services DAC Beachcroft New Zealand dated 21 December 2012, paragraphs 2 and 3.

68. On or around 17 March 2016, the Defendants advised BMX that underwriters' rights regarding BMX's claim for indemnity were fully reserved pending written confirmation otherwise.

Particulars

Letter from Wotton + Kearney to Buddle Findlay 17 March 2016.

69. On 3 April 2017, BMX notified the Defendants that its legal liability to the Plaintiff and Group Members had crystallised as a result of the New Zealand Judgment, and that the quantum of BMX's legal liability to the Plaintiff and Group Members amounted to NZD23,124,719.76 plus interest.

Particulars

Letter from Buddle Findlay to DAC Beachcroft New Zealand dated 3 April 2017.

70. On 28 August 2018, the Defendants declined indemnity under the Primary Policy on the basis of Exclusion 9 (Workmanship).

Particulars

Letter from Wotton + Kearney to Buddle Findlay dated 28 August 2018.

71. By reason of:

71.1 the terms of the Primary Policy pleaded in paragraphs 31 to 42 above; and
 71.2 the matters pleaded in paragraphs 62 to 69 above,

BMX, as Insured, notified the Defendants and Primary Insurers of a Claim during the policy period.

72. In the premise of paragraph 71 above, there is a Claim within the meaning of the Primary Policy to which the Insuring Clause responds.

Particulars

i. *The Unpaid Judgment Sum or the amount of the loss and damage is a Claim which BMX is legally liable to pay to the Plaintiff and Group Members the liability for which*

arose out of the negligence of BMX as found by Thomas J in the New Zealand Judgment or by reason of BMX's negligence as alleged above; and

- ii. *The Unpaid Judgment Sum or the amount of the loss and damage by reason of BMX's negligence as alleged above arose out of an act of neglect or error or omission or negligence arising from the carrying out of Professional Activities and Duties within the Territorial Limits of the Primary Policy.*

73. In the premise of paragraph 72 above, the Defendants are liable to indemnify BMX for the amount of the Unpaid Judgment Sum or the amount of the loss and damage pursuant to the Primary Policy, subject to the limit of indemnity.

Application of the Excess Policies

74. By reason of:

- 74.1 the terms of the Primary Policy pleaded in paragraphs 31 to 42 above;
- 74.2 the terms of the First Excess Policy, Second Excess Policy and Third Excess Policy pleaded in paragraphs 43 to 58 above; and
- 74.3 the matters pleaded in paragraphs 62 to 73 above,

there is a Claim within the meaning of the Primary Policy to which the Insuring Clause responds.

75. In the premise of paragraph 74 above, subject to the erosion of the relevant limits of indemnity, the First Excess Policy, the Second Excess Policy and/or the Third Excess Policy attach to and respond to the Primary Insurers liability to pay the Claim alleged in paragraph 72 above.

THIRD PARTY CLAIMS ACT

76. On 3 December 2012, BMX entered into liquidation.

77. BMX is:

- 77.1 an "Insured" within the meaning of the Primary Policy;
- 77.2 an "Insured" within the meaning of each of the First Excess Policy, Second Excess Policy and Third Excess Policy; and

77.3 an “insured person” within the meaning of that term in sections 3-4 of the Third Party Claims Act.

Particulars

- i. *Definition of the Insured in the Primary Policy; and*
- ii. *BMX is a person to whom the benefit of the insurance cover provided by the Primary Policy extends.*

78. In the premises, the matters pleaded above in relation to BMX:

- 78.1 give rise to a legal liability to pay damages or compensation for and/or arising out of events covered by an “Underlying Policy” (namely the Primary Policy) within the meaning of the First Excess Policy, Second Excess Policy and Third Excess Policy;
- 78.2 constitute an “insured liability” within the meaning of that term in sections 3 and 4 of the Third Party Claims Act; and
- 78.3 give rise to an entitlement by BMX to indemnity under the policies.

79. The Plaintiff has been granted leave, pursuant to section 5 of the Third Party Claims Act, to proceed with this current proceeding.

Particulars

Order made by Justice Rein in the Leave Proceeding on 8 December 2021.

80. Pursuant to section 4(1) of the Third Party Claims Act, the Plaintiff and Group Members may recover directly from the Defendants the amount of the insured liability of BMX for the Unpaid Judgment Sum.

Particulars

The Plaintiff repeats the particulars to paragraph 79.

81. Further or alternatively to paragraph 79 pursuant to section 4(1) and 8 of the Third Party Claims Act, the Plaintiff and Group Members may recover directly from the Defendants the amount of the loss and damage referred to in paragraph 30 above.

Particulars

The Plaintiff repeats the particulars to paragraph 79.

D QUESTIONS APPROPRIATE FOR REFERRAL TO REFEREE

1. None.

E A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION; WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION

The parties have not yet attempted mediation. The Plaintiff is willing to proceed to mediation at the appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under Schedule 2 clause 4(2) of the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Solicitor on record for the Plaintiff

Date of signature

9.10.23

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- You will be in default in these proceedings.
- The court may enter judgment against you without any further notice to you.

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.

2 If money is claimed, and you believe you owe the money claimed, by:

- Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

3 If money is claimed, and you believe you owe part of the money claimed, by:

- Paying the plaintiff that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000
Postal address	GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

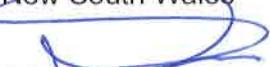
Name Dariusz Koper
 Address Unit 5, 2A Gilbert Street, Manly NSW 2095
 Occupation Project Director
 Date *6/10/2023*
 I affirm:

1. I am the plaintiff.
2. I believe that the allegations of fact in the Further Amended Commercial List Statement are true.

AFFIRMED at

Sydney, New South Wales

Signature of deponent



Name of witness

GEORGIA TALI MINSON

Address of witness

LEVEL 23, GOVERNOR MACQUARIE TOWER, 1 FARRER PLACE

Capacity of witness

SYDNEY NSW 2000

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 ~~#I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]~~
#I have confirmed the deponent's identity using the following identification document:

NEW ZEALAND PASSPORTIdentification document relied on (may be original or certified copy)[†]

Signature of witness



Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiff

Dariusz Koper

Defendants

First Defendant: Zurich Insurance—PLC Company Limited

Second Defendant: Aspen Insurance UK Limited

Third Defendant: Liberty Mutual Insurance Europe SE

Fourth Defendant: Allianz Global Corporate & Specialty SE

Fifth Defendant: American International Group UK Limited

Sixth Defendant: Arch Managing Agency Limited, for and on behalf of Syndicate 2012 at Lloyd's

Seventh Defendant: Great Lakes Insurance SE

Eighth Defendant: Swiss Re International SE

Ninth Defendant: Allied World Managing Agency Limited for and on behalf of Syndicate 2232 at Lloyd's

Tenth Defendant: Chubb Underwriting Agencies Limited for and on behalf of Syndicate 2488 at Lloyd's (formerly Syndicate 1882)

Eleventh Defendant: Starr Managing Agents Limited for and on behalf of Syndicate 1919 at Lloyd's

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name Dariusz Koper

Address Unit 5, 2A Gilbert Street
Manly NSW 2095

Legal representative for Plaintiff

Name Martin del Gallego

Practising certificate number 1905750

Firm	Piper Alderman
Contact solicitor	
Address	Level 23 Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
DX address	DX 10216 Sydney Stock Exchange
Telephone	+61 2 9253 9999
Fax	+61 2 9253 9900
Email	mdelgallego@piperalderman.com.au

DETAILS ABOUT DEFENDANTS

First Defendant

Name	Zurich Insurance PLC Company Limited (Company Number <u>CHE-105.833.114</u>)
Address	Zurich House <u>Mythenquai 2, 8002</u> <u>Ballsbridge Park Zurich</u> <u>Dublin 4 Switzerland</u> <u>Dublin, Ireland</u>

Second Defendant

Name	Aspen Insurance UK Limited (Company Number 01184193, ARBN 128 637 650)
Address	Governor Phillip Tower Suite 2305, Level 23 1 Farrer Place Sydney NSW 2000

Third Defendant

Name	<u>Liberty Mutual Insurance Europe SE (Company Number B232280)</u>
Address	<u>5-7, rue Leon Laval</u> <u>Leudelange, 3372</u> <u>Luxembourg</u>

Fourth Defendant

Name	<u>Allianz Global Corporate & Specialty SE (Company Number HRB 208312)</u>
Address	<u>Königinstrasse 28, Munich, Germany 80802</u>

Fifth Defendant

Name	<u>American International Group UK Limited (Company Number 10737370)</u>
Address	<u>The Aig Building, 58 Fenchurch Street</u> <u>London, United Kingdom</u> <u>EC3M 4AB</u>

Sixth Defendant

Name Arch Managing Agency Limited, for and on behalf of Syndicate 2012 at Lloyd's (Company Number 06948515)

Address 60 Great Tower Street, London
England
EC3R 5AZ

Seventh Defendant

Name Great Lakes Insurance SE (Company Number HRB 230378)

Address Königinstrasse 107, Munich, Germany, 80802

Eighth Defendant

Name Swiss Re International SE (Company Number B134553)

Address 2, rue Edward Steichen
Luxembourg, 2540

Ninth Defendant

Name Allied World Managing Agency Limited for and on behalf of Syndicate 2232 at Lloyd's (Company Number 07249776)

Address 19th Floor 20 Fenchurch Street
London, England
EC3M 3BY

Tenth Defendant

Name Chubb Underwriting Agencies Limited for and on behalf of Syndicate 2488 at Lloyd's (formerly Syndicate 1882) (Company Number 02287773)

Address 100 Leadenhall Street
London, United Kingdom
EC3A 3BP

Eleventh Defendant

Name Starr Managing Agents Limited for and on behalf of Syndicate 1919 at Lloyd's (Company Number 06265337)

Address 30 Fenchurch Avenue
London
EC3M 5AD