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D00019AG05

Commercial List Response

COURT DETAILS

| | |
|-------------|----------------------|
| Court | Supreme Court of NSW |
| Division | Equity |
| List | Commercial |
| Registry | Supreme Court Sydney |
| Case number | 2019/00094443 |

TITLE OF PROCEEDINGS

| | |
|----------------------|--|
| First Plaintiff | Barry Jones |
| Second Plaintiff | Karen Jones |
| Number of Plaintiffs | 4 |
| First Defendant | RCR Tomlinson Limited ACN 008898486 |
| Second Defendant | Paul Joseph Dagleish |
| Number of Defendants | 3 |

FILING DETAILS

| | |
|--------------------------------|----------------------------------|
| Filed for | Bruce Maxwell James, Defendant 3 |
| Legal representative | Paul Andrew Reidy |
| Legal representative reference | |
| Telephone | 02 8274 9555 |
| Your reference | C3525 |

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 Response (Third Defendant's Commercial List Response.pdf)

[attach.]

Form 1 (version 4)
Practice Note No. SC Eq 3

THIRD DEFENDANT'S COMMERCIAL LIST RESPONSE

COURT DETAILS

| | |
|-------------|---------------|
| Court | Supreme Court |
| Division | Equity |
| List | Commercial |
| Registry | Sydney |
| Case number | 2019/94443 |

TITLE OF PROCEEDINGS

| | |
|---|---|
| First plaintiff | Barry Jones |
| Number of plaintiffs (if more than two) | Four |
| First defendant | RCR Tomlinson Limited ACN 008 898 486 (Administrators Appointed) |
| Number of defendants (if more than two) | Three |

FILING DETAILS

| | |
|--------------------------------|---|
| Filed for | Bruce Maxwell James, Third Defendant |
| Filed in relation to | Plaintiff's claim |
| Legal representative | Paul Reidy, Johnson Winter & Slattery |
| Legal representative reference | C3525 |
| Contact name and telephone | Andreas Piesiewicz, (02) 8274 9518 |
| Contact email | andreas.piesiewicz@jws.com.au |

NATURE OF DISPUTE

1. Unless otherwise indicated, Bruce Maxwell James (**Mr James**) adopts the definitions used by the Plaintiffs in the Commercial List Statement (**CLS**). In doing so, Mr James does not make any admissions.
2. Much of the dispute raised by the Statement of Claim does not concern Mr James. Relief is sought against Mr James by reason of conduct allegedly engaged in on 28 August 2018 only. In particular:
 - (a) the allegations against Mr James in the CLS are limited to allegations that he personally engaged in misleading or deceptive conduct, or conduct that was likely to mislead or deceive (defined as the 28 August 2018 James Misleading Conduct Contravention), as a result of representations alleged to have been made by him ASX announcements made on 28 August 2018

(defined as the 28 August 2018 James Representations);

- (b) relief is also sought against Mr James in the Summons under s 729 of the *Corporations Act 2001 (Cth)* (**Act**) in respect of the alleged contravention by RCR Tomlinson Limited (**RCR**) of s 728 of the Act by reason of the release and publication of the Prospectus on 28 August 2018.
3. As to the alleged 28 August 2018 James Misleading Conduct Contravention, Mr James:
- (a) denies that the alleged 28 August 2018 James Representations (which extract parts of the announcements from their context) were made, and says that if they were made they were not made by him personally;
- (b) in the alternative, says that if the 28 August 2018 James Representations were made, there were reasonable grounds for making those representations and they were not misleading or deceptive or likely to mislead or deceive; and
- (c) denies that the alleged 28 August 2018 James Representations caused any loss; and
- (d) further says that he ought fairly be excused for any contravention of the Act under s 1318 of the Act.
4. As to the relief sought against Mr James under s 729 of the Act, Mr James:
- (a) denies that RCR contravened s 728 of the Act; and
- (b) relies on the positive defences provided for in s 731, 732 and 733 of the Act.

ISSUES LIKELY TO ARISE

1. Whether the 28 August 2018 James Representations were made and, if so, whether the making of the 28 August 2018 James Representations was the conduct of Mr James personally.
2. Whether the 28 August 2018 James Representations were misleading or deceptive.
3. Whether the Plaintiffs and Group Members suffered loss and damage as a result of the alleged 28 August 2018 James Misleading Conduct Contravention.
4. Whether Mr James ought fairly be excused under s 1318 of the Act for the alleged 28 August 2018 James Misleading Conduct Contravention.
5. Whether RCR contravened s 728 of the Act by reason of the release and publication

of the Prospectus on 28 August 2018.

6. Whether Mr James is relieved from any liability by reason of one or more of the positive defences provided for in s 731, 732 and 733 of the Act.

THIRD DEFENDANT'S RESPONSES TO CONTENTIONS

I. INTRODUCTION

(A) The Plaintiffs and Group Members

1. The Third Defendant (**Mr James**) does not admit paragraph 1 of the CLS.
2. Mr James does not admit paragraph 2 of the CLS.
3. Mr James does not admit paragraph 3 of the CLS.
4. Mr James does not admit paragraph 4 of the CLS.
5. Mr James does not admit paragraph 5 of the CLS.
6. Mr James does not admit paragraph 6 of the CLS.
7. In answer to paragraph 7 of the CLS, Mr James admits that the claims and relief sought are as described in subparagraphs 7.1 to 7.4 and otherwise does not admit the paragraph.

(B) The Defendants and other relevant persons

8. In answer to paragraph 8 of the CLS, Mr James:
 - (a) admits subparagraphs 8.1 to 8.3 and 8.5; and
 - (b) in respect of subparagraphs 8.4 and 8.6, admits that some of the conduct described in the CLS has the character alleged and otherwise does not admit the subparagraphs on the basis that no particular conduct is identified.
9. In answer to paragraph 9 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
10. In answer to paragraph 10 of the CLS, Mr James:
 - (a) admits subparagraph 10.1 and says further that between 29 January 2014 to 5 August 2018 he was a non-executive director of RCR;
 - (b) admits subparagraph 10.2 and says further that between 29 January 2014 to 5 August 2018 he was a non-executive director of RCR; and
 - (c) admits subparagraph 10.3 and says further that between 29 January 2014

to 5 August 2018 he was a non-executive director of RCR.

11. In answer to paragraph 11 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
12. In answer to paragraph 12 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(C) Application of section 674(2) of the Corporations Act

13. In answer to paragraph 13 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

II. RCR's BUSINESS

14. Mr James admits paragraph 14 of the CLS.
15. In answer to paragraph 15, Mr James:
 - (a) admits that in the period up to about mid 2016, RCR's business involved providing engineering and other services to the coal sector; and
 - (b) otherwise says that the expression "substantial part" is indefinite and on that basis does not admit the paragraph.
16. In answer to paragraph 16, Mr James:
 - (a) says that on 4 April 2016 RCR announced to the market that, amongst other things, it intended to discontinue twelve unprofitable business that were highly exposed to coal mining services, that it remained committed to its iron ore, gold, base metals and minerals sands markets where it enjoyed a leading position with customers, that it intended to discontinue a number of general fabrication facilities, and that it would divert existing resources to support its aspiration in renewable energy initiatives; and

Particulars

RCR ASX Announcement and Media Release, 4 April 2016.

- (b) otherwise does not admit the paragraph.
17. In answer to paragraph 17, Mr James:
 - (a) admits that the 2017 Annual Report stated "*[o]ur strength in engineering and project delivery, which has stood us in good stead in servicing the*

traditional energy markets, has been readily translatable to the new and emerging renewable energy market”;

- (b) admits that the Prospectus stated that the large-scale solar projects sector was a “*relatively new sector for RCR*”;
- (c) says that as at mid to late 2016 RCR did have substantial experience in the renewable energy sector;

Particulars

Renewable energy and transport was a core business for RCR as at April 2016, as highlighted by its recent completion of the Broken Hill Solar Plan and the award of the ECI for up to 200MW of solar power for Origin Energy at Darling Downs, Queensland.

- (d) relies on the whole of the 2017 Annual Report and Prospectus; and
 - (e) otherwise denies the paragraph.
18. In answer to paragraph 18 of the CLS, Mr James:
- (a) admits that the alleged strategy was one of the strategies RCR was pursuing as at 28 December 2016; and
 - (b) otherwise does not admit the paragraph.
19. In answer to paragraph 19 of the CLS, Mr James:
- (a) admits that from about December 2016 until about April 2018, RCR entered into a number of contracts for the engineering, procurement and construction of solar farms; and
 - (b) otherwise does not admit the paragraph.
20. In answer to paragraph 20 of the CLS, Mr James:
- (a) admits that EPC Solar Contracts were fixed price contracts;
 - (b) admits that EPC contracts exposed RCR to potential risks including project delays, unanticipated increases in the cost of delivering the project and high working capital requirements in the later stages of the project;
 - (c) admits that cash receipts on EPC contracts were dependent on certain milestones being met, which might cause timing differences from a cash collection point of view; and
 - (d) otherwise does not admit the paragraph.

21. In answer to paragraph 21 of the CLS, Mr James:
- (a) admits that, during the Relevant Period:
 - (i) RCR utilised processes and project-level systems relating to procurement commitments to monitor the time and cost to complete the EPC Solar Contracts;
 - (ii) monthly reports were prepared by management in order to monitor percentage completion and forecast costs to complete the EPC Solar Contracts;
 - (iii) monthly project meetings were held and updates were provided to RCR's board of directors;
 - (b) says that during the Relevant Period, RCR had in place a range of policies, processes and procedures in respect of tendering for EPC Solar Contracts, assessing project risks and opportunities, analysing existing and forecast construction status and risk, and analysing RCR Group's existing and forecast financial position and risk; and
 - (c) otherwise does not admit the paragraph.

III. DAYDREAM AND HAYMAN SOLAR FARMS PROJECT

22. Mr James admits paragraph 22 of the CLS.
23. In answer to paragraph 23 of the CLS, Mr James:
- (a) admits that the Project was a large-scale solar farm project, with 110,000 piles driven and approximately 2.2 million modules installed;
 - (b) otherwise does not admit the paragraph.

24. Mr James does not admit paragraph 24 of the CLS.

25. Mr James admits paragraph 25 of the CLS.

26. Mr James admits paragraph 26 of the CLS.

27. Mr James admits paragraph 27 of the CLS.

IV. RELEVANT ANNOUNCEMENTS, DISCLOSURES AND EVENTS

(A) 23 February 2017 Announcements

28. Mr James admits paragraph 28 of the CLS.

29. In answer to paragraph 29 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim

against Mr James and on that basis does not admit the paragraph.

30. In answer to paragraph 30 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

31. In answer to paragraph 31 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(B) 3 May 2017 Presentation

32. Mr James admits paragraph 32 of the CLS.

33. In answer to paragraph 33 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

34. In answer to paragraph 34 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(C) 11 August 2017 Announcement

35. Mr James admits paragraph 35 of the CLS.

36. In answer to paragraph 36 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

37. In answer to paragraph 37 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

38. In answer to paragraph 38 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(D) 24 August 2017 Announcements

39. Mr James admits paragraph 39 of the CLS.

40. Mr James admits paragraph 40 of the CLS.

41. In answer to paragraph 41 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

42. In answer to paragraph 42 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

43. In answer to paragraph 43 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(E) 30 August 2017 Cleansing Notice

44. Mr James admits paragraph 44 of the CLS.

45. Mr James admits paragraph 45 of the CLS.

46. In answer to paragraph 46 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

47. Mr James admits paragraph 47 of the CLS.

(F) 22 February 2018 Announcements

48. Mr James admits paragraph 38 of the CLS.

49. Mr James admits paragraph 49 of the CLS.

50. In answer to paragraph 50 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

51. In answer to paragraph 51 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

52. In answer to paragraph 52 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(G) 30 July 2018 Trading halt and suspension

53. Mr James admits paragraph 53 of the CLS.

54. Mr James admits paragraph 54 of the CLS.

55. Mr James admits paragraph 55 of the CLS.

(H) 28 August 2018 disclosures

56. Mr James admits paragraph 56 of the CLS.

57. Mr James admits paragraph 57 of the CLS.
58. In answer to paragraph 58 of the CLS, Mr James:
- (a) admits that as Interim CEO, he participated in decisions to publish and release the 28 August 2018 Announcements;
 - (b) admits that words in italicised text were attributed to him as “Interim CEO” in the 28 August 2018 ASX Announcement;
 - (c) admits that as “Interim CEO and Executive Director”, he was identified as a person in respect of whom further information might be sought in the 28 August 2018 ASX Announcement;
 - (d) admits that, as “Chief Executive Officer”, he was identified, together with the Chief Financial Officer and Chief Operating Officer, on the first page of the 28 August 2018 Presentation; and
 - (e) otherwise does not admit the paragraph.
59. In answer to paragraph 59 of the CLS, Mr James:
- (a) in relation to subparagraphs 59.1 and 59.2, admits the 28 August 2018 ASX Announcement contained the words:

The Project has experienced significant cost overruns due to several compounding project-specific issues, including external delays and materially worse sub-surface ground conditions than were allowed for in the tender estimate, as well as adverse weather conditions. These project-specific issues required the Company to continuously revise its execution methodologies to mitigate delays, leading to increases in subcontractor costs (both people and plant) and logistics cost overruns.

and the 28 August 2018 Investor Presentation contained the words:

The Project experienced significant cost overruns due to several compounding project-specific issues:

- *External delays which resulted in extension of time submissions;*
- *Materially worse sub-surface ground conditions than originally allowed for in the tender estimate, which caused an underestimation of site piling requirements; and*
- *Continuous re-planning of construction due to the*

interdependence with piling, which was compounded by adverse weather conditions at the Project site, increases in subcontractor costs (both people and plant) and logistics costs.

- (b) in relation to subparagraph 59.3, admits the 28 August 2018 ASX Announcement contained the words:

As a result of these cost overruns that arose over the life of the Project, RCR has realised cumulative writedowns of \$57 million from the tendered margin on the Project.

and the 28 August 2018 Investor Presentation contained the words:

As a result of the cost overruns that arose over the life of the Project, RCR has realised cumulative project write-downs of 57.0M (EBIT) from the tendered margin

- (c) in relation to subparagraph 59.4, admits both the 28 August 2018 ASX Announcement and the 28 August 2018 Investor Presentation contained the words:

Underlying EBIT loss of \$4.2 million, including cumulative write-downs of \$57 million from tendered margin on the Project.

with a footnote stating:

Underlying EBIT (earnings) is derived from statutory profit after excluding discontinued operations and non-recurring costs such as restructuring costs, legacy legal and claims costs, transaction costs and capital management initiatives.

Underlying Earnings are a key financial indicator used to reflect greater understanding of RCR's underlying business performance. See RCR's FY18 Audited Financial Report for additional information.

- (d) in relation to subparagraph 59.5, admits that:
- (i) the 28 August 2018 ASX Announcement contained the words:

Statutory net loss after tax of \$16.1 million.

- (ii) and the 28 August 2018 Investor Presentation also referred to RCR recording a loss of \$16.1 million;

and further that:

(iii) the 28 August 2018 ASX Announcement contained the words:

Loss largely driven by cost overruns experienced on the Daydream and Hayman Solar Farms project.

(e) in relation to subparagraphs 59.6 and 59.7, admits that the 28 August 2018 ASX Announcement contained the words:

In the last 12 months, RCR's revenue has been largely derived from fixed price EPC contracts, which expose RCR to potential risks including project delays, unanticipated increases in the cost of delivering the project and high working capital requirements in the later stages of the project. Cash receipts on these contracts are dependent on certain milestones being met, which may cause timing differences from a cash collection point of view.

(f) otherwise denies the paragraph.

60. In answer to paragraph 60 of the CLS, Mr James:

(a) in relation to subparagraphs 60.1 and 60.2, admits that the 28 August 2018 ASX Announcement contained the words:

A large proportion of the write-downs experienced were only recently identified. This was due to the on-site procedures adopted by a limited number of site personnel which had the effect of circumventing RCR's processes and project level systems relating to procurement commitments.

and the 28 August 2018 Investor Presentation contained the words:

Large proportion of the write-downs experienced were only recently identified due to the on-site procedures adopted by a limited number of site personnel, which had the effect of circumventing RCR's processes and project level systems relating to procurement commitments.

(b) in relation to subparagraph 60.3, admits that the 28 August 2018 Investor Presentation included a statement to the effect that one of the key findings of an internal investigation was that the "nature of conduct made it extremely difficult to accurately determine cost-to-date and forecast cost-to-complete on a timely basis";

(c) in relation to subparagraph 60.4, admits the 28 August 2018 ASX

Announcement contained the words:

... several actions and additional measures are being implemented to mitigate the risk of project level systems being circumvented and cost overruns going undetected in the future.

- (d) in relation to subparagraph 60.5, admits that the 28 August 2018 Investor Presentation stated that RCR was “*re-positioning towards a more acceptable risk profile*” and identified various matters being undertaken in that regard and admits that the 28 August 2018 ASX Announcement contained a similar statement and identified that “*RCR’s near term strategic objectives [would] be focused on*” certain matters; and
- (e) otherwise, denies the paragraph.

61. In answer to paragraph 61 of the CLS, Mr James:

- (a) admits that the 28 August 2018 ASX Announcement contained italicised text attributed to Mr James as “*RCR’s Interim CEO*”;
- (b) admits that the italicised text included the words “*the financial impact from the Project was clearly disappointing however, the outlook for the business remains positive*” and the words “*RCR appreciates the support that its customers and shareholders have provided through this challenging period and with the Entitlement Offer and support from our financiers announced today, we can move forward in a position of strength*”;
- (c) says that the statements in italicised text extracted above were qualified and/or contextualised by other statements in the 28 August 2018 ASX Announcement, and by other information released and published by RCR on the ASX on 28 August 2018, including the FY18 Financial Report; and

Particulars

The qualifications and contextualisation included the following:

“Due to the nature of RCR’s business, the Company does not generally provide earnings guidance”, 28 August 2018 Announcement, p. 5

“This FY19 outlook is based on various assumptions, which are summarised below. The assumptions described here do not represent all factors that may affect RCR’s financial performance and should be read conjunction with the risks described in the Company’s FY18 Audited Financial Report

which accompanies this announcement”, 28 August 2018 Announcement, p. 6

“Investors should note that revenues, particularly from project work, can vary from expectations for a number of reasons outside of the control of RCR”, 28 August 2018 Announcement, p. 6

“Current projects have been included at their forecast margins, noting that these could increase or decrease as projects progress” 28 August 2018 Announcement, p. 6

“The adoption of AASB 15 may result in increased earnings volatility (up or down)”, 28 August 2018 Announcement, p. 7

“Underlying EBIT is very sensitive to changes in revenue and project margins”, 28 August 2018 Announcement, p. 7

“The Company’s financial position and performance may be adversely affected, sometimes materially, by a number of risk factors, some of which are beyond the control of RCR” FY18 Financial Report, p. 10.

“Potential for cost overruns on projects... There is a risk that additional cost overruns occur across one or more of RCR’s projects which, may have an impact on RCR’s future financial performance. In addition to potentially impacting RCR’s financial performance, additional cost overruns may result in an inability to procure future contracts and maintain existing contracts. Further, future cost overruns have the potential to be costly and damaging to RCR’s reputation and business relationships, which in turn could have an adverse effect on RCR, including its operating and financial performance, industry standing and the value of RCR shares.” FY18 Financial Report, p. 10.

“Ineffective Execution of Strategy... The execution of RCR’s strategy requires a degree of risk-taking. In particular, the success achieved by individual contracts may not translate to profitable returns for RCR (and RCR’s shareholders, in turn) for various reasons, including lower than expected margins. In such a case, the execution risk of that project may not be

commensurate with the profit returned. Any inability to achieve organic growth or to execute acquisition growth strategies may have an adverse impact on share price, shareholder sentiment and the long-term sustainability of the business.” FY18 Financial Report, p. 10.

“Renewable Energy Market Concentration Risk ... RCR is exposed to a range of risks and opportunities associated with engineering, procurement and construction (“EPC”) of large-scale solar projects. This is a sector for RCR which is experiencing growth exposing RCR to a range of risks and opportunities including energy regulations and standards, commissioning, capital investment, increased competition and a range of associated EPC activity risks.

RCR’s current Order Book [fn] and Preferred Contractor Status (and therefore future revenues and earnings) are weighted towards EPC contracts for large-scale solar farms. Any adverse changes in the solar industry may have a significant impact on RCR.” FY18 Financial Report, p. 11.

“Failure of Systems and Process... There can be no assurance that internal control systems and procedures will not result in, or lead to, a future material weakness or loss of accreditations, including a failure of systems to ensure effective control of costs across projects and operations. Failure to maintain proper and effective internal controls may adversely impact RCR.” FY18 Financial Report, p. 13.

“EPC Risks... RCR’s ability to achieve its operating and financial performance objectives is influenced by its ability to complete complex projects to the satisfaction of its customers. The execution and delivery of projects or supply of RCR proprietary equipment involves professional judgment regarding the design, planning, development, construction, commissioning and operation of complex operating facilities and equipment.

Projects may occur over extended time periods and may be impacted or delayed due to procurement, engineering design changes, construction, commissioning, adverse weather,

physical environment, supplier events, performance of sub-contractors and joint venture partners, regulatory requirements, employment practices and a wide variety of other circumstances. Projects and operations, cash flows and liquidity could be adversely affected if RCR miscalculates the resources, cost or time needed to complete a project, fails to meet contractual obligations, encounters delays due to varying conditions or if a supplier fails to deliver project materials on time. In addition, some projects require payment of liquidated damages if RCR does not meet project deadlines or other contractual obligations.” FY18 Financial Report, p. 13.

“Tender estimates ... RCR utilises extensive skills and expertise when pricing for fixed price contracts and uses all reasonable efforts to ensure that those tenders accurately reflect the scope of work. There is a risk that the tender estimate is not reflective of the actual position such that RCR suffers a financial loss.” FY18 Financial Report, p. 14.

- (d) says further that the proper context for assessing the statements in italicised text extracted above includes statements made in the Prospectus which was also released and published to the ASX at or around the same time on 28 August 2018, and which included a range of qualifications of, and/or statements about, assumptions, risk factors and forward-looking statements similar to those particularised above;
 - (e) denies that any of the statements in italicised text extracted above were made by Mr James personally (as opposed to by RCR); and
 - (f) otherwise denies the paragraph.
62. Mr James denies paragraph 62 of the CLS and refers to paragraphs 60 and 61 above.
- (I) Capital raising**
63. Mr James admits paragraph 63 of the CLS.
64. Mr James admits paragraph 64 of the CLS.
- (J) Share price decline**
65. Mr James admits paragraph 65 of the CLS.
66. In answer to paragraph 66 of the CLS, Mr James:

- (a) admits that the price of RCR Shares declined after the reinstatement of RCR shares to quotation on the ASX on 30 August 2018; and
- (b) otherwise, does not admit the paragraph.

(K) Voluntary administration and liquidation

- 67. Mr James admits paragraph 67 of the CLS.
- 68. Mr James admits paragraph 68 of the CLS save that the closing price allegation is not admitted.
- 69. Mr James admits paragraph 69 of the CLS.
- 70. Mr James admits paragraph 70 of the CLS.
- 71. Mr James admits paragraph 71 of the CLS.
- 72. Mr James admits paragraph 72 of the CLS.
- 73. Mr James admits paragraph 73 of the CLS.
- 74. Mr James admits paragraph 74 of the CLS and relies on the whole of the Update to Shareholders of RCR issued by the Liquidators.

V. INFORMATION OF WHICH RCR WAS AWARE

(A) EPC Solar Contract Risk Information

- 75. In answer to paragraph 75 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(B) Ground Conditions Information

- 76. In answer to paragraph 76 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
- 77. In answer to paragraph 77 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(C) Project Issues Information

- 78. In answer to paragraph 78 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(D) Cost Overruns Information

79. In answer to paragraph 79 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(E) Write-downs Information

80. In answer to paragraph 80 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(F) FY18 Earnings Information

81. In answer to paragraph 81 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(G) FY19 Financial Information

82. Mr James denies paragraph 82 and refers to paragraph 179 below and the particulars thereto.

V. BREACH OF CONTINUOUS DISCLOSURE OBLIGATIONS**(A) EPC Solar Contract Risk Information Contravention**

83. In answer to paragraph 83 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

84. In answer to paragraph 84 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

85. In answer to paragraph 85 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

86. In answer to paragraph 86 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(B) Ground Conditions Information Contravention

87. In answer to paragraph 87 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim

against Mr James and on that basis does not admit the paragraph.

88. In answer to paragraph 88 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

89. In answer to paragraph 89 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

90. In answer to paragraph 90 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(C) Project Issues Information Contravention

91. In answer to paragraph 91 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

92. In answer to paragraph 92 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

93. In answer to paragraph 93 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

94. In answer to paragraph 94 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(D) Cost Overruns Information Contravention

95. In answer to paragraph 95 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

96. In answer to paragraph 96 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

97. In answer to paragraph 97 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

98. In answer to paragraph 98 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(E) Write-downs Information Contravention

99. In answer to paragraph 99 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

100. In answer to paragraph 100 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

101. In answer to paragraph 101 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

102. In answer to paragraph 102 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(F) FY18 Earnings Information Contravention

103. In answer to paragraph 103 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

104. In answer to paragraph 104 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

105. In answer to paragraph 105 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

106. In answer to paragraph 106 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(G) FY19 Financial Information Contravention

107. In answer to paragraph 107 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

108. In answer to paragraph 108 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

109. In answer to paragraph 109 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

110. In answer to paragraph 110 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(H) The Continuous Disclosure Contraventions were continuing

111. In answer to paragraph 111 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

VII. MISLEADING AND DECEPTIVE CONDUCT OF RCR

(A) Additional RCR public statements

112. In answer to paragraph 112 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(B) Continuous Disclosure RCR Representation

113. In answer to paragraph 113 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

114. In answer to paragraph 114 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

115. In answer to paragraph 115 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

116. In answer to paragraph 116 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

117. In answer to paragraph 117 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim

against Mr James and on that basis does not admit the paragraph.

118. In answer to paragraph 118 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(C) Risk Management RCR Representation

119. In answer to paragraph 119 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

120. In answer to paragraph 120 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

121. In answer to paragraph 121 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

122. In answer to paragraph 122 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

123. In answer to paragraph 123 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

124. In answer to paragraph 124 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(D) 23 February 2017 RCR Conduct

125. In answer to paragraph 125 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

126. In answer to paragraph 126 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

127. In answer to paragraph 127 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

128. In answer to paragraph 128 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(E) 3 May 2017 RCR Conduct

129. In answer to paragraph 129 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

130. In answer to paragraph 130 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

131. In answer to paragraph 131 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

132. In answer to paragraph 132 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(F) 11 August 2017 RCR Conduct

133. In answer to paragraph 133 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

134. In answer to paragraph 134 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

135. In answer to paragraph 135 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

136. In answer to paragraph 136 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(G) 24 August 2017 RCR Conduct

137. In answer to paragraph 137 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

138. In answer to paragraph 138 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
139. In answer to paragraph 139 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
140. In answer to paragraph 140 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
141. In answer to paragraph 141 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(H) 30 August 2017 RCR Conduct

142. In answer to paragraph 142 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
143. In answer to paragraph 143 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
144. In answer to paragraph 144 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
145. In answer to paragraph 145 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(I) 22 February 2018 RCR Conduct

146. In answer to paragraph 146 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
147. In answer to paragraph 147 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.
148. In answer to paragraph 148 of the CLS, Mr James says the paragraph makes no

material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

149. In answer to paragraph 149 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

150. In answer to paragraph 150 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(J) 28 August 2018 RCR Conduct

151. In answer to paragraph 151 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

152. In answer to paragraph 152 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

153. In answer to paragraph 153 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

154. In answer to paragraph 155 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

VIII. MISLEADING CONDUCT OF DALGLEISH

(A) 23 February 2017 Dalgleish Conduct

155. In answer to paragraph 155 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

156. In answer to paragraph 156 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

157. In answer to paragraph 157 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

158. In answer to paragraph 158 of the CLS, Mr James says the paragraph makes no

material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(B) 3 May 2017 Dalglish Conduct

159. In answer to paragraph 159 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

160. In answer to paragraph 160 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

161. In answer to paragraph 161 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

162. In answer to paragraph 162 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(C) 11 August 2017 Dalglish Conduct

163. In answer to paragraph 163 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

164. In answer to paragraph 166 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

165. In answer to paragraph 165 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

166. In answer to paragraph 166 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(D) 24 August 2017 Dalglish Conduct

167. In answer to paragraph 167 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

168. In answer to paragraph 168 of the CLS, Mr James says the paragraph makes no

material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

169. In answer to paragraph 169 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

170. In answer to paragraph 170 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

171. In answer to paragraph 171 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(E) 22 February 2018 Dalglish Conduct

172. In answer to paragraph 172 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

173. In answer to paragraph 173 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

174. In answer to paragraph 177 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

175. In answer to paragraph 175 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

176. In answer to paragraph 176 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

IX. MISLEADING CONDUCT OF JAMES

(A) 28 August 2018 James Conduct

177. Mr James denies paragraph 177 of the CLS and refers to paragraph 61 above.

178. Mr James denies paragraph 178 of the CLS and refers to paragraph 177 above.

179. Mr James denies paragraph 179, and further says that if the 28 August 2018 James Representations were made by Mr James personally, there were reasonable

grounds for making them.

Particulars

As at 28 August 2018, Mr James had reasonable grounds for making the 28 August 2018 James Representations (if they were made, which is denied) by reason that:

(i) RCR held regular monthly board meetings, which Mr James attended as a non-executive director, including on 23 January 2018, 20 February 2018, 27 March 2018, 24 April 2018, 28 and 29 May 2018, and 26 June 2018 at which management reported on, and directors discussed, the financial performance and position of RCR including the following regular reports:

- A. Chief Executive Officer and Managing Director's Report on, among other things, the financial position and performance of RCR, major project updates, business development opportunities, and legal matters.
- B. Chief Operating Officer's - Monthly Report on RCR's Infrastructure and Energy businesses', among other things, financial position and performance, project updates, and business development opportunities.
- C. Chief Financial Officer's report on RCR's financial position and performance, including management accounts and forecasts.
- D. Company Secretary's Report on Earnings Guidance and Consensus,

and otherwise held meetings on 30 July, 31 July, 2 August, 5 August, 7 August, 13 August, 19 August and 27 August 2018, which Mr James attended, at which time RCR's FY19 forecast was specifically the subject of reports and/or discussion.

(ii) While a non-executive director of RCR Mr James was a member of the Audit and Risk Committee (**ARC**) of RCR and attended meetings of the committee on at least 5 February 2018, 14 February 2018, 25 June 2018, 31 July 2018 and 5

August 2018.

- (iii) Following his appointment as interim-CEO and Managing Director on 6 August 2018, Mr James attended ARC meetings as an invitee on 13 August 2018 and 22 August 2018.
- (iv) At or around the time of becoming aware of cost overruns on the Daydream and Hayman Project, the Board held a meeting on 30 July 2018 (which Mr James attended) at which the Board received a briefing on, and discussed, preliminary findings on the forecast cost to complete the Daydream and Hayman Project and otherwise commissioned an internal investigation into issues which, by final report dated 23 August 2018, relevantly concluded that:
- A. On-site procedures adopted by a limited number of site personnel at the Daydream and Hayman Project had the effect of circumventing RCR's standard processes and project level systems relating to procurement commitments;
 - B. The nature of the conduct with respect to procurement commitments made it difficult for RCR to accurately determine cost-to-date and forecast cost-to-complete on a timely basis;
 - C. The procurement control issues at the site occurred during peak execution months of the Daydream and Hayman Project;
 - D. There were significant challenges in maintaining appropriate project management oversight at the Daydream and Hayman Project;
 - E. Site management at the Daydream and Hayman Project were focused on delivering project milestones under time pressure, and did not give adequate focus to cost management and oversight of site practices with respect to procurement commitments;
 - F. No indication of fraud or collusion on the part of site personnel or management had been detected; and

G. The procurement control issues identified at the Daydream and Hayman Project were not systemic within RCR.

- (v) On 1 August 2018 the Board resolved to establish a Due Diligence Committee (**DDC**) to co-ordinate and oversee the implementation of due diligence processes in connection with the capital raising through the Prospectus, the membership of which included Mr James and representatives from King & Wood Mallesons (**KWM**), Macquarie Capital (Australia) Limited (**Macquarie**) and Deloitte Corporate Finance Pty Limited (**Deloitte**). The DDC met on 6 August 2018, 7 August 2018, 13 August 2018, 21 August 2018, 23 August 2018 and 27 August 2018.
- (vi) KWM acted as RCR's legal advisers in relation to the capital raising under the Prospectus, which included preparation of a Due Diligence Planning Memorandum (**DDPM**), Key Issues Report, Legal Work Plan, Prospectus Content and Liability Advice, Legal Due Diligence Report (final versions of which were all dated 27 August 2018). KWM also acted as RCR's legal advisors in relation to (among other things) the "key risks" section of the Prospectus and in relation to continuous disclosure obligations under s 674 and s 708A of the *Corporations Act 2001* (Cth).
- (vii) By letter dated 10 August 2018, RCR engaged Macquarie to act as lead manager and bookrunner in relation to the capital raising under the Prospectus. Under the terms of the engagement, Macquarie's role included assisting RCR with due diligence processes including appointing representatives to attend due diligence committee meetings as a member to, among other things, contribute and otherwise participate in matters directly related to the scope of Macquarie's engagement and review documents, ask any questions and raise any issues that the Macquarie representative considered necessary or appropriate. As part of Macquarie's engagement, it issued and received responses from RCR Management to a Due Diligence Questionnaire concerning a

range of matters including financial matters and risks associated with RCR's solar projects, the answers to which were made available to the DDC and to the RCR Board including at the RCR Board meeting on 7 August 2018 and which were subsequently discussed by the directors of RCR.

- (viii) By letter dated 14 August 2018, KWM engaged McGrathNicol Advisory Partnership (**McGrathNicol**) to, among other things, provide assistance in assessing the short-term cashflow forecast and the forecasting process of the RCR Group. McGrath Nicol delivered a draft short-term cashflow report to RCR dated 24 August 2018 on 23 August 2018. Consistent with paragraph 8.5.1 of McGrath Nicol's report to creditors dated 19 March 2019, the executive summary of the draft report stated that, "*based on our limited review, the short-term cash forecasting process seems robust*".
- (ix) In a report to the ARC dated 21 August 2018 Deloitte indicated that it expected to issue an unqualified audit report which included an emphasis of matter paragraph in relation to RCR's FY18 Financial Report. In its report, Deloitte indicated that it had not identified any uncorrected misstatements that, in its judgment, either individually or in the aggregate, could have a material effect on the financial report for the year ended 30 June 2018. Key audit matters considered included recognition of revenue (with testing of significant contracts, including solar contracts) and the performance of procedures to ensure that the issues identified on the Daydream and Hayman Project were not systemic. On 28 August 2018, Deloitte produced an unqualified audit report in accordance with its report to the ARC.
- (x) On 17 August 2018 RCR retained Deloitte to perform a limited scope financial due diligence focussed on RCR's FY19 forecast earnings before interest and tax and cash flows in connection with the Prospectus, which was to include a qualitative statement on expected FY19 earnings.

Deloitte produced a report on 23 August 2018.

- (xi) By letter dated 23 August 2018, RCR engaged Deloitte to perform agreed-upon procedures to assist RCR in assessing, in combination with other information, the Preferred Tender report, current order book and other procedures relating to the investor presentation and Prospectus, with Deloitte producing its report on 28 August 2018.
- (xii) On or about 27 August 2018 each of the members of the Due Diligence Committee provided confirmations in relation to the Prospectus including that nothing had come to their attention which caused them to believe that, amongst other things, any statement in the Prospectus was false, misleading or deceptive.
- (xiii) At a meeting on 27 August 2018, the RCR board (among other things):
 - A. Received a final report on the investigation into the Daydream and Hayman Project.
 - B. Adopted a revised strategy which included shifting RCR's project portfolio towards 'alliance style' contracting models, which involved higher working capital commitments, but offered a more favourable risk allocation to RCR as the contractor and therefore provided a higher degree of margin predictability.
 - C. Resolved to approve the engagement of Deloitte in relation to the FY19 Forecast review and otherwise noted the receipt of Deloitte's limited scope financial due diligence report on the same dated 23 August 2018.
 - D. Noted that management confirmed the FY19 forecast remained current, had a reasonable basis, bottom-up approach and was supported by a number of assumptions and sensitivities as set out in a paper marked Annexure A.
 - E. Discussed the FY19 Forecast with Management.

- F. Resolved to approve the FY19 Forecast but adjusted for the impact of new accounting standard AASB15 (resulting in a FY19 underlying EBIT of \$43.2 million)
 - G. Resolved that the provision of a FY19 forecast to the market was reasonable on the basis of the FY19 Forecast materials presented by Management and on the work completed by Deloitte.
 - H. Resolved that RCR provide FY19 Guidance of Underlying EBIT in the range of \$40 million to \$48 million under AASB15 based on specified assumptions set out in a paper marked Annexure A.
 - I. Resolved to approve the due diligence processes associated with the Prospectus as described in the DDC report (including approving the DDPM, accepting the final DDC Report (including a verification report tabled at the DDC meeting held on 27 August 2018), and giving final approval of the adequacy and appropriateness of the due diligence process as described in the DDC Report).
 - J. Resolved to approve the draft Prospectus, 28 August 2018 Presentation and a list of statements contained in each which needed to be specifically adopted by the Directors, principally being statements as to the intentions or beliefs of the Directors of the Company, with each Director confirming they were satisfied there were reasonable grounds for making all statements relating to future matters included in, among other things, the Prospectus and 28 August 2018 Presentation.
 - K. Resolved to accept the proposed FY18 Deloitte Auditor's Report and approve the FY18 Financial Report.
 - L. Resolved that, subject to execution of the Underwriting Agreement for the capital raising, approve the 28 August 2018 Announcement.
- (xiv) RCR had in place a range of policies, processes and procedures in respect of tendering for EPC Solar Contracts, assessing project risks and opportunities, analysing existing

and forecast construction status and risk, and analysing RCR Group's existing and forecast financial position and risk.

(xv) Further particulars may be provided prior to trial.

180. Mr James denies paragraph 180 of the CLS.

181. In answer to paragraph 181 of the CLS, Mr James accepts the defined term but otherwise:

(a) in relation to subparagraphs 181.1-181.14, Mr James says the subparagraphs make no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraphs; and

(b) denies subparagraph 181.15.

X. SECTION 1041E CONTRAVENTION

182. In answer to paragraph 182 of the CLS, Mr James:

(a) as to subparagraphs 182.1 to 182.13, says the subparagraphs makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the subparagraph; and

(a)(b) as to subparagraph 182.14, denies the paragraph and refers to paragraphs 177 and 179 above .

183. Mr James denies~~In answer to paragraph 183 of the CLS and repeats paragraph 182 above., Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.~~

184. In answer to paragraph 184 of the CLS, Mr James says that:

(a) if and to the extent that it is alleged that RCR made the 28 August 2018 James Representations, denies the paragraph and refers to paragraphs 177 and 179 above;

(b) otherwise, says that the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

185. In answer to paragraph 185 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

186. Mr James denies paragraph 186 of the CLS and refers to paragraphs 177 and 179 above, ~~including on the basis that none of the 1041E Representations (as defined in the CLS) is alleged to have been made by James.~~

187. In answer to paragraph 187 of the CLS, Mr James:

(a) says that subparagraphs 187.1 and 187.2 make no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit them;

(b) ~~denies subparagraph 187.3, including on the basis that Mr James is not referred to in subparagraph 186.~~

XI. CAUSATION, INCLUDING INDIRECT (MARKET-BASED) CAUSATION

(A) Market contraventions generally

188. Mr James denies paragraph 188 of the CLS.

189. Mr James denies paragraph 189 of the CLS.

190. Mr James denies paragraph 190 of the CLS.

191. Mr James denies paragraph 191 of the CLS.

192. Mr James denies paragraph 191 of the CLS.

193. Mr James denies paragraph 193 of the CLS.

194. Mr James denies paragraph 194 of the CLS.

195. Mr James denies paragraph 195 of the CLS.

(B) 30 AUGUST 2017 RCR CLEANSING NOTICE MISLEADING CONDUCT CONTRAVENTION

(i) No transaction

196. In answer to paragraph 196 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(ii) Market-based causation

197. In answer to paragraph 197 of the CLS, Mr James says the paragraph makes no material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

(iii) Reliance

198. In answer to paragraph 198 of the CLS, Mr James says the paragraph makes no

material allegation against Mr James nor any allegation that supports a claim against Mr James and on that basis does not admit the paragraph.

XII. LOSS AND DAMAGE

199. Mr James denies paragraph 199 of the CLS.

XIII. PROSPECTUS CONTRAVENTION

200. In answer to paragraph 200 of the CLS, Mr James:

- (a) admits that the Prospectus was a transaction specific prospectus for an offer of continuously quoted securities as defined in the Act, prepared in accordance with s 713 of the Act;
- (b) admits that the Prospectus was issued in relation to an offer of RCR Shares;
- (c) says that the balance of the paragraph alleges a matter of law, not material fact, and on that basis does not admit the balance.

201. In answer to paragraph 201 of the CLS, Mr James:

- (a) says that as part of the FY18 group audit, in response to the issues identified at the Project, additional procedures were conducted by Deloitte as independent audit in relation to the Project and RCR's cost management systems and procedures and that Deloitte issued an unqualified audit opinion in relation to RCR's FY18 result, including that the FY2018 Financial Report gave a true and fair view of the Group's financial position as at 30 June 2018 and of its financial performance for the year then ended;
- (b) admits that the Independent Auditor's Report in on the FY2018 Financial Report included a statement to the effect that the recorded loss of \$16.1 million "*together with other matters as set forth in Note 1.3 and Note 5.3 'Financial Risk Management', indicate that a material uncertainty exists that may cast significant doubt on the Group's ability to continue as a going concern*";
- (c) says that Deloitte stated that the audit opinion was not modified in respect of the matter in subparagraph (b) above; and

Particulars

FY2018 Annual Report, p 91.

- (d) otherwise does not admit the paragraph.

202. In answer to paragraph 202 of the CLS, Mr James:
- (a) relies on the whole of the Prospectus, including the qualifications of, and/or statements about, assumptions, risk factors and forward-looking statements, referred to in the particulars to paragraph 61 above;
 - (b) admits that the Prospectus included the words "*We also remain ideally positioned in a range of growing markets, including the rail and transport, energy, water, renewable, resources and property services sectors*";
 - (c) admits that the Prospectus included the words "*The Project has experienced significant cost overruns due to several compounding project-specific issues*";
 - (d) admits that the Prospectus included the words "*The Entitlement Offer will enable RCR to avoid the risk of breaching financial covenants under its Facility Agreement following release of its FY18 Audited Financial Report results*";
 - (e) admits that the Prospectus included the words "*[t]he audit opinion is modified, but not qualified, in respect of this matter, and would be resolved by the completion of the Entitlement Offer*";
 - (f) otherwise denies the paragraph.
203. In answer to paragraph 203 of the CLS, Mr James:
- (a) does not admit subparagraphs 203.1 and 203.2; and
 - (b) denies paragraph 203.3, and repeats paragraph 179 above and the particulars thereto.
204. Mr James denies paragraph 204 of the CLS.
205. Mr James denies paragraph 205 of the CLS.
206. Mr James denies paragraph 206 of the CLS.
207. Mr James denies paragraph 207 of the CLS.
- (A) Causation**
- (i) No transaction**
208. Mr James denies paragraph 208 of the CLS.
- (ii) Market-based causation**
209. Mr James denies paragraph 209 of the CLS.

210. Mr James denies paragraph 210 of the CLS.

(iii) Reliance

211. Mr James denies paragraph 211 of the CLS.

(B) Loss and Damage

212. Mr James denies paragraph 212 of the CLS.

213. Mr James says, in answer to the whole of paragraphs 200 to 212 of the CLS, if and to the extent that relief is sought against him under s 729 of the Act, that:

- (a) he is not liable under s 729 for any contravention of s 728 by RCR (which is denied) because, for the purposes of the defence in s 731 of the Act, he:
 - (i) made all inquiries that were reasonable in the circumstances; and
 - (ii) after doing so, believed on reasonable grounds that there was no misleading or deceptive statement in, or omission from, the Prospectus as alleged;
- (b) he is not liable under s 729 for any contravention of s 728 by RCR (which is denied) because, for the purposes of the defence in s 732 of the Act, he:
 - (i) did not know that any statement in the Prospectus was misleading or deceptive;
 - (ii) did not know of any omission from the Prospectus;
- (c) he is not liable under s 729 for any contravention of s 728 by RCR (which is denied) because, for the purposes of the defence in s 733 of the Act, he:
 - (i) placed reasonable reliance on information given to him by KWM, Macquarie, Deloitte, McGrath Nicol and RCR management (including members of the ARC and DDC);
 - (ii) was not aware of any new circumstance that arose since the Prospectus was lodged (if and to the extent relevant).

Particulars

In respect of each of the allegations in this paragraph 213, Mr James relies on the whole of the particulars to paragraph 179 above.

Section 1318 of the *Corporations Act 2001* (Cth)

214. If, which is denied, Mr James is found to have contravened s 1041H of the Act, Mr

James says that:

- (a) he is a person who has acted honestly and that, having regard to all the circumstances of the case, ought fairly to be excused for such contravention;

Particulars

- (i) It is not alleged that Mr James acted dishonestly.
 - (ii) The circumstances of the case are those identified in the particulars to paragraph 179 above.
- (b) the Court should, pursuant to s 1318 of the *Corporations Act 2001* (Cth), relieve him wholly from liability in respect of such contravention on such terms as the Court thinks fit.

QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

None.

E. MEDIATION

Mr James is prepared to mediate at an appropriate time.

SIGNATURE

Signature of legal representative



Capacity

Solicitor for Bruce Maxwell James (by his Partner)

Date of signature

~~4 October 2019~~ 23 March 2020