Ball J

FILED

8 OCT 2019

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THIRD CROSS-CLAIM
AMENDED STATEMENT OF CROSS-CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Class Action Panel
Registry	Sydney
Case number	2017/294069 ~~& 2018/52431~~ -005

TITLE OF PROCEEDINGS

Proceeding 2017/294069

First plaintiff	**Haliburton Charles David Findlay**
Second plaintiff	Marian Jennifer Denny Findlay
First defendant	**DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)**
Number of defendants	457

~~**Proceeding 2018/52431**~~

~~First plaintiff~~	~~**Epaminondas Mastoris**~~
~~Second plaintiff~~	~~Lena Mastoris~~
~~First defendant~~	~~**DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liquidation)**~~
~~Number of defendants~~	~~457~~

TITLE OF THIS CROSS-CLAIM

Cross-claimant	**Michael Thomas Potts** (Cross-Claimant/Third Defendant)
Cross-defendants	**David White and the others listed in Schedule 1 trading as Deloitte Touche Tohmatsu (ABN 74 490 121 060)**
	Deloitte Corporate Finance Pty Ltd (ACN 003 833 127)

FILING DETAILS

Filed for	**Michael Thomas Potts,** Cross-Claimant
Legal representative	Tobin Meagher, Clayton Utz
Legal representative reference	842/11250/80200538
Contact name and telephone	Andrew Moore, (02) 9353 4299
Contact email	amoore@claytoutz.com

RELIEF CLAIMED

1. An order ~~that~~the 1st to 454th Cross-Defendants (**Deloitte**) pay the Cross-Claimant damages or compensation pursuant to ss~~.~~ 236 and 237 of the Australian Consumer Law (NSW) (**ACL**) and/or ss~~.~~ 12GF and 12GM of the Australian Securities and Investments Commission Act 2001 (Cth) (**ASIC Act**) and/or ss~~.~~ 1041I and 1325 of the Corporations Act 2001 (Cth) (**CA**) in the amount of:

   (a) any damages or compensation, costs or interest that the Cross-Claimant is ordered to pay to the Plaintiffs or Group Members in ~~these~~ each of the Findlay and Mastoris proceedings;

   ~~(a)~~(b) any damages or compensation, costs or interest that the Cross-Claimant is ordered to pay to either Deloitte or the 455th Cross-Defendant (**DCF**) pursuant to the Fourth Cross-Claim in each of the Findlay and Mastoris proceedings; and

   ~~(b)~~(c) the legal costs and disbursements that the Cross-Claimant has incurred in defending these proceedings, including the Fourth Cross-Claim.

1A. An order that DCF pay the Cross-Claimant damages or compensation pursuant to ss 236 and 237 of ACL and/or ss 12GF and 12GM of the ASIC Act and/or ss 1041I and 1325 of the CA in the amount of:

   (a) any damages or compensation, costs or interest that the Cross-Claimant is ordered to pay to either Deloitte or DCF pursuant to the Fourth Cross-Claim in each of the Findlay and Mastoris proceedings; and

   (b) the legal costs and disbursements that the Cross-Claimant has incurred in defending these proceedings, including the Fourth Cross-Claim.

2. Equitable contribution.

3. Interest.

4. Costs.

5. Such further or other orders as the Court sees fit.

PLEADINGS AND PARTICULARS

The Cross-Claimant, Michael Thomas Potts (**Potts**), is the Third Defendant to the Further Amended Joint Statement of Claim filed ~~7 March~~26 April 2019. ~~The Cross-Defendants (**Deloitte**)~~ Deloitte are the 4th to 457th defendants to the Further Amended Joint Statement of Claim. (Unless otherwise

indicated, defined terms in the Further Amended Joint Statement of Claim have the same meaning where used below.)

Potts is also a cross-defendant to the Fourth Cross-Claim which has been brought by Deloitte and DCF in each of the Findlay and Mastoris proceedings (the Deloitte Cross-Claims).

In the event only that it is found that Potts is liable to the plaintiffs and/or any of the Group Members in the manner pleaded in the Further Amended Joint Statement of Claim (which is denied), or liable to Deloitte or DCF pursuant to the Deloitte Cross-Claims, then Potts pleads as follows:

The Parties

1. Potts

   (a) was the Finance Director and Chief Financial Officer of DSHE Holdings Limited ACN 166 237 841 (receivers and managers appointed) (in liq) (**DSH**) from on or around 25 October ~~2014~~ 2013 to 4 January 2016;

   (b) was a director of DSH from on or around 12 August 2014 to 4 January 2016;

   (c) was, as the Finance Director and Chief Financial Officer, a person who at all times between 25 October 2013 and 4 January 2016:

      (i) made, or participated in making, decisions that affected the whole or a substantial part, of the business of DSH and its controlled entities (together, the **DSH Group**); and

      (ii) had the capacity to affect significantly DSH and the DSH Group's financial standing;

   (d) was the Company Secretary of DSH from on or around 25 October 2013 to 12 August 2014; and

   (e) is and was at all material times a person for the purposes of ss 728, 729, 1041E and 1041H of the CA.

2. At all material times, DSH:

   (a) was and is a company registered pursuant to the CA and is capable of being sued; and

   (b) was:

      (i) the consolidated reporting entity for the DSH Group; and

      (ii) a person for the purposes of ss 728, 729(1), 1041E and 1041H of the CA; and

(c) was on and from 4 December 2013:

(i) a corporation listed on a financial market operated by ASX Limited (**ASX**);

(ii) had on issue 236,511,364 ordinary shares (**DSH Shares**) which were:

A. listed and traded on the ASX under the code "DSH";

B. "ED Securities" within the meaning of s 111AE of the CA; and

C. "quoted ED Securities" within the meaning of s 111AM of the CA;

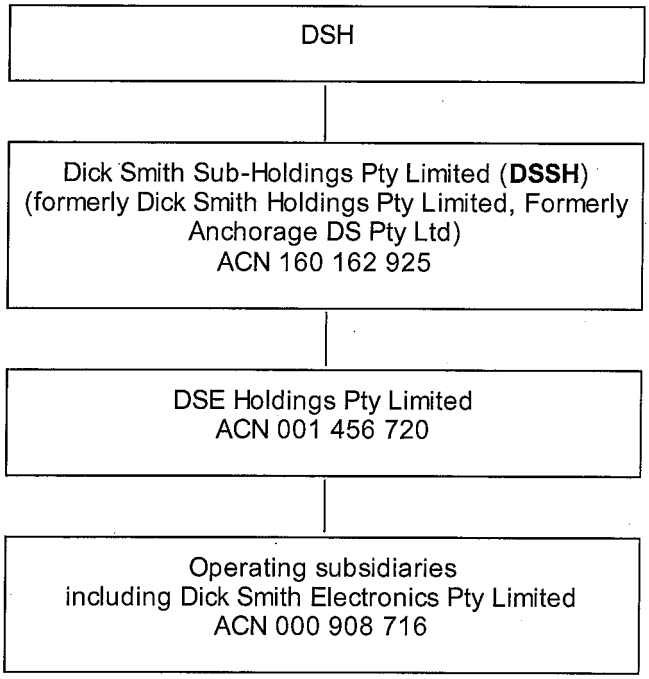
(iii) a "listed disclosing entity" within the meaning of s 111AL(1) of the CA;

(iv) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and

(v) obliged by ss 111AP(1) and/or 674(1) of the CA and/or ASX Listing Rule 3.1 to, once it became aware of any information concerning DSH that a reasonable person would expect to have a material effect on the price or value of DSH Shares, tell the ASX that information immediately (unless ASX Listing Rule 3.1A applied);

(d) carried on business itself and through the DSH Group as a retailer of consumer electronics, entertainment, computer products and related accessories; and

(e) was the parent company of the DSH Group comprising itself and its trading subsidiaries, which DSH controlled, as follows:



Particulars

Page 134 of a prospectus issued and lodged with ASIC by DSH dated 21 November 2013.

3. Deloitte are, and at all material times were, persons carrying on business in partnership as chartered accountants and auditors, under the name Deloitte Touche Tohmatsu.

4. At all material times, Deloitte had, and held itself out as having, professional expertise and competence in the provision of auditing and accounting services.

The Deloitte Retainers

5. Potts repeats paragraphs 376-378 of the Further Amended Joint Statement of Claim.

6. On or about 13 December 2013, Deloitte was retained by DSH to audit the consolidated financial statements of DSH for the financial year ending 29 June 2014 (the **FY14 Financial Statements**).

Particulars

The retainer (**FY14 Retainer**) is in writing and is comprised of:

- Letter of engagement dated 13 December 2013 from Deloitte to Bill Wavish, the Chairman of DSH's Finance and Audit Committee (the **FAC**), and signed by David White on behalf of Deloitte (the **FY14 Engagement Letter**); and
- Document entitled "Deloitte Standard Terms and Conditions" effective from 21 March 2013 (the **Deloitte Standard Terms**).

7. On 13 November 2014, Deloitte was retained by DSH to audit the consolidated financial statements of DSH for the financial year ending 28 June 2015 (the **FY15 Financial Statements**).

Particulars

The retainer (**FY15 Retainer**) is in writing and is comprised of:

- Letter of engagement dated 13 November 2014 from Deloitte to Bill Wavish, the Chairman of the FAC, and signed by David White on behalf of Deloitte (the **FY15 Engagement Letter**); and
- the Deloitte Standard Terms.

8. It was a term of the FY14 Retainer that in performing its audit of the FY14 Financial Statements (the **FY14 Audit**), Deloitte would:

   (a) conduct its audit pursuant to the CA;

   (b) conduct its audit in accordance with the Australian Auditing Standards (**Auditing Standards**);

   (c) perform procedures to obtain audit evidence about the amounts and disclosures in the FY14 Financial Statements;

   (d) evaluate the appropriateness of DSH's accounting policies;

   (e) evaluate the reasonableness of accounting estimates made by DSH's management;

   (f) evaluate the overall presentation of the FY14 Financial Statements;

   (g) communicate with DSH in writing concerning any significant deficiencies in internal control relevant to the audit of the financial statements that Deloitte identified during the audit; and

   (h) express an opinion on the FY14 Financial Statements and report to the members of DSH in the format outlined in the example Independent Auditor's Report as per Appendix A to the FY14 Engagement Letter.

Particulars

The FY14 Engagement Letter, page 2.

9. It was a term of the FY15 Retainer that in performing its audit of the FY15 Financial Statements (the **FY15 Audit**), Deloitte would:

   (a) conduct its audit pursuant to the CA;

   (b) conduct its audit in accordance with the Auditing Standards;

   (c) perform procedures to obtain audit evidence about the amounts and disclosures in the FY15 Financial Statements;

   (d) evaluate the appropriateness of DSH's accounting policies;

   (e) evaluate the reasonableness of accounting estimates made by DSH's management;

   (f) evaluate the overall presentation of the FY15 Financial Statements;

(g) communicate with DSH in writing concerning any significant deficiencies in internal control relevant to the audit of the financial statements that Deloitte identified during the audit; and

(h) express an opinion on the FY15 Financial Statements in the format outlined in the example Independent Auditor's Report as per Appendix A to the FY15 Engagement Letter.

Particulars

The FY15 Engagement Letter, page 2.

10. It was a term of each of the FY13 Retainer, the FY14 Retainer and the FY15 Retainer that Deloitte would exercise reasonable skill, care and diligence in the performance of services as auditor, including in performing, respectively, FY13 Audit, the FY14 Audit and the FY15 Audit.

Particulars

Clause 3.1 of the Deloitte's Standard Terms and Conditions.

Accounting and Auditing Framework

CA and Accounting Standards

11. For the purposes only of this cross claim, Potts repeats paragraphs 111-134 of the Further Amended Joint Statement of Claim.

12. Potts repeats paragraphs 386-409 of the Further Amended Joint Statement of Claim.

13. The Auditing Standards in force under s 336 of the CA, in accordance with which Deloitte was required to conduct the FY13 Audit, the FY14 Audit and FY15 Audit, included Auditing Standard ASA 265 *Communicating Deficiencies in Internal Control to those Charged with Governance and Management* (**ASA 265**).

14. In complying with ASA 265, Deloitte was required:

(a) to communicate in writing significant deficiencies in internal control identified during the audit to those charged with governance (ASA 265 para 10); and

(b) to communicate to management at an appropriate level of responsibility on a timely basis:

(i) in writing significant deficiencies in internal control that the auditor has communicated or intends to communicate to those charged with governance unless it would be inappropriate to communicate directly with management in the circumstances (ASA 265 para 10(a)); and

(ii) other deficiencies in internal control identified during the audit that have not been communicated to management by other parties and that, in the auditor's professional judgement are of sufficient importance to merit management attention (ASA 265 para 10(b)).

Representations by Deloitte in respect of Inventory Obsolescence Provisions

The FY13 Inventory Representations

14A In the FY13 Audit, Deloitte identified the inventory provisions in the FY13 Financial Statements as a key area of audit focus.

Particulars

Report by Deloitte headed "Dick Smith Holdings Pty Limited – Report to the Board for the period ended 30 June 2013" and dated 17 October 2013 (**FY13 Board Report**), section 2.2.

14B On or about 17 October 2013, Deloitte reported to the Board of DSSH that the procedures carried out by Deloitte in the FY13 Audit included "*assessing the adequacy of the inventory provision at 30 June 2013*", by performing "*various alternative analyses, including reviewing the various categories of inventory, the split of inventory between that acquired pre and post acquisition by Dick Smith Holdings Pty Limited, subsequent sales in the 3 month period to 30 September 2013, and the type of inventory held by the trading department*".

Particulars

FY13 Board Report, p.9.

14C On or about 17 October 2013, at the conclusion of the FY13 Audit, Deloitte reported to the Board of DSSH that, having performed the procedures referred to in paragraph 14B above, Deloitte concluded that the "*provision for inventory obsolescence as at 30 June 2013 is considered to be reasonable based on the profile of inventory and subsequent sales made to 30 September 2013*".

Particulars

FY13 Board Report, p. 9.

14D On or about 17 October 2013, Deloitte represented to the Board of DSSH that:

(a) Deloitte was of the opinion that the provision in respect of inventory obsolescence in the FY13 Financial Statements complied with AASB 102;

Particulars

The representation in paragraph (a) above is partly express and partly implied.

To the extent it is express, Potts repeats paragraph 14C above.

To the extent it is implied, it is implied from those express statements and from the matters pleaded in paragraphs 14A-14B above.

(b) Deloitte had a reasonable basis for the opinion in paragraph (a) above, and that opinion was the result of Deloitte having exercised reasonable skill and care in performing the FY13 Audit, having performed the procedures referred to in paragraph 14B above, and having complied with Auditing Standards in respect of its work in relation to inventory in the course of the FY13 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 5, 10, 12-14 and 14A - 14C above.

(the **FY13 Inventory Representations**).

The FY14 Inventory Representations

15. In the FY14 Audit, Deloitte identified the inventory provisions in the FY14 Financial Statements as a key area of focus and audit response.

Particulars

Report by Deloitte headed "Report to the Finance and Audit Committee for the year ended 29 June 2014" and dated 6 August 2014 (**FY14 FAC Report**), section 3.2.

16. In or around January 2014, Deloitte informed DSH that the audit responses which Deloitte had tailored to address the key risk area in relation to the inventory obsolescence provisions in the FY14 Financial Statements, and which would be performed in the course of the FY14 Audit, included:

(a) reviewing the inventory costing and provisioning methodologies adopted as required under AASB 102;

(b) as part of the review in (a) above, reviewing management's evolving provision methodologies and providing guidance as to the appropriateness of the methodology for both pre- and post-acquisition balances;

(c) analysing reports developed by management to track actual selling prices for stock sold during the period and the allocation of 'scan' provision utilisation rates; and

(d) reviewing the provision of 1.0% of purchases which had been instituted by management to assist in building the required provision for obsolescence and to ensure adequate provisions are maintained, in order to ensure that the appropriate amount has been taken to profit or loss relating to inventory purchases.

Particulars

Deloitte presentation to DSH headed "External audit strategy for the financial year ending 29 June 2014", dated January 2014, p. 8.

17. On or about 6 August 2014, Deloitte reported that the procedures carried out by Deloitte in the FY14 Audit included reviewing both the assumptions and methodology which were to be applied by management in the financial year ending 28 June 2015 in determining inventory provisions.

Particulars

FY14 FAC Report, p.10.

18. On or about 6 August 2014, at the conclusion of the FY14 Audit, Deloitte reported that:

(a) DSH's methodology used to calculate the provision for inventory obsolescence had been evolving as more historical data was available under the restructured business model;

(b) whilst the gross inventory balance has increased, the inventory provision has decreased mainly due to an improvement in the quality and ageing of inventory, and in addition management have implemented an 'End of life' category which identifies the inventory approaching the end of its life cycle but not under an active clearance program;

(c) as at 29 June 2014, a process was undertaken to assess the inventory obsolescence provision based on:

(i) inventory status;

(ii) inventory aging;

(iii) sell through rates and months cover;

(iv) negative margins at current selling prices; and

(v) current promotions or other adjustments;

(the **Revised Inventory Obsolescence Methodology**)

(d) this process included investigation of major product lines with the buying team to understand the expected future sell through and potential future write-downs;

(e) the calculation of the obsolescence provision based on the Revised Inventory Obsolescence Methodology resulted in a provision of $7.2 million, compared to the provision recognised under the previous methodology of $8.7 million;

(f) no adjustment had been made by management as at 29 June 2014 to reflect the Revised Inventory Obsolescence Methodology on the basis that the previous assumptions were built into the prospectus forecast, but the Revised Inventory Obsolescence Methodology will be implemented in FY15;

(g) Deloitte had reviewed the assumptions and methodology applied and concurred with the Revised Inventory Obsolescence Methodology;

(h) accordingly, Deloitte raised an unadjusted difference at Appendix A of $1.5 million to reflect the difference between the provision in the FY14 Financial Statements and provision based on the Revised Inventory Obsolescence Methodology (referred to in paragraph (e) above); and

(i) Deloitte had also reviewed the calculation methodology in relation to provision for shrinkage and concurred with the assumptions adopted by DSH management.

Particulars

FY14 FAC Report, p. 10.

19. On or about 6 August 2014, Deloitte represented that:

(a) Deloitte was of the opinion that the provision in respect of inventory obsolescence in the FY14 Financial Statements complied with AASB 102;

(b) Deloitte was of the opinion that the assumptions and methodology in the Revised Inventory Obsolescence Methodology were appropriate, and that the provision in respect of inventory obsolescence derived by using that methodology complied with AASB 102; and

Particulars

The representations in paragraphs (a)-(b) above are partly express and partly implied.

To the extent they are express, Potts repeats paragraph 18 above.

To the extent they are implied, they are implied from those express statements and from the matters pleaded in paragraphs 15-17 above.

(c) Deloitte had a reasonable basis for the opinions in paragraphs (a)-(b) above, and those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY14 Audit, having performed the procedures referred to in paragraph 16-17 above, and having complied with Auditing Standards in respect of its work in relation to inventory in the course of the FY14 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 8, 10, 12-14 and 15-18 above.

(the **FY14 Inventory Representations**).

The FY15 Inventory Representations

20. In the FY15 Audit, Deloitte identified the inventory provisions in the FY15 Financial Statements as a key area of focus and audit response.

Particulars

Report by Deloitte headed "Report to the Finance and Audit Committee for the year ended 28 June 2015" and dated 6 August 2015 (**FY15 FAC Report**), section 3.2.

21. On or about 18 November 2014, Deloitte informed DSH that the audit responses which Deloitte had tailored to address the key risk area in relation to the inventory obsolescence provisions in the FY15 Financial Statements, and which would be performed in the course of the FY15 Audit, included:

(a) testing controls around the inventory obsolescence, reconciliation, review and approvals process;

(b) reviewing the inventory costing and provisioning methodologies adopted as required under AASB 102;

(c) using data analytics to analyse reports developed by management to track actual selling prices for stock sold; and

(d) reviewing management's assessment of provisions based on this information and other evidence as to the appropriateness of the percentages provided on stock lines.

Particulars

Deloitte presentation to DSH headed "External audit strategy for the year ending 28 June 2015", dated 18 November 2014 (the **FY15 Audit Strategy Presentation**), p. 8.

22. On or about 6 August 2015, Deloitte reported that in the course of the FY15 Audit, Deloitte had assessed the assumptions and methodology applied by DSH management in determining inventory provisions in the FY15 Financial Statements.

Particulars

FY15 FAC Report, p. 9.

23. On or about 6 August 2015, Deloitte represented that:

(a) Deloitte was of the opinion that the assumptions and methodology applied by DSH management in determining inventory provisions in the FY15 Financial Statements were appropriate, and that the provision in respect of inventory obsolescence in the FY15 Financial Statements complied with AASB 102;

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated in the FY15 FAC Report that:

(i) the methodology which had been reviewed and approved by Deloitte in the course of the FY14 Audit (being the Revised Inventory Obsolescence and Methodology) had been adopted in the FY15 Financial Statements (pp. 5 and 9); and

(ii) Deloitte had assessed the assumptions and methodology applied by DSH and concurred with the revised methodology and with the provision made for inventory obsolescence applying that methodology (pp. 5 and 9).

To the extent it is implied, it is implied from those express statements and from the matters in paragraphs 20-22 above.

(b) Deloitte had a reasonable basis for the opinions in paragraph (a) above, and those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY15 Audit, having performed the procedures referred to in paragraphs 20-22 above, and having complied with Auditing Standards in respect of its work in relation to inventory in the course of the FY15 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 9-10, 12-14 and 20-22 above.

(the **FY15 Inventory Representations**)

Deloitte Inventory Representations

24. The FY13 Inventory Representations, the FY14 Inventory Representations and FY15 Inventory Representations (collectively, the **Deloitte Inventory Representations**) constituted conduct by Deloitte:

    (a) in trade or commerce within the meaning of ~~section~~ s 18 of the ACL; and/or

    (b) in relation to a financial product or a financial service within the meaning of ~~section~~ s 1041H of the CA; and/or

    (c) in trade or commerce, in relation to financial services, within the meaning of ~~section~~ s 12DA of the ASIC Act.

25. Further or in the alternative, the representations pleaded in paragraphs 14D(b), 19(c)~~19(c)~~ and 23(b)~~23(b)~~ above were representations by Deloitte:

    (a) in connection with the supply of services, that those services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL; and/or

    (b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSH in respect of the FY13 Audit, the FY14 Audit and the FY15 Audit, respectively.

The representations pleaded in paragraphs 14D(b), ~~19~~19(c) and 23(b) above, being representations that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in respect of its work in the relation (respectively) to the FY13 Audit, the FY14 Audit and the FY15 Audit, were representations regarding the standard, quality, value or grade of Deloitte's services in respect of those engagements.

Misleading or Deceptive Conduct – Deloitte Inventory Representations

Allegation that Inventory Provisions did not comply with AASB 102

26. The Plaintiffs allege (which is denied) that:

(a) the assumptions and methodology applied by DSH management in determining inventory provisions in each of the FY13 Financial Statements, the FY14 Financial Statements and the FY15 Financial Statements were inappropriate and did not result in a provision for inventory obsolescence that complied with AASB 102;

Particulars

Further Amended Joint Statement of Claim, paragraphs 144-145.

(b) the carrying value of "Inventories" was:

(ia) overstated by approximately $22.9m in the FY13 Financial Statements;

(i) overstated by approximately $30m in the FY14 Financial Statements; and

(ii) overstated by approximately $36.3m in the FY15 Financial Statements.~~;~~

Particulars

Further Amended Joint Statement of Claim, paragraph 146.

(c) by reason of overstating the carrying value of "Inventories", and failing to recognise the write down of inventory value as an expense against gross-profit in the statement of profit and loss, each of the FY13 Financial Statements, FY14 Financial Statements and the FY15 Financial Statements:

(i) overstated the reported gross profit, earnings before interest, taxes, depreciation and amortisation (**EBITDA**) and net profit reported in the consolidated statement of profit or loss; and

(ii) overstated the total equity and net assets of DSH;

Particulars

Further Amended Joint Statement of Claim, paragraphs 147-148.

(d) by reason of the matters in paragraphs (a)-(c) above, each of the FY13 Financial Statements, the FY14 Financial Statements and the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group; and

Particulars

Further Amended Joint Statement of Claim, paragraphs ~~150~~149-151.

(e) by reason of the matters in paragraphs (a)-(d) above, the issuing and publication of each of the FY14 Financial Statements and FY15 Financial Statements was misleading or deceptive, or likely to mislead or deceive.

Particulars

Further Amended Joint Statement of Claim, paragraphs 239 and 245.

Misleading conduct - the FY13 Inventory Representations

26A If the matters referred to in paragraph 26 above in respect of the FY13 Financial Statements are established (which are denied), then, for the purposes only of this cross-claim, Potts repeats paragraphs 427-431 of the Further Amended Joint Statement of Claim.

26B By reason of the matters pleaded in paragraphs 427-431 of the Further Amended Joint Statement of Claim, Deloitte failed to exercise reasonable skill and care, and failed to comply with Auditing Standards, in carrying out its work in relation to inventory provisions in the course of the FY13 Audit.

26C In the premises, Deloitte, in making the FY13 Inventory Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the ACL and/or s 1041H of the CA and/or s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care, pleaded in paragraphs 26A-26B above, Deloitte did not (contrary to the representations pleaded in paragraph 14D(b) above) have a reasonable basis for the representations of opinion pleaded in paragraph 14D(a) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to inventory provisions in the course of the FY13 Audit.

26D Further or in the alternative, by reason of the matters in paragraphs 26-26B above, Deloitte, in making the representation pleaded in paragraph 14D(b) above, made a false or misleading representation in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of s 29(1)(b) of the ACL and/or s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 25 and 26C above.

The representation pleaded in paragraph 14D(b) above was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY13 Audit for the reasons pleaded in paragraph 26A above, and therefore Deloitte did not have a reasonable basis for the representation pleaded in paragraph 14D(a) above.

Misleading conduct - the FY14 Inventory Representations

27. If the matters referred to in paragraph 26 above in respect of the FY14 Financial Statements are established (which are denied), then:

    (a) Deloitte, in representing that it was of the opinion that the assumptions and methodology applied by DSH management in determining inventory provisions in the FY14 Financial Statements were appropriate, and that the provision in respect of inventory obsolescence in the FY14 Financial Statements complied with AASB 102 (see paragraph 19 above), either:

        (i) failed properly to understand the assumptions and methodology applied in determining inventory provisions in the FY14 Financial Statements; or

        (ii) failed to gather sufficient appropriate audit evidence in order to enable Deloitte to express an opinion on whether the assumptions and methodology applied by management in determining the inventory provisions in the FY14 Financial Statements were appropriate or whether the provision in respect of inventory in the FY14 Financial Statements complied with AASB 102; or

        (iii) failed properly to apply the requirements of AASB 101 and AASB 102 to such audit evidence as Deloitte obtained in assessing the issue whether the inventory provisions in the FY14 Financial Statements complied with AASB 102; and

    (b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of inventory provisions in the course of the FY14 Audit, and failed to exercise reasonable skill and care in performing such work, in that:

        (i) Deloitte failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY14 Financial Statements (ASA 500 paras 4-6, A1-A3, A10, A14-A15);

(ii) Deloitte failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (one of the key areas of risk identified by Deloitte being the inventory provisions in the FY14 Financial Statements), through designing and implementing appropriate responses to those risks (ASA 330 paras 3, 5-7);

(iii) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY14 Financial Statements so as to reduce audit risk to an acceptably low level:

A. Deloitte failed to obtain reasonable assurance about whether the FY14 Financial Statements as a whole were free from material misstatement, whether due to fraud or error (ASA 200 para 5 and 17); and

B. Deloitte was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY14 Financial Statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY14 Financial Statements in accordance with the auditor's findings (ASA 200 paras 11 and 17);

(iv) Deloitte failed to perform risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures in respect of inventory provisions (ASA 315 paras 5-6, 25-26);

(v) Deloitte failed to obtain an adequate understanding of the application of accounting policies by DSH in respect of inventory provisioning, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 para 11);

(vi) Deloitte failed to obtain an adequate understanding of DSH's internal controls in respect of provisioning for inventory or of the activities undertaken by DSH to monitor such controls (ASA 315 paras 11-15, 18, 20-22);

(vii) Deloitte failed to design and perform tests of controls in relation to inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paras 8-10, 16);

(viii) Deloitte, having determined that there was a significant risk of material misstatement in respect of inventory provisions in the FY14 Financial Statements,

failed to perform substantive procedures that are specifically responsive to that risk (ASA 330 para 21);

(ix) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 para 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 para 25); and/or

(x) Deloitte failed to obtain sufficient appropriate audit evidence about whether the provisioning for inventory in the FY14 Financial Statements was reasonable, and in particular to evaluate whether the significant assumptions used by management in determining the level of provisioning were reasonable (ASA 540 paras 6, 15 and 18); and/or

(xi) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the provisioning for inventory in the FY14 Financial Statements, Deloitte failed to express a qualified opinion or disclaim an opinion on the FY14 Financial Statements (ASA 330 paras 26-27; ASA 260 paras A18).

Particulars

A reasonable auditor in Deloitte's position would have, in the course of the FY14 Audit:

- determined the methodology used by DSH to assess whether a provision should be made to reduce inventory to the lower of cost or the amount for which the inventory could be sold;
- determined the process by which DSH undertook its analysis used in the provisioning process (whether based on age, future sales or re-order profile), and would have determined the controls and processes adopted by DSH to ensure the accuracy of the analysis;
- determined whether or not to rely on the controls and checks operated by DSH. If the auditor chose to rely on such controls, he or she would have tested the operation of those controls through an appropriately sized sample. If the auditor chose not to rely on such controls, he or she would have selected a sample of inventory items for testing to determine whether, based on that sample, he or she could conclude that DSH's estimation of the amount of the provision to reduce inventory to the lower of cost and net realisable value was appropriate; and

- insofar as such audit work identified any deficiencies in the provisioning process or methodology undertaken by DSH, reported such matters to the directors of DSH.

DEL 23401 contains a review of the process used by DSH to calculate the provision for obsolete stock and also includes commentary on the new "Bottom up" calculation that DSH had developed during the year to enable it to perform a line by line analysis of its stock. This line by line analysis is required by AASB 102 (see paragraph 29).

The worksheet notes that the new schedule has been assessed for reasonableness and reconciled to the general ledger but there is no evidence of any detailed testing of the assumptions and calculations being used and their reasonableness for the purpose for which they were developed (see ASA 540 paragraph 15 and ASA 330 paragraph 7). In particular, there is no analysis in the workpapers of the justification for the adoption of various assumptions, including: an age override that did not calculate a provision if the age of the stock was not more than three months (Report of Mr Michael Potter dated 24 September 2018 (**First Potter Report**), 8.57.1); or provisioning for a line item being based on the quantity of stock which exceeded the highest threshold, with no provision for stock quantities in excess of earlier intermediate thresholds (First Potter Report 8.55.2). Also, there is no analysis or testing of the appropriateness of the classifications of stock used, or the percentages applied to the different classifications. An analysis of the classifications and the percentages used would have been appropriate to explain the acceptance of this estimation technique as the most reliable evidence available at the time (see AASB 102 paragraph 30 and ASA 530 particularly paragraphs 8b, 15 and A16).

DEL 23401 contains one test (at Tab 6) undertaken by Deloitte to compare the amount at which inventory is included in the financial report with selling price. The test does not:

- provide evidence of testing of the purported "current selling price" against prices actually being obtained in sales being made at or after the year end;

- provide a comparison between the volumes of stock on hand at the year end with sales prior to the year-end or after the year end to provide evidence of the saleability of the amount of inventory on hand at the year end at the prices and margins currently being achieved;

- test selling prices to the carrying value of inventory in the financial statements, which is not based on standard cost, but on an amount adjusted for overheads and rebates in order to comply with AASB 102.

Accordingly the tests provide no evidence that inventory is being carried at the lower of cost and net realisable value as required by AASB 102 and that the purported sales price is capable of being achieved for the volumes of inventory on hand at the year end (as required by ASA 315 paras 5, 11, 25-26; ASA 330 paras 5-7, 21 and 24-27; and ASA 500 para 4).

DEL 23403 notes that Inventory values have increased by $70 million but the obsolescence provision has declined by $8 million. There is a brief discussion of this fact but no audit testing of the reasons for this change to determine whether there is support for the decline in the obsolescence provision. This is contrary to ASA 315 paras 5, 11, 25-26; ASA 330 paras 5-7, 21 and 24-27; and ASA 500 para 4.

DEL 23410 Tab 7(b) contains an analysis of inventory showing the age of inventory; and the total amount of the obsolescence provision. The deficiencies with this analysis are that:

- it does not provide any evidence to support the appropriateness of the classification of inventory over the several age brackets.
- it does not provide evidence of the likely saleability of inventory (even if recently bought).

This analysis does not meet the requirements of ASA 315 paras 5, 11, 25-26; ASA 330 paras 5-7, 21 and 24-27; and ASA 500 para 4.

In addition, the work papers do not provide audit evidence that the age of inventory analysis prepared by DSH and used in its model fairly reflected the risk of obsolescence for that stock and any resulting need to reduce its carrying value to Net Realisable Value.

While the work papers for the FY14 Audit include descriptions of the processes adopted for provisioning of inventory, they contain insufficient evidence, obtained through testing of records and data, to support the propositions upon which the provisions in the FY14 Financial Statements were based, and therefore insufficient evidence that the requirements of AASB 102, the Auditing Standards and ss.307(a)(i) and 308 of the CA have been met.

If the matters referred to in paragraph 26(a)-(d) above are established (which are denied), then an auditor exercising reasonable skill and care, who had obtained a proper understanding of the assumptions and methodology applied in determining inventory provisions in the FY14 Financial Statements, and who had performed review procedures so as to evaluate whether the adoption of these assumptions and methodology resulted in a provision in respect of inventory obsolescence which was in accordance with the applicable financial reporting framework (including tests of the type outlined above), would have ascertained the matters alleged in paragraph 26(a)-(d) above and would have concluded that these matters meant that the FY14 Financial Statements did not comply with Australian Accounting Standards, and would have reported those matters to the directors of DSH.

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

28. Further, or in the alternative, and for the purposes only of this cross-claim, Potts repeats paragraphs 427-431 and 445-449 of the Further Amended Joint Statement of Claim.

29. By reason of the matters in paragraphs 26 and 27 above, and further or alternatively by reason of the matters in paragraph 28 above, Deloitte, in making the FY14 Inventory Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care, pleaded in paragraph 27 above and/or paragraph 28 above, Deloitte did not (contrary to the representations pleaded in paragraph 19(c) above) have a reasonable basis for the representations of opinion pleaded in paragraphs 19(a)-(b) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to inventory provisions in the course of the FY14 Audit.

30. Further or in the alternative, by reason of the matters in paragraphs 26 and 27 above and/or paragraph 28 above, Deloitte, in making the representation pleaded in paragraph 19(c) above, made a false or misleading representation in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL and/or ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 25 and 27 above.

The representation pleaded in paragraph 19(c) above was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY14 Audit for the reasons pleaded in paragraph 27 above and/or paragraph 28 above, and therefore Deloitte did not have a reasonable basis for the representations pleaded in paragraphs 19(a)-(b) above.

Misleading conduct - the FY15 Inventory Representations

31. If the matters referred to in paragraph 26 above in respect of the FY15 Financial Statements are established (which are denied), then:

    (a) Deloitte, in representing that it was of the opinion that the assumptions and methodology applied by DSH management in determining inventory provisions in the FY15 Financial Statements were appropriate, and that the provision in respect of inventory obsolescence in the FY15 Financial Statements complied with AASB 102 (see paragraph 23(a) above), either:

        (i) failed properly to understand the assumptions and methodology applied in determining inventory provisions in the FY15 Financial Statements; or

        (ii) failed to gather sufficient appropriate audit evidence in order to enable Deloitte to express an opinion on whether the assumptions and methodology applied by management in determining the inventory provisions in the FY15 Financial Statements were appropriate or whether the provision in respect of inventory in the FY15 Financial Statements complied with AASB 102; or

        (iii) failed properly to apply the requirements of AASB 101 and AASB 102 to such audit evidence as Deloitte obtained in assessing the issue whether the inventory provisions in the FY15 Financial Statements complied with AASB 102; and

    (b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of inventory provisions in course of the FY15 Audit, and failed to exercise reasonable skill and care in performing such work, in that:

        (i) Deloitte failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in

determining inventory provisions in the FY15 Financial Statements (ASA 500 paras 4-6, A1-A3, A10, A14-A15);

(ii) Deloitte failed to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement (one of the key areas of risk identified by Deloitte being the inventory provisions in the FY15 Financial Statements), through designing and implementing appropriate responses to those risks (ASA 330 paras 3, 5-7);

(iii) by reason of having failed to obtain sufficient appropriate audit evidence in respect of the assumptions and methodology applied by management in determining inventory provisions in the FY15 Financial Statements so as to reduce audit risk to an acceptably low level:

A. Deloitte failed to obtain reasonable assurance about whether the FY15 Financial Statements as a whole were free from material misstatement, whether due to fraud or error (ASA 200 para 5 and 17); and

B. Deloitte was unable to draw reasonable conclusions on which to base the auditor's opinion on whether the FY15 Financial Statements were prepared, in all material respects, in accordance with the applicable financial reporting framework, and to report on the FY15 Financial Statements in accordance with the auditor's findings (ASA 200 paras 11 and 17);

(iv) Deloitte failed to perform risk assessment procedures (including enquiries of DSH personnel, analytical procedures and observation and inspection) sufficient to provide a basis for the identification and assessment of risks of material misstatement at the financial report level, and to provide a basis for designing and performing further audit procedures in respect of inventory provisions (ASA 315 paras 5-6, 25-26);

(v) Deloitte failed to obtain an adequate understanding of the application of accounting policies by DSH in respect of inventory provisioning, sufficient to evaluate whether those policies were appropriate for its business and consistent with the applicable financial reporting framework (ASA 315 para 11);

(vi) Deloitte failed to obtain an adequate understanding of DSH's internal controls in respect of provisioning for inventory or of the activities undertaken by DSH to monitor such controls (ASA 315 paras 11-15, 18, 20-22);

(vii) Deloitte failed to design and perform tests of controls in relation to inventory provisioning so as to obtain sufficient appropriate audit evidence regarding the operating effectiveness of such controls (ASA 330 paras 8-10, 16);

(viii) Deloitte, having determined that there was a significant risk of material misstatement in respect of inventory provisions in the FY15 Financial Statements, failed to perform substantive procedures that are specifically responsive to that risk (ASA 330 para 21);

(ix) Deloitte failed to perform adequate audit procedures to evaluate whether the overall presentation of the financial report was in accordance with the applicable financial reporting framework (ASA 330 para 24) and to evaluate whether the assessments of risks of material misstatement at the assertion level remained appropriate (ASA 330 para 25);

(x) Deloitte failed to obtain sufficient appropriate audit evidence about whether the provisioning for inventory in the FY14 Financial Statements was reasonable, and in particular to evaluate whether the significant assumptions used by management in determining the level of provisioning were reasonable (ASA 540 paras 6, 15 and 18); and/or

(xi) in circumstances where Deloitte had not obtained sufficient appropriate audit evidence in respect of the provisioning for inventory in the FY15 Financial Statements, Deloitte failed to express a qualified opinion or disclaim an opinion on the FY15 Financial Statements (ASA 330 paras 26-27; ASA 260 paras A18).

Particulars

A reasonable auditor in Deloitte's position would have, in the course of the FY15 Audit:

- determined the methodology used by DSH to assess whether a provision should be made to reduce inventory to the lower of cost or the amount for which the inventory could be sold;
- determined the process by which DSH undertook its analysis used in the provisioning process (whether based on age, future sales or re-order profile), and would have determined the controls and processes adopted by DSH to ensure the accuracy of the analysis;
- determined whether or not to rely on the controls and checks operated by DSH. If the auditor chose to rely on such controls, he or she would have tested the operation of those controls through an appropriately sized sample. If the auditor chose not to rely on such controls, he or she would have selected a sample of inventory items for testing to determine whether, based on that sample, he or she could conclude that DSH's estimation of the amount of the provision to reduce

inventory to the lower of cost and net realisable value was appropriate;

- insofar as such audit work identified any deficiencies in the provisioning process or methodology undertaken by DSH, reported such matters to the directors of DSH; and

- identified any deficiencies in the controls in the systems underlying the development of the provision to management and those charged with governance under ASA 265.

DEL.001.002.1498 sets out Deloitte's understanding of the assumptions and methodology used by DSH in respect of inventory provisions in the FY15 Financial Statements.

There is no, or no adequate, analysis in the work papers for the FY15 Audit of the process by which DSH undertook its analysis used in the provisioning process (whether based on age, future sales or re-order profile), or of the controls and processes adopted by DSH to ensure the accuracy of the analysis. There is also no evidence of testing of the refinement in FY15 of the Revised Inventory Obsolescence Methodology, which was noted as an improvement to that methodology. Deloitte thereby failed to comply with ASA 315 (paras 11-15, 18, 20-22 and 25-26) and with ASA 330 (paras 5-10 and 16).

The testing undertaken by Deloitte in **DEL.001.002.1509** and **DEL.001.002.1498** was deficient, in that such testing did not enable the auditor to conclude that DSH's estimation of the amount of the provision to reduce inventory to the lower of cost and net realisable value was appropriate. This is contrary to ASA 500 (paras 4, A1-A3, A10 and A14-A15), ASA 315 (paras 5, 11, 25-26) and ASA 330 (paras 5-7, 21, 24-27).

Accordingly, these work papers for the FY15 Audit do not (contrary to ASA 200, ASA 500 and ASA 330) provide sufficient appropriate audit evidence that the requirements of AASB 102 were met in respect of inventory provisions in the FY15 Financial Statements, such that Deloitte did not have a sufficient or reasonable basis to form the view required by s 307(a)(i) of the CA or to issue the opinion required by s 308 of the CA.

If the matters referred to in paragraph 26(a)-(d) above are established (which are denied), then an auditor exercising reasonable skill and care, who had obtained a proper understanding of the assumptions and methodology applied in determining inventory provisions in the FY15 Financial

Statements, and who had performed review procedures so as to evaluate whether the adoption of these assumptions and methodology resulted in a provision in respect of inventory obsolescence which was in accordance with the applicable financial reporting framework (including tests of the type outlined above), would have ascertained the matters alleged in paragraph 26(a)-(d) above and would have concluded that these matters meant that the FY15 Financial Statements did not comply with Australian Accounting Standards, and would have reported those matters to the directors of DSH.

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

32. Further, or in the alternative, and for the purposes only of this cross-claim, Potts repeats paragraphs 456-460 of the Further Amended Joint Statement of Claim.

33. By reason of the matters in paragraphs 26 and 31 above, and further or alternatively by reason of the matters in paragraph 32 above, Deloitte, in making the FY15 Inventory Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care, pleaded in paragraph 31 above and/or paragraph 32 above, Deloitte did not (contrary to the representations pleaded in paragraph 23(b) above) have a reasonable basis for the representations of opinion pleaded in paragraph 23(a) above, and those opinions were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to inventory provisions in the course of the FY15 Audit.

34. Further or in the alternative, by reason of the matters in paragraphs 26 and 31 above and/or paragraph 32 above, Deloitte, in making the representation pleaded in paragraph 23(b) above, made a false or misleading representation in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL and/or ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 25 and 31 above.

The representation pleaded in paragraph 23(b) above was false or misleading by reason that Deloitte had in fact failed to comply with Auditing

Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY15 Audit for the reasons pleaded in paragraph 31 above and/or paragraph 32 above, and therefore Deloitte did not have a reasonable basis for the representations pleaded in paragraph 23(a) above.

Representations by Deloitte in respect of Rebates

The FY14 Rebate Representations

35. In the FY14 Audit, Deloitte identified the accounting treatment of rebates in the FY14 Financial Statements as a key area of focus and audit response.

Particulars

FY14 FAC Report, section 3.3.

36. In around January 2014, Deloitte informed DSH that the procedures which would be undertaken by Deloitte in the course of the FY14 Audit in relation to the accounting treatment of rebates in the FY14 Financial Statements included:

(a) confirming the key controls associated with the completeness and validity of the recording of rebate revenues;

(b) performing substantive testing on a sample of rebates recorded in the year; and

(c) assessing the provision for any disputed claims which were expected to be granted by the vendors.

Particulars

Deloitte presentation to DSH headed "External audit strategy for the financial year ending 29 June 2014", dated January 2014, p. 11.

37. On or about 6 August 2014, Deloitte reported that the procedures which it had undertaken in the FY14 Audit in relation to the accounting treatment of rebates in the FY14 Financial Statements included:

(a) discussing the rebates with key members of DSH's management;

(b) analysing the various types of rebates recognised;

(c) performing detailed testing of a sample of rebates recognised throughout the year, with a focus on the rebates accrued as at 29 June 2014; and

(d) assessing whether any of these rebates represented amounts which should be deferred and recognised in profit or loss in the next financial year.

Particulars

FY14 FAC Report, p.11.

38. In the course of the FY14 Audit, in order for Deloitte to provide its view on the accounting treatment of rebates in the FY14 Financial Statements, Deloitte requested, and Potts provided to Deloitte, information on the accounting treatment of O&A rebates in the accounts of DSH (the **O&A Rebate Accounting Treatment**).

Particulars

Email from Damien Cork of Deloitte to Potts, copied to Nigel Mills of DSH and to David White of Deloitte, sent on Monday 26 May 2014, and headed "Dick Smith: O&A Rebates"

Email from Potts to David White of Deloitte, copied to Damien Cork of Deloitte, sent on Friday 6 June 2014 and headed "RE:O&A", attaching two papers, headed:

- "Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH"; and
- "Vendor Rebates – O&A"

39. The O&A Rebate Accounting Treatment involved recognising O&A rebates in the profit and loss statement, either as a Cost of Doing Business, or as a Cost of Sales which derived the Gross Margin, depending on the purpose for which the O&A rebate was allowed to DSH.

Particulars

"Position Paper – Vendor Rebates – Profit/Loss and Balance Sheet Recognition, dated 28 May 2014 and prepared by Nigel Mills of DSH".

40. The information provided to Deloitte, referred to in paragraph 38 above, included a paper prepared by DSH management referring to the proposed reallocation of O&A Rebates from marketing expenses in the Costs of Doing Business to the Gross Margin (the **FY14 Reallocation of O&A Rebates**).

Particulars

Paper headed "Vendor Rebates – O&A" attached to the email of 6 June 2014 referred to in paragraph 38 above.

41. On or about 6 August 2014, Deloitte represented that:

(a) Deloitte was of the opinion that the accounting treatment of rebates in the FY14 Financial Statements complied with Australian Accounting Standards;

Particulars

The representation is implied from the matters in paragraphs 35-40 above from the express statement in the FY14 FAC Report (p. 11) that Deloitte concurred with the accounting treatment of rebates which had been adopted by management of DSH in preparing the FY14 Financial Statements, and from the fact that, having performed the procedures in paragraphs 35-40 above for the purposes of the FY14 Audit, Deloitte did not report any respect in which the recording of rebates did not comply with Australian Accounting Standards.

(b) Deloitte was of the opinion that the FY14 Reallocation of O&A Rebates was appropriate, complied with Australian Accounting Standards and did not have a material impact; and

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated (FY14 FAC Report p.11) that: "In the FY14 financial statements, the over and above rebates were recognised as a recovery of marketing and sale expenses. ... During the second half of the year, management undertook a review of the appropriateness of the classification of the over and above rebates. As these amounts are essentially a contribution to the selling costs of the inventory being cleared, it was determined that they should instead be recognised within cost of sales. We concur with this treatment and note that the reclassification does not have a material impact on the comparatives reported."

To the extent it is implied, it is implied from those express statements.

(c) Deloitte had a reasonable basis for the opinions in paragraphs (a)-(b) above, and those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY14 Audit, having performed the procedures referred to in paragraphs 35-40 above, and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY14 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 8(b), 10, 12-14 and 35-38 above.

(the **FY14 Rebate Representations**)

The FY15 Rebate Representations

42. In the FY15 Financial Statements, DSH adopted the O&A Rebate Accounting Treatment.

43. In the FY15 Audit, Deloitte identified the accounting treatment of rebates in the FY15 Financial Statements as a key area of focus and audit response.

Particulars

FY15 FAC Report, pp. 10-11.

44. On or around 18 November 2014, Deloitte informed DSH that the procedures which would be undertaken by Deloitte in the course of the FY15 Audit in relation to the accounting treatment of rebates in the FY15 Financial Statements included:

(a) understanding the key controls associated with the completeness and validity of the recording of rebate income;

(b) critically evaluating management's methodologies in capturing, calculating and recognising rebates received and receivable, included the underlying key assumptions;

(c) testing the controls in place to ensure that they are operating effectively throughout the year;

(d) performing substantive testing on a sample of rebates recorded or accrued at balance sheet date as well as reviewing a sample of supplier agreements to ensure they have been correctly treated; and

(e) assessing the completeness and accuracy of the provision for any disputed claims with suppliers.

Particulars

The FY15 Audit Strategy Presentation, p. 8.

45. On or about 6 August 2015, Deloitte reported that the procedures which Deloitte had performed in the course of the FY15 Audit in relation to the accounting treatment of rebates in the FY15 Financial Statements included:

(a) analysing the various types of rebates recognised, by assessing the nature and the classification of the rebates;

(b) performing a walkthrough of the process for classifying rebates;

(c) carrying out testing of a sample of rebates recognised throughout the year by tra cing to supporting documentation, with a focus on rebates accrued as at 28 June 2015;

(d) assessing whether any supplier rebates represented amounts which should be deferred;

(e) analysing the gross margin, net advertising costs and overall costs of doing business as a percentage of sales to determine whether the recognition of rebates was reasonable and reflected the fundamental economic nature of the activities; and

(f) considering the reallocation by DSH management of a portion of the O&A Rebates in cost of sales where the rebates exceed the underlying promotional costs (the **FY15 Reallocation of O&A Rebates**).

Particulars

FY15 FAC Report, pp. 10 and 11.

46. On or about 6 August 2015, Deloitte represented that:

(a) Deloitte was of the opinion that the accounting treatment of rebates adopted in the FY15 Financial Statements, including the O&A Rebate Accounting Treatment, complied with Australian Accounting Standards;

(b) Deloitte was of the opinion that the FY15 Reallocation of O&A Rebates was appropriate and complied with Australian Accounting Standards;

Particulars

The particulars in subparagraphs (a)-(b) are partly express and partly implied.

To the extent they are express, Deloitte stated in the FY15 FAC Report that Deloitte concurred with management's accounting treatment of O&A Rebates in the FY15 FAC Report (p. 10); that based on the work which Deloitte had performed in respect of the recording of rebates in the FY15 Financial Statements, Deloitte had not identified any unadjusted differences (p. 10); and that Deloitte concurred with the allocation by DSH management of a portion of the O&A Rebates in cost of sales where the rebates exceed the underlying promotional costs (p. 11).

To the extent they are implied, they are implied from those express statements, and from the fact that, having performed the procedures in paragraphs 43-45 above for the purposes of the FY15 Audit, Deloitte did not report any respect in which the recording of rebates in the FY15 Financial Statements did not comply with Australian Accounting Standards.

(c) Deloitte was of the opinion that there were no material deficiencies in the controls and systems which were in place at DSH in respect of recording, calculating and re cognising rebates;

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated:

(i) in the FY15 FAC Report (p. 10) that Deloitte was of the view that DSH's processes, reconciliations and supporting evidence for O&A Rebates had significantly improved compared to the previous financial year ending 29 June 2014, with those rebates accrued in the accounts being based on supporting evidence provided by the buyers and reviewed by finance before accruals were raised;

(ii) In the FY15 FAC Report (p.10) that having performed the procedures in paragraph 45 above, Deloitte had not identified any unadjusted differences in respect of the recording of rebates in the FY15 Financial Statements; and

(iii) in the FY15 FAC Report (p. 15) that Deloitte had not identified, in the course of the FY15 Audit, any significant deficiencies in internal controls relating to the prevention and detection of fraud or error which would impact upon Deloitte's ability to provide an opinion on the FY15 Financial Statements.

To the extent it is implied, it is implied from those express statements and from the circumstances that:

(i) Deloitte stated that it would perform the procedures in paragraph 44 above in the course of the FY15 Audit (including critically evaluating management's methodologies in capturing and recognising rebates received and receivable, testing the key controls associated with the completeness and validity of recording of rebate income, and performing substantive testing on a sample of rebates recorded or accrued);

(ii) Deloitte stated that it had performed in the course of the FY15 Audit the procedures in relation to rebates which are described in paragraph 45 above (including performing a walkthrough of the process for classifying rebates and performing detailed testing of a sample of rebates recognised throughout the year by tracing to supporting documentation); and

(iii) Deloitte did not, on the basis of any procedures referred to in paragraph (i) or (ii) above, report any material deficiency in the controls and systems in place at DSH in respect of recording, calculating and recognising rebates and did not identify any unadjusted differences (FY15 FAC Report, p. 10).

(d) Deloitte had a reasonable basis for the opinions in paragraphs (a)-(c) above, and that those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY15 Audit, having performed the procedures referred to in paragraphs 43-45 above, and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY15 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 9-10, 12-14 and 42-45 above.

(the **FY15 Rebate Representations**)

Deloitte Rebate Representations

47. The FY14 Rebate Representations and FY15 Rebate Representations (collectively, the **Deloitte Rebate Representations**) constituted conduct by Deloitte:

(a) in trade or commerce within the meaning of ~~section~~ s 18 of the ACL; and/or

(b) in relation to a financial product or a financial service within the meaning of ~~section~~ s 1041H of the CA; and/or

(c) in trade or commerce, in relation to financial services, within the meaning of ~~section~~ s 12DA of the ASIC Act.

48. Further or in the alternative, the representations pleaded in paragraphs 41(c) and 46(d) above were representations by Deloitte:

(a) in connection with the supply of services, that those services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSH in respect of the FY14 Audit and the FY15 Audit.

The representations pleaded in paragraphs 41(c) and 46(d) above, being representations that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in respect of its work in the relation to (respectively) the FY14 Audit and the FY15 Audit, were representations regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of those engagements.

Misleading or Deceptive Conduct – Deloitte Rebate Representations

Misleading conduct - FY14 Rebate Representations

49. The Plaintiffs allege (which is denied) that:

(a) the accounting treatment of rebates in the FY14 Financial Statements did not comply with Australian Accounting Standards because:

(i) an amount of approximately $3.64m of Volume Rebates was incorrectly treated as O&A Rebates, which had the effect of recognising $3.64m in income immediately rather than to treat the amount as a reduction to the cost of inventory (with profit in turn being recognised as and when the inventory was sold);

Particulars

Further Amended Joint Statement of Claim, paragraphs 164-168.

First Potter Report, 7.93-7.104.

(ii) an amount of approximately $22.1m of O&A Rebates was reallocated from marketing expenses in the Costs of Doing Business to Cost of Goods Sold without proper justification, which had the effect of understating costs of goods sold, thus overstating gross profit and gross profit margin;

Particulars

Further Amended Joint Statement of Claim, paragraphs 173, 175 and 182-184.

First Potter Report, 7.44-7.68.

(iii) an amount of approximately $4.1m of O&A Rebates was double-counted;

Particulars

Further Amended Joint Statement of Claim, paragraphs 177 and 182-184.

(iv) an amount of approximately $3.155m of O&A Rebates relating to DSH's "Exchange" conference which was to take place in July 2014 was incorrectly recognised in the FY14 Financial Statements, which had the effect of overstating net profit by $2.2m;

Particulars

Further Amended Joint Statement of Claim, paragraphs 178 and 182-185.

(v) an amount of approximately $169,611 of rebates for Toshiba products was incorrectly recorded in the FY14 Financial Statements, which had the effect of overstating net assets and Net Profit After Tax (**NPAT**) by $118,727;

Particulars

Further Amended Joint Statement of Claim, paragraphs 179 and 182-184.

(b) by reason of the matters in paragraph (a) above, the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group, and did not comply with Australian Accounting Standards; and

Particulars

Further Amended Joint Statement of Claim, paragraph 187.

(c) by reason of the matters in paragraphs (a)-(b) above, the issuing and publication of the FY14 Financial Statements was misleading or deceptive, or likely to mislead or deceive.

Particulars

Further Amended Joint Statement of Claim, paragraphs 240-241.

50. If the matters in paragraph 49(a)-(b) above are established (which are denied), then:

(a) Deloitte, in representing (as pleaded in paragraph 41(a)-(b) above) that it was of the opinion that the accounting treatment of rebates in the FY14 Financial Statements complied with Australian Accounting Standards and that the FY14 Reallocation of O&A

Rebates complied with Australian Accounting Standards and did not have a material impact, either:

(i) failed properly to understand:

A. the nature of the rebates recorded in the FY14 Financial Statements,

B. the controls and systems in place at DSH in respect of recording, calculating and recognising rebates,

C. the accounting treatment of rebates adopted in the FY14 Financial Statements, and/or

D. the FY14 Reallocation of O&A Rebates, or

(ii) failed to perform adequate testing work in order to obtain reasonable assurance whether the accounting treatment of rebates in the FY14 Financial Statements and the FY14 Reallocation of O&A Rebates complied with Australian Accounting Standards;

(iii) failed properly to apply the requirements of AASB 101, AASB 102, AASB 108, AASB 118, AASB 132 and/or AASB 139 to the accounting treatment of rebates in the FY14 Financial Statements or the FY14 Reallocation of O&A Rebates, and

(b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of rebates, and failed to exercise reasonable skill and care in performing such work, in that:

(i) Deloitte failed adequately to evaluate, as required by ASA 315 paragraph 11, whether the accounting treatment of rebates in the FY14 Financial Statements and the FY14 Reallocation of O&A Rebates were consistent with the applicable financial reporting framework and accounting policies used in the relevant industry; and/or

(ii) Deloitte failed adequately to consider, as required by ASA 200 paragraph 9 and ASA 500 paragraph 4:

A. whether the rebates recorded in the FY14 Financial Statements constituted a valid receivable of the DSH Group, justifying their recognition as an asset on the balance sheet in FY14;

B. whether the accounting treatment of those rebates accurately reflected the underlying nature of the rebate and the purpose for which it was paid; and

C. whether the amounts were appropriately recognised in profit at such time as the benefit of the rebate had been earned, either via sale of the relevant inventory or performance of the relevant service; and

(iii) Deloitte failed adequately to perform, as required by ASA 330 paragraph 24, audit procedures so as to evaluate whether the overall presentation of the FY14 Financial Statements, including in respect of the accounting treatment of rebates in the FY14 Financial Statements and the FY14 Reallocation of O&A Rebates, was in accordance with the applicable financial reporting framework.

Particulars

A reasonable auditor in Deloitte's position, who was aware of the accounting treatment of rebates in the FY14 Financial Statements, including the O&A Rebate Accounting Treatment and the FY14 Reallocation of O&A Rebates, would have:

- obtained an understanding of the different categories of rebates, and the basis and application of the accounting treatment of rebates in the FY14 Financial Statements, including the FY14 Reallocation of O&A Rebates; and

- determined whether the accounting treatment of rebates in the FY14 Financial Statements and the FY14 Reallocation of O&A Rebates complied with Australian Accounting Standards by:

  1) obtaining an understanding of the processes for dealing with rebates and in particular with O&A Rebates;

  2) ascertaining the level of risk relating to the accounting treatment of rebates;

  3) having regard to the level of risk, designed testing work to consider an appropriately sized sample that took account of the different providers of rebates;

  4) obtaining, in respect of the rebates within that sample, evidence of the nature of any marketing and promotional support, the terms of such support, or whether those terms had been fulfilled, in order to form a view whether it was appropriate for such Rebates to be taken up in profits in the reporting period;

5) making enquiries of management as to whether the services to be provided in exchange for the rebate had been fully provided by DSH; and

6) considering whether there was a basis for relying on the systems and processes used to determine whether rebates were included in profits.

Deloitte's work papers do not establish that Deloitte designed and implemented adequate testing work in order to obtain reasonable assurance whether the accounting treatment of rebates in the FY14 Financial Statements and the FY14 Reallocation of O&A Rebates complied with Australian Accounting Standards.

In particular, Deloitte's work papers do not establish that Deloitte:

- adequately tested the credit side of transactions selected from the 1392 account in order to determine in which account the credit had been recorded (namely, the Costs of Doing Business account or the Cost of Goods Sold Account or some other account) and to determine whether there was justification for crediting the rebate in the respective account;
- obtained reasonable assurance about whether the accounting treatment of rebates in the FY14 Financial Statements complied with AASB 102; and
- adequately tested the substance of transactions reclassified from Costs of Doing Business to Cost of Goods Sold in order to obtain reasonable assurance whether the FY14 Reallocation of O&A Rebates in the FY14 Financial Statements was in accordance with the requirements of AASB 101 and 102.

DEL 23303 records that Deloitte was aware that O&A Rebates were an area of significant risk.

Deloitte's testing in respect of the 1392 account for the purposes of the FY14 Audit is documented in its work papers **DEL.001.001.3952**, **DEL.001.001.3953** and **DEL.001.001.3973**. The testing did not address the matters outlined above.

Deloitte's testing identified several examples of volume rebates being wrongly classified as O&A Rebates (**DEL 23303 tab 3**), each being an instance of the issue identified in the First Potter Report (referred to in

paragraph 49(a)(i) above). Deloitte did not identify why the errors had occurred or consider whether this was indicative of a systemic problem. If the matters in paragraph 49(a)(i) are established, then Deloitte would have identified those matters had they adequately investigated this issue.

Deloitte considered the FY14 Reallocation of O&A Rebates in **DEL 26150**, and concluded that this reallocation should be accepted. If the matters referred to in paragraph 49(a)(ii) above are established, then Deloitte failed properly to apply the Australian Accounting Standards to the FY14 Reallocation of O&A Rebates in reaching this conclusion.

Deloitte tested a sample of receivables identified in the Second Potter Report as relating to the "Exchange" conference (see paragraph 49(a)(iv) above), but there is no evidence of any enquiries concerning the event(s) to which the rebates related, or whether such event(s) occurred after June 2014.

Deloitte tested the rebate in respect of Toshiba (see Second Potter Report ch 10), to which reference is made in paragraph 49(a)(v) above, and identified no issues in respect of it (see **DEL 23302** spreadsheet line 40). If the matters referred to in paragraph 49(a)(v) above are established, then Deloitte failed properly to apply the Australian Accounting Standards to the Toshiba rebate in reaching this conclusion.

The material in these work papers is insufficient to enable an auditor to determine:

- the adequacy of the evidentiary support for the O&A Rebate transactions;
- whether the sample selected for testing was representative of the population of O&A Rebate transactions so as to provide a reasonable basis for any audit conclusion;
- whether DSH had performed all the activities necessary for it to earn the rebates by the end of FY14 or whether some part of the O&A Rebates should be held back as deferred revenue;
- whether under the terms of the O&A Rebate arrangements it was appropriate to include the amounts in profits in 2014; and
- whether the O&A Rebate amounts were actually being deducted by the supplier from balances owed (such as by way of supplier approved credit notes) or being received in some other way.

Deloitte's work papers therefore do not provide evidence that their audit work met the requirements of ASA 315 (paras 5, 11, 25-26), ASA 330 (paras 5-7, 21, 24-27) and ASA 500 (para 4). Accordingly the work papers provide no evidence that the FY14 Financial Statements met the requirements of AASB 102, and ss 307(a)(i) and 308 of the CA.

If the matters in paragraph 49(a)-(b) above are established, then an auditor exercising reasonable skill and care, who had obtained a proper understanding of the basis and the application of the accounting treatment of rebates in the FY14 Financial Statements, and who had performed audit procedures so as to evaluate whether the adoption of this accounting treatment was in accordance with the applicable financial reporting framework (including tests of the type outlined above), would have ascertained the matters alleged in paragraph 49(a)-(b) above and would have concluded that these deficiencies in the accounting treatment of rebates in the FY14 Financial Statements meant that the report did not comply with Australian Accounting Standards, and would have reported those matters to the directors of DSH.

Deloitte failed to do so, and thereby failed to meet the requirements of a reasonable auditor and failed to comply with the Auditing Standards identified in paragraph (b) above.

Further particulars may be provided after discovery and expert evidence.

51. Further, or in the alternative, and for the purposes only of this cross-claim, Potts repeats paragraphs 450-454 of the Further Amended Joint Statement of Claim.

52. By reason of the matters in paragraphs 49-50 above, and further or alternatively by reason of the matters in paragraph 51 above, Deloitte, in making the FY14 Rebate Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY14 Audit, pleaded in paragraph 50 above and/or paragraph 51 above, Deloitte did not (contrary to the representations pleaded in paragraph 41(c) above) have a reasonable basis for the statements pleaded in paragraphs 41(a)-(b) above, and the opinions expressed by Deloitte in relation to those matters were not the result of Deloitte having exercised reasonable skill and care and having

complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY14 Audit.

53. Further or in the alternative, by reason of the matters in paragraphs 49-50 above and/or paragraph 51 above, Deloitte, in making the representation pleaded in paragraph 41(c) above, made a false or misleading representation in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL and/or ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 48 and 50 above.

The representation pleaded in paragraph 41(c) above was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY14 Audit for the reasons pleaded in paragraph 50 above and/or paragraph 51 above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the FY14 Audit which are pleaded in paragraph 41(a)-(b) above.

The FY15 Rebate Representations

54. The Plaintiffs allege (which is denied) that:

(a) the accounting treatment of rebates in the FY15 Financial Statements did not comply with Australian Accounting Standards because:

(i) the price of certain inventory was uplifted by a total of approximately $18.8m, with the amount of such uplift being treated as O&A Rebates and brought to account as either a reduction in the Costs of Doing Business or the Costs of Good Sold, when this did not reflect the economic substance of the transaction;

Particulars

Further Amended Joint Statement of Claim, paragraphs 155-158.

(ii) an amount of approximately $63.5m of O&A Rebates was reallocated from marketing expenses in the Costs of Doing Business to Cost of Goods Sold, in circumstances where there was no basis for that reallocation;

Particulars

Further Amended Joint Statement of Claim, paragraphs 174-175.

(iii) DSH ought to have written off, as at 28 June 2015, approximately $9.6m of "At Risk" O&A Rebates which had been accrued but were unrecoverable.

Particulars

Further Amended Joint Statement of Claim, paragraphs 180-181.

(b) the matters referred to in paragraph (a) above had the effect of:

(i) understating costs of goods sold, thus overstating gross profit and gross profit margin in the FY15 Financial Statements;

Particulars

First Potter Report, paragraphs 7.46 and 7.68.

(ii) artificially inflating profit by approximately $24.7m in the FY15 Financial Statements;

Particulars

First Potter Report, paragraph 7.118.

(c) by reason of the matters in paragraphs (a)-(b) above, the FY15 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group, and did not comply with Australian Accounting Standards; and

Particulars

Further Amended Joint Statement of Claim, paragraph 187.

(d) by reason of the matters in paragraphs (a)-(c) above, the issuing and publication of the FY15 Financial Statements was misleading or deceptive, or likely to mislead or deceive.

Particulars

Further Amended Joint Statement of Claim, paragraphs 246-247.

55. If the matters in paragraph 54 above are established (which are denied), then:

(a) Deloitte, in representing (as pleaded in paragraph 46(a)-(c) above) that it was of the opinion that the accounting treatment of rebates in the FY15 Financial Statements and the FY15 Reallocation of O&A Rebates complied with Australian Accounting Standards, and in representing that it was of the opinion that there were no material deficiencies in the controls and systems which were in place at DSH in respect of recording, calculating and recognising rebates, either:

(i) failed properly to understand:

A. the nature of the rebates recorded in the FY15 Financial Statements,

B. the controls and systems in place at DSH in respect of recording, calculating and recognising rebates,

C. the accounting treatment of those rebates adopted in the FY15 Financial Statements,

D. the FY15 Reallocation of O&A Rebates, or

(ii) failed to perform adequate testing work in order to obtain reasonable assurance whether the accounting treatment of rebates in the FY14 Financial Statements and the FY14 Reallocation of O&A Rebates complied with Australian Accounting Standards;

(iii) failed properly to apply the requirements of AASB 101, AASB 102, AASB 108 and/or AASB 118 to the accounting treatment of rebates in the FY15 Financial Statements or the FY15 Reallocation of O&A Rebates, and

(b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of rebates, and failed to exercise reasonable skill and care in performing such work, in that:

(i) Deloitte failed adequately to evaluate, as required by ASA 315 paragraph 11, whether the accounting treatment of rebates in the FY15 Financial Statements and the FY15 Reallocation of O&A Rebates in the FY15 Financial Statements was consistent with the applicable financial reporting framework and accounting policies used in the relevant industry; and/or

(ii) Deloitte failed adequately to consider, as required by ASA 200 paragraph 9 and ASA 500 paragraph 4:

A. whether the rebates recorded in the FY14 Financial Statements constituted a valid receivable of the DSH Group, justifying their recognition as an asset on the balance sheet in FY15;

B. if so, whether the accounting treatment of those rebates accurately reflected the underlying nature of the rebate and the purpose for which it was paid;

C. whether the amounts were appropriately recognised in profit at such time as the benefit of the rebate had been earned, either via sale of the relevant inventory or performance of the relevant service;

(iii) Deloitte failed adequately to perform, as required by ASA 330 paragraph 24, audit procedures so as to evaluate whether the overall presentation of the FY15 Financial Statements, including in respect of the accounting treatment of rebates in the FY15 Financial Statements and the FY15 Reallocation of O&A Rebates, was in accordance with the applicable financial reporting framework.

Particulars

A reasonable auditor in Deloitte's position would have, in the course of the FY15 Audit, determined whether the accounting treatment of rebates in the FY15 Financial Statements and the FY15 Reallocation of O&A Rebates complied with Australian Accounting Standards by:

- obtaining an understanding of the different categories of rebates and the processes for dealing with rebates;
- ascertaining the level of risk relating to the accounting treatment of rebates;
- having regard to the level of risk, designed testing work to consider an appropriately sized sample that took account of the different providers of rebates;
- obtaining, in respect of the rebates within that sample, evidence of the nature of any marketing and promotional support, the terms of such support, or whether those terms had been fulfilled, in order to form a view whether it was appropriate for such rebates to be taken up in profits in the reporting period;
- making enquiries of management as to whether the services to be provided in exchange for the rebate had been fully provided by DSH; and
- considering whether there was a basis for relying on the systems and processes used to determine whether rebates were included in profits.

DEL.001.002.1449 identified that O&A Rebates were an area of significant risk in the FY15 Financial Statements and that Deloitte staff should concentrate on ensuring the appropriate authority for them by looking at emails and other documents supporting the rebates. This document did not however require any testing of whether services had been performed in respect of the rebate, or any testing of whether the rebates had actually been received.

Deloitte's testing, in the course of the FY15 Audit, of rebates posted to the 1392 account is at **DEL.001.002.1462** under tab 3. The material at tab 3 is insufficient to enable an auditor to determine:

- the adequacy of the evidentiary support for the transactions;
- whether the sample selected was representative of the population of O&A Rebate transactions so as to provide a basis for any audit conclusion;
- whether DSH had performed all activities necessary for it to earn the rebates by 28 June 2015 or whether some part of the O&A Rebates should be held back as deferred revenue;
- whether some of the O&A Rebates were closely related to inventory purchases and thus should be set against the cost of inventory; and
- whether under the terms of the O&A Rebate arrangements it was appropriate to include the amounts in profits in the FY15 Financial Statements.

So far as the matters referred in paragraph 54(a)(i) above are concerned (the 'uplifted' invoices), all such 'uplift' entries were posted to account 4227 "Private Label Vnd Uplift". Deloitte identified this account, and recorded a 'tickmark' against it. This tickmark was a copy of the explanation in another Deloitte workpaper regarding other private label inventory uplifts recorded in account 4219. Deloitte accepted the balance of account 4227 based on this explanation and without any further testing. A reasonable auditor in Deloitte's position would have ensured that account 4227 was properly incorporated into inventory testing, and/or should have been aware that inventory testing had not identified that a new account was being used for private label uplifts. If the matters referred to in paragraph 54(a)(i) above are established, then Deloitte would have ascertained those matters had it conducted adequate testing of Account 4227.

So far as the matters referred in paragraph 54(a)(ii) above are concerned, the FY15 Reallocation of O&A Rebates was explained at **DEL 26133** and tested by Deloitte at **DEL 26310AU Tab 5**, with no exceptions noted. If the matters referred to in paragraph 54(a)(ii) above are established, then Deloitte failed properly to apply the Australian Accounting Standards to the FY15 Reallocation of O&A Rebates in concluding that there were no issues in respect of this reallocation.

So far as the matters referred to in paragraph 54(a)(iii) above are concerned (regarding "At Risk" rebates), Deloitte's work on the provision for disputed claims (**DEL 23310 AY**) at Tab 5 appears to focus on disputes which have been identified, and which Deloitte then investigate for accuracy, rather than Deloitte performing procedures of their own to identify disputed or unrecoverable items, allowing them to assess the completeness of the provision and thus its adequacy. The material in this work paper is insufficient to enable an auditor to determine:

- whether the amounts were genuine receivables of the DSH Group as at 28 June 2015; and
- whether the provision for doubtful debts and disputed claims recognised, and adequately provided for, all amounts (particularly in respect of O&A Rebates) considered doubtful, so as to ensure the amounts noted as receivable in the FY15 Financial Statements were capable of recovery.

Deloitte's work papers for the FY15 Audit do not therefore provide evidence that their audit work met the requirements of ASA 200, ASA 315, ASA 330, or ASA 500 set out above. The work papers do not provide sufficient appropriate audit evidence that the requirements of AASB 101 and AASB 102 have been met in respect of the recording of rebates in the FY15 Financial Statements. Accordingly, Deloitte did not have a sufficient or reasonable basis to form the view required by s 307(a)(i) of the CA or to issue the opinion required by s 308 of the CA.

If the matters in paragraph 54(a)-(c) above are established (which are denied), then an auditor exercising reasonable skill and care, who had obtained a proper understanding of the basis and the application of the accounting treatment of rebates in the FY15 Financial Statements, and who had performed audit procedures so as to evaluate whether the adoption of this accounting treatment was in accordance with the applicable financial reporting framework (including tests of the type outlined above), would have ascertained the matters alleged in paragraph 54(a)-(c) above and would have concluded that these deficiencies in the accounting treatment of rebates in the FY15 Financial Statements meant that the report did not comply with Australian Accounting Standards, and would have reported those matters to the directors of DSH.

Further particulars may be provided after disclosure by Deloitte and after expert evidence.

56. Further, or in the alternative, and for the purposes only of this cross-claim, Potts repeats paragraphs 461-465 of the Further Amended Joint Statement of Claim.

57. By reason of the matters in paragraphs 54-55 above, and further or alternatively by reason of the matters in paragraph 56 above, Deloitte, in making the FY15 Rebate Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY15 Audit, pleaded in paragraph 55 above and/or paragraph 56 above, Deloitte did not (contrary to the representations pleaded in paragraph 46(d) above) have a reasonable basis for the statements pleaded in paragraphs 46(a)-(c) above, and the opinions expressed by Deloitte in relation to those matters were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to rebates in the course of the FY15 Audit.

58. Further or in the alternative, by reason of the matters in paragraphs 54-55 above and/or paragraph 56 above, Deloitte, in making the representation pleaded in paragraph 46(d) above, made a false or misleading representation in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL and/or ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 48 and 55 above.

The representation pleaded in paragraph 46(d) above was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY15 Audit for the reasons pleaded in paragraph 55 above and/or paragraph 56 above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the FY15 Audit which are pleaded in paragraph 46(a)-(c) above.

Representations by Deloitte in respect of Warranty Sign On Liability

59. ~~Prior to undertaking the FY14 Audit,~~ At the conclusion of the FY13 Audit, Deloitte reported to the Board of DSSH that:

(a) ~~was aware that,~~ at Acquisition, DSSH had recognised an unearned revenue liability in respect of a sign-on bonus under an agreement with the Warranty Group (the **Warranty Sign On Liability**), to which management had ascribed a fair value of $2.1m;

(b) Deloitte was of the view that the fair value of the Warranty Sign On Liability was $nil; ~~and~~

(c) ~~had included~~ the amount of the ~~adjustment referred to in paragraph (b) above~~ Warranty Sign On Liability recorded as a liability on the balance sheet of DSSH as at 30 June 2013 was $1,718,750; and

~~(c)~~(d) Deloitte was of the view that the amount of the overstatement on the balance sheet in respect of the Warranty Sign On Liability (being $1,718,750) did not ~~in the schedule of unadjusted differences in the FY13 Financial Statements of DSH, but was of the view that this difference did not,~~ either individually or in aggregate with other unadjusted differences identified by Deloitte, have a material effect on those financial statements.

Particulars

FY13 Board Report, section 2.~~15~~ and Appendix A.

59A On or about 17 October 2013, Deloitte represented to the Board of DSSH that:

(a) Deloitte was of the opinion that the overstatement in respect of the Warranty Sign On Liability as at 30 June 2013 was not material, either individually or in aggregate with other unadjusted differences identified by Deloitte;

(b) Deloitte was of the opinion that it was not necessary to adjust the FY13 Financial Statements by reducing the amount of Warranty Sign On Liability to nil in order to ensure that the FY13 Financial Statements gave a true and fair view of the financial position and performance of DSSH and the DSH group; and

Particulars

The representations in paragraphs (a) and (b) above are partly express and partly implied.

To the extent they are express, Potts repeats paragraph 59 above. To the extent they are implied, they are implied from those express statements.

(c) Deloitte had a reasonable basis for the opinions in paragraphs (a) and (b) above, and that those opinions were the result of Deloitte having exercised reasonable skill and care in performing the FY13 Audit, and having complied with Auditing Standards in determining materiality for the FY13 Audit and in performing audit work in relation to the accounting treatment of the Warranty Sign On Liability in the course of the FY13 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 5, 10, 12-14 and 59 above.

(the **FY13 Warranty Sign On Liability Representations**)

60. In the course of the FY14 Audit, Deloitte identified that:

(a) included in the statutory and pro forma results for FY14 were a number of one-off items, which included the release of the Warranty Sign On Liability;

(b) in the course of FY14, management had renegotiated the agreement with the Warranty Group;

(c) DSH had recognised the Warranty Sign On Liability in its financial statements, which was being amortised over the period of the agreement with the Warranty Group; and

(d) on renegotiation of this agreement, the unamortised portion of the Warranty Sign On Liability (being $1.7m) was released to profit or loss.

Particulars

FY14 FAC Report, section 3.1.

61. In auditing the FY14 Financial Statements, Deloitte identified the accounting treatment of the Warranty Sign On Liability, referred to in paragraph 60 above, as a key area of focus and audit response.

Particulars

FY14 FAC Report, section 3.1.

62. On or about 6 August 2014, Deloitte reported that it had reviewed the accounting treatment of the Warranty Sign On Liability, referred to in paragraph 60 above, with respect to its compliance with the requirements of the relevant Australian Accounting Standards, and had "assessed [this adjustment] as compliant with relevant Accounting Standards".

Particulars

FY14 FAC Report, section 3.1.

63. On or about 6 August 2014, Deloitte represented that:

(a) Deloitte was of the opinion that the accounting treatment of the Warranty Sign On Liability in the FY14 Financial Statements, referred to in paragraph 60 above complied with Australian Accounting Standards; and

Particulars

The representation is partly express and party implied.

To the extent it is express, Potts repeats paragraph 62 above. To the extent it is implied, it is implied from that express statement, and the matters in paragraphs 59-61 above.

(b) Deloitte had a reasonable basis for the opinion in paragraph (a) above, and that this opinion was the result of Deloitte having exercised reasonable skill and care in performing the FY14 Audit, and having complied with Auditing Standards in respect of its work in relation to the accounting treatment of the Warranty Sign On Liability in the course of the FY14 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 9-10, 12-14 and 59-62 above.

(the **FY14 Warranty Sign On Liability Representations**)

64. The FY13 Warranty Sign On Liability Representations and the FY14 Warranty Sign On Liability Representations (together, the **Warranty Sign on Liability Representations**) constituted conduct by Deloitte:

(a) in trade or commerce within the meaning of ~~section~~ s 18 of the ACL; and/or

(b) in relation to a financial product or a financial service within the meaning of ~~section~~ s 1041H of the CA; and/or

(c) in trade or commerce, in relation to financial services, within the meaning of ~~section~~ s 12DA of the ASIC Act.

65. Further or in the alternative, the representations pleaded in paragraphs 59A(c) and 63~~63~~(b) above ~~was~~ were ~~a~~ representations by Deloitte:

(a) in connection with the supply of services, that those services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSH in respect of the FY13 Audit and the FY14 Audit respectively.

The representations pleaded in paragraphs 59A(c) and 63(b) above, being ~~a~~ representations that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in respect of its work in the relation to the FY13 Audit and the FY14 Audit respectively, were ~~was a~~ representations regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of ~~that~~ those engagements.

Misleading or Deceptive Conduct – Warranty Sign On Liability Representations

66. The Plaintiffs allege (which is denied) that:

(a) the accounting treatment of the Warranty Sign On Liability in the FY13 Financial Statements and the FY14 Financial Statements did not comply with Australian Accounting Standards because:

(i) in the FY13 Financial Statements, the Warranty Sign On Liability should not have been recognised, or should have been recognised as having a value of $nil;

(ii) the effect of 'writing back' the amount of approximately $1.7m of the Warranty Sign On Liability against the Cost of Sales in the FY14 Financial Statements was to increase net profit by the amount of this write back; and,

(iii) the reported NPAT for FY14 was greater than would have been the case had the Warranty Sign On Liability not been recorded in the first instance in the FY13 Financial Statements, and had the unwinding of the liability not occurred in FY14;

Particulars

Further Amended Joint Statement of Claim, paragraphs 193-201.

(b) by reason of the matters in paragraph (a) above, the FY13 Financial Statements and the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group, and did not comply with Australian Accounting Standards; and

Particulars

Further Amended Joint Statement of Claim, paragraphs 239-241 and 440-441.

(c) by reason of the matters in paragraphs (a)-(b) above, the issuing and publication of the FY14 Financial Statements was misleading or deceptive, or likely to mislead or deceive.

Particulars

Further Amended Joint Statement of Claim, paragraphs 239-241.

67. For the purposes only of this cross claim, Potts repeats paragraphs 432-443 of the Further Amended Joint Statement of Claim.

68. If the matters in paragraphs 66 and 67 above are established (which are denied), then Deloitte failed to comply with the Auditing Standards in carrying out its work in respect of the accounting treatment of the Warranty Sign On Liability, and failed to exercise reasonable skill and care in performing such work, in that:

(a) while considering that the Warranty Sign On Liability had a value of $nil, Deloitte accepted the recognition of $1.7m of the Warranty Sign On Liability in the FY13 Financial Statements on the basis that it was not material, and similarly accepted that the writeback of the Warranty Sign On Liability in the FY14 Financial Statements was not material; and

(b) whereas a reasonable auditor in Deloitte's position, exercising due skill and care and complying with Auditing Standards, would have:

(i) determined that the Warranty Sign On Liability of $1.7m in the FY13 Financial Statements was material; and,

(ii) required management to account for the recognition of the Warranty Sign On Liability in the FY13 Financial Statements in accordance with Australian Accounting Standards, with the result that no amount of that liability was written back in the FY14 Financial Statements.~~; and~~

Particulars

Potts repeats paragraphs 432-443 of the Further Amended Joint Statement of Claim and the particulars thereto.

Further particulars may be provided after discovery and expert evidence.

69. By reason of the matters in paragraphs 66-67 above, Deloitte, in making the Warranty Sign On Liability Representations, engaged in conduct that was misleading or deceptive or likely to

mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY13 Audit and the FY14 Audit, pleaded in paragraph 67 above, Deloitte did not (contrary to the representations pleaded in paragraphs 59A(c) and 63(b) above) have a reasonable basis for the statements pleaded in paragraphs 59A(a) - (b) and/or 63(a) above, and the opinions expressed by Deloitte in relation to those matters were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to ~~rebates~~ materiality and/or in relation to the Warranty Sign On Liability in the course of the FY13 Audit and/or the FY14 Audit.

70. Further or in the alternative, by reason of the matters in paragraphs 66-67 above, Deloitte, in making the representations pleaded in paragraphs 59A(c) and 63(b) above, made a false or misleading representation in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL and/or ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

The representations pleaded in paragraphs 59A(c) and 63(b) above ~~was~~ were false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY13 Audit and/or the FY14 Audit for the reasons pleaded in paragraph 67 above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the FY13 Audit and/or the FY14 Audit in respect of the Warranty Sign On Liability which are pleaded in paragraphs 59A(a) - (b) and 63(a) above.

Representations by Deloitte in respect of Onerous Lease Provision Release

71. In FY14 an amount of $4.1m was released by DSH from the onerous lease provision (the **Onerous Lease Provision Release**).

Particulars

FY14 FAC Report, page 8.

72. In the FY14 Audit, Deloitte identified the Onerous Lease Provision Release as a key area of audit focus and response.

Particulars

FY14 FAC Report, page 8.

73. In the course of the FY14 Audit, Deloitte assessed whether the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements complied with relevant Australian Accounting Standards.

Particulars

FY14 FAC Report, page 8.

74. On or about 6 August 2014, Deloitte represented that:

(a) the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements complied with Australian Accounting Standards; and

Particulars

The representation is partly express and party implied.

To the extent it is express, Deloitte reported in the FY14 FAC Report, section 3.1, that it had "assessed [the Onerous Lease Provision Release] as compliant with relevant Accounting Standards". To the extent it is implied, it is implied from this express statement and from the matters in paragraphs 72-73 above.

(b) Deloitte had a reasonable basis for the opinion in paragraph (a) above, and that this opinion was the result of Deloitte having exercised reasonable skill and care in performing the FY14 Audit, and having complied with Auditing Standards in respect of its work in relation to the Onerous Lease Provision Release in the course of the FY14 Audit.

Particulars

The representation was implied from the matters in paragraphs 4, 9-10, 12-14 and 72-73 above.

(the **Onerous Lease Provision Representations**)

75. The Onerous Lease Provision Representations constituted conduct by Deloitte:

(a) in trade or commerce within the meaning of ~~section~~ s 18 of the ACL; and/or

(b) in relation to a financial product or a financial service within the meaning of ~~section~~ s 1041H of the CA; and/or

(c) in trade or commerce, in relation to financial services, within the meaning of ~~section~~ s 12DA of the ASIC Act.

76. Further or in the alternative, the representation pleaded in paragraph 74(b) was a representation by Deloitte:

(a) in connection with the supply of services, that those services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSH in respect of the FY14 Audit.

The representation pleaded in paragraph 74(b) above, being a representation that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in respect of its work in the relation to the FY14 Audit, was a representation regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of that engagement.

Misleading or Deceptive Conduct – Onerous Lease Provision Representations

77. The Plaintiffs allege (which is denied) that:

(a) the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements did not comply with Australian Accounting Standards because the Onerous Lease Provision Release was one-off in nature, and therefore DSH should have:

(i) reduced its reported pro-forma FY14 NPAT in the FY14 Financial Statements by $4.1 million relating to the Onerous Lease Provision Release; and/or

(ii) disclosed in the FY14 Financial Statements that $4.1 million of the statutory FY14 NPAT of $19.8 million (20.7%) and the reported pro-forma FY14 NPAT of $42.1 million (9.7%) was attributable to a one-off, non-recurring item;

(b) by reason of the matters in paragraph (a) above, the FY14 Financial Statements did not give a true and fair view of the financial position and performance of DSH and the DSH Group, and did not comply with Australian Accounting Standards; and

Particulars

Further Amended Joint Statement of Claim, paragraphs 216-218.

(c) by reason of the matters in paragraphs (a)-(b) above, the issuing and publication of the FY14 Financial Statements was misleading or deceptive, or likely to mislead or deceive.

Particulars

Further Amended Joint Statement of Claim, paragraphs 239-241.

78. If the matters in paragraph 77 above are established (which are denied), then:

(a) Deloitte, in representing (as pleaded in paragraph 74(a) above) that it was of the opinion that the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements complied with Australian Accounting Standards, either:

(i) failed properly to understand the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements, or

(ii) failed properly to apply the requirements of AASB 101, AASB 116 and/or the Accounting Framework to the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements, and

(b) Deloitte thereby failed to comply with the Auditing Standards in carrying out its work in respect of the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements, and failed to exercise reasonable skill and care in performing such work, in that:

(i) Deloitte failed adequately to evaluate, as required by ASA 315 paragraph 11, whether the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements was consistent with the applicable financial reporting framework and accounting policies used in the relevant industry; and/or

(ii) Deloitte failed adequately to perform, as required by ASA 330 paragraph 24, audit procedures so as to evaluate whether the overall presentation of the FY14 Financial Statements, including in respect of the accounting treatment of the Onerous Lease Provision Release and the disclosure in respect of this accounting treatment, was in accordance with the applicable financial reporting framework.

Particulars

If the matters in paragraph 77 above are established, the accounting treatment of the Onerous Lease Provision Release in the FY14 Financial Statements did not comply with Australian Accounting Standards, and an auditor who had obtained an adequate understanding of the accounting treatment of the Onerous Lease Provision Release, and who had properly applied the requirements of the Australian Accounting Standards to the accounting treatment of the Onerous Lease Provision Release, would have concluded this was the case and would have reported this to management.

Deloitte failed to do so, and thereby failed to meet the requirements of a reasonable auditor and failed to comply with the Auditing Standards identified in paragraph (b) above.

Further particulars may be provided after discovery and expert evidence.

79. By reason of the matters in paragraphs 77-78 above, Deloitte, in making the Onerous Lease Provision Representations, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in the course of the FY14 Audit, pleaded in paragraph 78 above, Deloitte did not (contrary to the representations pleaded in paragraph 74(b) above) have a reasonable basis for the statements pleaded in paragraph 74(a) above, and the opinions expressed by Deloitte in relation to those matters were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in respect of its work in relation to the accounting treatment of the Onerous Lease Provision Release in the course of the FY14 Audit.

80. Further or in the alternative, by reason of the matters in paragraphs 77-78 above, Deloitte, in making the representation pleaded in paragraph 74(b) above, made a false or misleading representation in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL and/or ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

The representation pleaded in paragraph 74(b) above was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY14 Audit for the reasons pleaded in paragraph 78 above, and therefore Deloitte did not have a reasonable basis for the representations made at the conclusion of the FY14 Audit which are pleaded in paragraph 74(a) above.

Deloitte Report Representations

~~*Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations*~~ *FY13 Financial Statements Representations*

81. On or about 17 and 22 October 2013, Deloitte represented to the directors of DSSH and Potts that it would be issuing an unqualified audit report on its audit of the FY13 Financial Statements, being a report that contained statements to the effect of the FY13 Unqualified Audit Statements set out in paragraph 81A below. ~~For the purposes only of this cross-claim, Potts repeats paragraphs 411-416 and 467-468 of the Amended Joint Statement of Claim and the particulars thereto.~~

Particulars

Affidavit of Nicholas Abboud sworn 20 August 2019 (**Abboud Affidavit**), paragraphs 310 - 313.

Affidavit of Michael Thomas Potts sworn 21 August 2019 (**Potts Affidavit**), paragraphs 450 - 455 and 460 - 461.

81A On or about 22 October 2013, at the conclusion of the FY13 Audit, Deloitte issued an audit report which stated, inter alia, that Deloitte was of the opinion that the FY13 Financial Statements:

(a) were in accordance with the CA, including:

(i) giving a true and fair view of the consolidated entity's financial position as at 30 June 2013 and of its performance for the year ending on that date; and

(ii) complying with Australian Accounting Standards and *Corporations Regulations* 2001 (Cth) (**Corporations Regulations**); and

(b) complied with International Reporting Standards.

(the **FY13 Unqualified Audit Statements**)

Particulars

Independent Auditor's Report to the Members of DSSH dated 22 October 2013 (**FY13 Audit Report**).

81B In representing that it would make the FY13 Unqualified Audit Statements (as pleaded in paragraph 81 above), and in making the FY13 Unqualified Audit Statements, Deloitte represented that it had a reasonable basis for making the FY13 Unqualified Audit Statements, and that the FY13 Unqualified Audit Statements were the result of Deloitte having exercised reasonable skill and care in performing the FY13 Audit, and having complied with Auditing Standards in the course of the FY13 Audit (the **FY13 Audit Report Representation**).

FY14 Financial Statements Representations

81C On 12 August 2014, Deloitte represented to Potts, at the meeting of the FAC on that date, that the FY14 Audit was almost complete and Deloitte proposed to issue an unqualified audit report on its audit of the FY14 Financial Statements, being a report that contained statements to the effect of the FY14 Unqualified Audit Statements set out in paragraph 83 below.

Particulars

The representation was partly express and partly implied.

To the extent it was express, see Minutes of the meeting of the board of directors of DSH held on 18 August 2014, "*Adoption of full year accounts*", and Potts Affidavit, paragraph [551].

To the extent it was implied, it was implied from this express statement and from the matters in paragraphs 8 and 12 above.

82. On or about 12 and 18 August 2014, Deloitte represented to Potts and the other directors of DSH that it would be issuing an unqualified audit report on its audit of the FY14 Financial Statements, being a report that contained statements to the effect of the FY14 Unqualified Audit Statements set out in paragraph 83 below.

Particulars

The representation was partly express and partly implied.

To the extent it was express, see Minutes of the meeting of the board of directors of DSH held on 18 August 2014, "Adoption of full year accounts", and Potts Affidavit paragraphs [549] - [551] and [557].

To the extent it was implied, it was implied from ~~this~~ such express statements and from the matters in paragraphs 8 and 12 above.

83. On or about 18 August 2014, at the conclusion of the FY14 Audit, Deloitte issued an audit report which stated, inter alia, that Deloitte was of the opinion that the FY14 Financial Statements:

(a) were in accordance with the CA, including:

(i) giving a true and fair view of the consolidated entity's financial position as at 29 June 2014 and of its performance for the year ending on that date; and

(ii) complying with Australian Accounting Standards and *Corporations Regulations* 2001 (Cth) (**Corporations Regulations**); and

(b) complied with International Reporting Standards.

(the **FY14 Unqualified Audit Statements**)

Particulars

Independent Auditor's Report to the Members of DSH dated 18 August 2014 (**FY14 Audit Report**).

84. In ~~making~~ representing that it would make the FY14 Unqualified Audit Statements (as pleaded in paragraphs 81C - 82 above), and in making the FY14 Unqualified Audit Statements, Deloitte represented that it had a reasonable basis for making ~~those statements~~the FY14 Unqualified Audit Statements, and that those statements were the result of Deloitte having exercised reasonable skill and care in performing the FY14 Audit, and having complied with Auditing Standards in the course of the FY14 Audit (the **FY14 Audit Report Representation**).

Particulars

The representation is partly express and partly implied.

To the extent it is express, Deloitte stated in the FY14 Audit Report as follows: "Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. ... An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. ... We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion."

To the extent it is implied, it is implied from the express statement in the FY14 Audit Report and from the matters in paragraphs 4, 8, 10 and 12 above.

FY15 Financial Statements Representations

84A On 11 August 2015, Deloitte represented to Potts, at the meeting of the FAC on that date, that Deloitte was proposing to issue an unqualified audit report on its audit of the FY15 Financial Statements, being a report that contained statements to the effect of the FY15 Unqualified Audit Statements set out in paragraph 86 below, subject to the directors adopting the FY15 Financial Statements, receipt of a management representation letter, and a review of subsequent events.

Particulars

The representation was partly express and partly implied.

To the extent it was express, see Minutes of the FAC meeting of 11 August 2015, and Potts Affidavit, paragraphs [671] - [672].

To the extent it was implied, it was implied from such express statements and from the matters in paragraphs 9 and 12 above.

85. On or about 17 August 2015, Deloitte represented to Potts and the other directors of DSH that it would be issuing an unqualified audit report on its audit of the FY15 Financial Statements, being a report that contained statements to the effect of the FY15 Unqualified Audit Statements set out in paragraph 86 below.

Particulars

The representation was partly express and partly implied.

To the extent it was express, see Minutes of the meeting of the board of directors of DSH held on 17 August 2015, "Adoption of full year accounts".

To the extent it was implied, it was implied from this express statement and from the matters in paragraphs 9 and 12 above.

86. On or about 17 August 2015, at the conclusion of the FY15 Audit, Deloitte issued an audit report which stated, inter alia, that Deloitte was of the opinion that the FY15 Financial Statements:

(a) were in accordance with the CA, including:

(i) giving a true and fair view of the consolidated entity's financial position as at 28 June 2015 and of its performance for the year ending on that date; and

(ii) complying with Australian Accounting Standards and Corporations Regulations;

(b) complied with International Reporting Standards.

(the **FY15 Unqualified Audit Statements**)

Particulars

Independent Auditor's Report to the Members of DSH dated 17 August 2015 (**FY15 Audit Report**).

87. In representing that it proposed to make the FY15 Unqualified Audit Staments (as pleaded in paragraphs 84A to 85 above), and in making the FY15 Unqualified Audit Statements, Deloitte represented that it had a reasonable basis for those statements, and that those statements were the result of Deloitte having exercised reasonable skill and care in performing the FY15 Audit, and having complied with Auditing Standards in the course of the FY15 Audit (the **FY15 Audit Report Representation**).

Particulars

The FY15 Audit Report Representation is partly express and partly implied.

To the extent it is express, Deloitte stated in the FY15 Audit Report as follows: "Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. ... An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. ... We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion."

To the extent it is implied, it is implied from the express statement in the FY15 Audit Report and from the matters in paragraphs 4, 9-10, and 12 above.

Deloitte Report Representations

88. The representations pleaded in paragraphs 81, 81C-82 and 84A-85 above, and the issuing of:

(a) the FY13 Audit Report, and the making thereby of:

(i) the FY13 Unqualified Audit Statements; and

(ii) the FY13 Audit Report Representation;

~~(a)~~(b) the FY14 Audit Report, and the making thereby of:

(i) the FY14 Unqualified Audit Statements; and

(ii) the FY14 Audit Report Representation;

~~(b)~~(c) the FY15 Audit Report, and the making thereby of:

(i) the FY15 Unqualified Audit Statements; and

(ii) the FY15 Audit Report Representation,

constituted conduct by Deloitte in trade or commerce within the meaning of ~~section~~ s 18 of the ACL; and/or in relation to a financial product or a financial service within the meaning of ~~section~~ s 1041H of the CA; and/or in trade or commerce, in relation to financial services, within the meaning of ~~section~~ s 12DA of the ASIC Act.

89. Further or in the alternative, each of the FY13 Audit Report Representation, the FY14 Audit Report Representation and the FY15 Audit Report Representation (the **Deloitte Report Representations**) was a representation by Deloitte in connection with the supply of services and/or financial services, being the services supplied by Deloitte in (respectively) the FY14 Audit and the FY15 Audit, that those services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL and/or ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

The services being supplied by Deloitte were its services as auditor of DSH in respect of, respectively, the FY13 Audit, the FY14 Audit and the FY15 Audit.

Each of the Deloitte Report Representations, each being a representation that Deloitte had exercised reasonable skill and care and had complied with Auditing Standards in respect of its work in the relation to (respectively) the FY13 Audit, the FY14 Audit and the FY15 Audit, was a representation regarding the standard, quality, value or grade of Deloitte's services as auditor in respect of (respectively) the FY13 Audit, the FY14 Audit and the FY15 Audit.

Misleading or Deceptive Conduct – Deloitte Report Representations

Misleading or Deceptive Conduct – ~~Deloitte's FY13 Express Representations and Deloitte's FY13 Implied Representations~~FY13 Audit Report Representation

89A If the matters referred to in paragraphs 26 and/or 66 above are established then:

(a) the assumptions and methodology used to determine inventory provisions in the FY13 Financial Statements were flawed and did not result in a carrying value for "*Inventories*" and a provision for inventory obsolescence that complied with AASB 102;

(b) the accounting treatment of the Warranty Sign On Liability in the FY13 Financial Statements did not comply with Australian Accounting Standards;

(c) by reason of the matters in paragraphs (a) and/or (b) above, the FY13 Financial Statements materially overstated Gross Profit, EBITDA, NPAT, the value of inventories and total equity;

(d) by reason of the matters in paragraphs (a)-(c) above, the FY13 Financial Statements were not prepared in accordance with Australian Accounting Standards, and did not give a true and fair view of the financial position and performance of DSSH as at 30 June 2013; and

(e) by reason of the matters in paragraphs 26A-26B and/or 68 above, Deloitte, in performing its work in the FY13 Audit, failed to comply with the Auditing Standards, and failed to exercise reasonable skill and care, in respect of the matters in paragraphs (a)-(b) above.

90. Further or in the alternative, and ~~F~~for the purposes only of this cross claim, Potts repeats paragraphs 427-444 and 469-472 of the Further Amended Joint Statement of Claim and the particulars thereto.

90A By reason of the matters in paragraph 89A above, and further or alternatively by reason of the matters in paragraph 90 above, Deloitte, in issuing the FY13 Audit Report and thereby making the FY13 Unqualified Audit Statements and the FY13 Audit Report Representation, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 18 of the ACL and/or s 1041H of the CA and/or s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in performing work in respect of the FY13 Audit, pleaded in paragraphs 26A-26B, 68, 89A and/or 90 above, Deloitte did not (contrary to the FY13 Audit Report Representation) have a reasonable basis for the FY13 Unqualified Audit Statements, and those statements were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in the course of the FY13 Audit.

90B Further or in the alternative, by reason of the matters in paragraph 89A above and/or paragraph 90 above, Deloitte, in making the FY13 Audit Report Representation, made a false or misleading representation:

(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 89 and 90A above.

The FY13 Audit Report Representation was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY13 Audit, for the reasons pleaded in paragraphs 26A-26B, 68, 89A and/or 90 above, and therefore Deloitte did not have a reasonable basis for the FY13 Unqualified Audit Statements.

Misleading or Deceptive Conduct - FY14 Audit Report Representation

91. If the matters referred to in paragraphs 26, 49, 66 and/or 77 above are established then:

(a) the assumptions and methodology used to determine inventory provisions in the FY14 Financial Statements were flawed and did not result in a carrying value for "Inventories" and a provision for inventory obsolescence that complied with AASB 102;

(b) the accounting treatment of rebates adopted in the FY14 Financial Statements did not comply with Australian Accounting Standards;

(c) the accounting treatment of the Warranty Sign On Liability did not comply with Australian Accounting Standards;

(d) the accounting treatment of the Onerous Lease Provision did not comply with Australian Accounting Standards;

(e) by reason of the matters in paragraphs (a), (b), (c) and/or (d) above, the FY14 Financial Statements materially overstated Gross Profit, EBITDA, NPAT, the value of inventories and total equity;

(f) by reason of the matters in paragraphs (a)-(e) above, the FY14 Financial Statements were not prepared in accordance with Australian Accounting Standards, and did not give a true and fair view of the financial position and performance of DSH and the DSH Group as at 29 June 2014; and

(g) by reason of the matters in paragraphs 27-28, 50-51, 68 and/or 78 above, Deloitte, in performing its work in the FY14 Audit, failed to comply with the Auditing Standards, and failed to exercise reasonable skill and care, in respect of the matters in paragraphs (a)-(d) above.

92. Further or in the alternative, and for the purposes only of this cross claim, Potts repeats paragraphs 445-455 and 479-484 of the Further Amended Joint Statement of Claim.

93. By reason of the matters in paragraph 91 above, and further or alternatively by reason of the matters in paragraph 92 above, Deloitte, in issuing the FY14 Audit Report and thereby making the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in performing work in respect of the FY14 Audit, pleaded in paragraphs 27-28, 50-51, 68, 78, 90, 91 and/or 92 above, Deloitte did not (contrary to the FY14 Audit Report Representation) have a reasonable basis for the FY14 Unqualified Audit Statements, and those statements were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in the course of the FY14 Audit.

94. Further or in the alternative, by reason of the matters in paragraph 91 above and/or paragraph 92 above, Deloitte, in making the FY14 Audit Report Representation, made a false or misleading representation:

(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 89 and 92-93 above.

The FY14 Audit Report Representation was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY14 Audit, for the reasons pleaded in paragraphs 27-28, 50-51, 68, 78, 91 and/or 92 above, and therefore Deloitte did not have a reasonable basis for the FY14 Unqualified Audit Statements.

Misleading or Deceptive Conduct - FY15 Audit Report Representation

95. If the matters referred to in paragraphs 26 and/or 54 above are established, then:

(a) the assumptions and methodology used to determine inventory provisions in the FY15 Financial Statements were flawed and did not result in a carrying value for "Inventories" and a provision for inventory obsolescence that complied with AASB 102; and/or

(b) the accounting treatment of rebates in the FY15 Financial Statements did not comply with Australian Accounting Standards;

(c) by reason of the matters in paragraphs (a) and/or (b) above, the FY15 Financial Statements materially overstated Gross Profit, EBITDA, NPAT, the value of inventories and total equity;

(d) by reason of the matters in paragraphs (a)-(c) above, the FY15 Financial Statements were not prepared in accordance with Australian Accounting Standards, and did not give a true and fair view of the financial position and performance of DSH and the DSH Group as at 28 June 2015; and

(e) by reason of the matters pleaded in paragraphs 31-32 and 55-56 above, Deloitte, in performing its work in the FY15 Audit in respect of the accounting treatment of rebates, the recording of rebates, and the inventory obsolescence provisions, Deloitte failed to comply with the Auditing Standards, and failed to exercise reasonable skill and care.

96. Further or in the alternative, and for the purposes only of this cross claim, Potts repeats paragraphs 456-466 and 491-496 of the Further Amended Joint Statement of Claim.

97. By reason of the matters in paragraph 95 above, and further or alternatively by reason of the matters in paragraph 96 above, Deloitte, in issuing the FY15 Audit Report and thereby making the FY15 Unqualified Audit Statements and the FY15 Audit Report Representation, engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of ~~section~~ s 18 of the ACL and/or ~~section~~ s 1041H of the CA and/or ~~section~~ s 12DA of the ASIC Act.

Particulars

By reason of Deloitte's failure to comply with Auditing Standards and failure to exercise reasonable skill and care in performing work in respect of the FY15 Audit, pleaded in paragraphs 31-32, 55-56, 95 and/or 96 above, Deloitte did not (contrary to the FY15 Audit Report Representation) have a reasonable basis for the FY15 Unqualified Audit Statements, and those statements were not the result of Deloitte having exercised reasonable skill and care and having complied with Auditing Standards in the course of the FY15 Audit.

98. Further or in the alternative, by reason of the matters in paragraph 95 above and/or paragraph 96 above, Deloitte, in making the FY15 Audit Report Representation, made a false or misleading representation:

(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, within the meaning of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraphs 89 and 96-97 above.

The FY15 Audit Report Representation was false or misleading by reason that Deloitte had in fact failed to comply with Auditing Standards and failed to exercise reasonable skill and care in the course of providing services in respect of the FY15 Audit, for the reasons pleaded in paragraphs 31-32, 55-56, 95 and/or 96 above, and therefore Deloitte did not have a reasonable basis for the FY15 Unqualified Audit Statements.

Claim by Potts for damages

99. In the event only that any of the contraventions pleaded against Potts in paragraphs 321-356 of the Further Amended Joint Statement of Claim is established (each of which is denied), or that any of the contraventions pleaded against Potts in the Deloitte Cross-Claims is established (each of which is also denied), then Potts pleads as follows.

Claim by Potts in relation to the FY13 Financial Statements

99A By 13 November 2013, Potts:

(a) had reviewed the FY13 Board Report and was aware of the statements and representations which Deloitte made by that report, including the matters which are pleaded in paragraphs 14A-14D and 59 above; and

(b) was aware of the representations by Deloitte in paragraphs 81-81B above.

99B On 22 October 2013:

(a) The directors of DSSH passed a resolution that the FY13 Financial Statements be adopted (the **FY13 Adoption Resolution**); and

(b) The directors of DSSH thereby declared as stated in the FY13 Financial Statements, that they were of the opinion that the FY13 Financial Statements were:

(i) in accordance with the CA, including compliance with Australian Accounting Standards and giving a true and fair view of the financial position and performance of DSH and the consolidated entity; and

(ii) in compliance with the IFRS as stated in note 2 to the financial statements.

(the **FY13 Directors' Declaration**)

99C On 22 October 2013, DSSH issued the FY13 Financial Statements in the form approved by the DSSH directors pursuant to the resolution in paragraph 99B above.

99D In reliance on the FY13 Inventory Representations, the representation pleaded in paragraph 81 above, the FY13 Unqualified Audit Statements and the FY13 Audit Report Representation, Potts was of the view, as at 13 November 2013 that the assumptions and methodology used by DSSH management to determine inventory provisions in the FY13 Financial Statements were appropriate and resulted in a provision which complied with Australian Accounting Standards.

99E In reliance on the FY13 Warranty Sign On Liability Representations, the representation pleaded in paragraph 81 above, the FY13 Unqualified Audit Statements and the FY13 Audit Report Representation, Potts was of the view, as at 13 November 2013 that the issue raised by Deloitte in respect of the Warranty Sign On Liability in the FY13 Financial Statements was not, individually or together with other unadjusted differences, material, and that there was no need to adjust the FY13 Financial Statements in respect of the Warranty Sign On Liability in order to ensure that they gave a true and fair view of DSSH's financial position and performance.

99F In reliance on the FY13 Inventory Representations, the FY13 Warranty Sign On Liability Representations, the representation pleaded in paragraph 81 above, the FY13 Unqualified Audit Statements and the FY13 Audit Report Representation, Potts:

(a) was of the view, as at 13 November 2013, that the FY13 Financial Statements:

(i) gave a true and fair view of the position and performance of DSH and the DSE Group as at the reporting date;

(ii) complied with the CA; and

(iii) complied with Australian Accounting Standards; and

(b) signed the Prospectus Management Certificate, and joined with the other directors of DSH in the Prospectus Representation Letter, the Directors' Prospectus Confirmations and the Directors' Approval of the Prospectus.

99G If it is established (as alleged in the Deloitte Cross Claims, which is denied) that:

(a) the assumptions and methodology used by DSSH to determine inventory provisions were not appropriate, and the provision for inventory in the FY13 Financial Statements did not comply with Australian Accounting Standards;

(b) the accounting for the Warranty Sign On Liability in the FY13 Financial Statements did not comply with Australian Accounting Standards;

(c) by reason of the matters in paragraphs (a) and/or (b) above:

(i) the FY13 Financial Statements did not give a true and fair view of the financial position and performance of DSSH;

(ii) there was no proper or adequate basis for Potts to form the view that the FY13 Financial Statements:

A. gave a true and fair view of the position and performance of DSSH;

B. complied with the CA; and/or

C. complied with Australian Accounting Standards; and/or

(d) Potts engaged in misleading or deceptive conduct by signing the Prospectus Management Certificate and/or by joining in the Prospectus Representation Letter, the Directors' Prospectus Confirmations and the Directors' Approval of the Prospectus;

(e) Deloitte relied on the Prospectus Management Certificate, the Prospectus Representation Letter, the Directors' Prospectus Confirmations and the Directors' Approval of the Prospectus in providing the DTT Prospectus Consent; and/or

(f) by reason of the matters set out above, to the extent that Deloitte is liable to the Plaintiffs any of the Defendants or DCF by reason of having provided the DTT Prospectus Consent, Potts is liable to pay compensation to Deloitte for such loss;

then Potts will have suffered loss or damage by the misleading conduct of Deloitte in making the FY13 Inventory Representations, the FY13 Warranty Sign On Liability Representations, the representation pleaded in paragraph 81 above, the FY13 Unqualified Audit Statements and/or the FY13 Audit Report Representation.

Particulars

Potts repeats paragraphs 26-26D, 59-68, and 89A-90B above and the particulars thereto.

If Deloitte had taken the steps in respect of the provisioning for inventory in the FY13 Financial Statements which Deloitte ought to have taken in order to comply with Auditing Standards and which Deloitte failed to take (pleaded in paragraph 26A-26B above), then, on the basis that it is established (which is denied) that the FY13 Financial Statements failed to account for inventory at its net realisable value, contrary to AASB 102 (see paragraph 26 above), Deloitte would have ascertained such non-compliance and would have reported to the directors of DSH such non-compliance.

If Deloitte had taken the steps in respect of the determination of materiality for the FY13 Financial Statements and the accounting for the Warranty Sign On Liability, which Deloitte ought to have taken in order to comply with Auditing Standards and which Deloitte failed to take (pleaded in paragraph 68 above), then, on the basis that it is established (which is denied) that the FY13 Financial Statements did not, by reason of their treatment of the Warranty Sign On Liability, give a true and fair view of the financial position and performance of DSSH, Deloitte would have ascertained those matters and would have reported them to the directors of DSSH.

If Deloitte had ascertained and reported any or all of the matters set out above, then Deloitte would have ascertained and reported to the directors of DSSH that, by reason of one or more of those matters, the FY13 Financial Statements did not comply with Australian Accounting Standards and did not give a true and fair view of the financial position and performance of DSSH as at 28 June 2013.

See Archer Report, Section 5.

Had Deloitte informed the other directors of DSSH of those matters, then:

(1) Deloitte would not have issued the FY13 Audit Report in respect of the FY13 Financial Statements in their then current form; and

(2) The Prospectus would not have been issued with the Financial Information in the form that was in fact issued, and Potts and the other directors of DSH would not have taken the steps pleaded in paragraphs 33-36, 56-58 and 65 of the Deloitte Cross-Claims in relation to the Prospectus in that form.

The consequence of (1) to (2) above is that, but for Deloitte's misleading conduct, Potts would not have any liability (which is denied) to either Deloitte or DCF in respect of his conduct in relation to the Prospectus alleged in paragraphs 33-36, 56-58 and 65 of the Deloitte Cross-Claims.

Accordingly, if Potts is found liable to Deloitte and/or for any loss allegedly suffered by reason of Potts' alleged misleading or deceptive conduct by reason of his conduct alleged in paragraphs 33-36, 56-58 and 65 of the Deloitte Cross-Claims, then Potts will have suffered loss and damage as a result of the misleading conduct of Deloitte, in the amount of any order made against Potts in the Deloitte Cross-Claims for damages, compensation, interest and/or costs, together with the amount of his own legal costs.

Claim by Potts in relation to the FY14 Financial Statements

100. ~~As~~ By at 19 August 2014, Potts

(a) had reviewed the FY13 Audit Report and was aware of the representations made by that report, pleaded in paragraphs ~~81~~ 81A - 81B above;

(b) had reviewed the FY14 FAC Report and was aware of the statements and representations which Deloitte made by that report, including the matters which are pleaded in paragraphs 15-19, 35, 37, 41, ~~59~~60-63 and 71-74 above; and

(c) was aware of the representations ~~made by Deloitte at the conclusion of the~~ by Deloitte FY14 Audit, pleaded in paragraphs 82-84 above.

100A On 18 August 2014, Potts signed a management representation letter addressed to Deloitte (**FY14 Management Representation Letter**).

100B On or about 18 August 2014, Potts gave a declaration pursuant to s 295A of the CA for the year ended 29 June 2014 (the **FY14 Section 295A Declaration**) that, in his opinion:

(a) the financial records of DSH for the financial year had been properly maintained in accordance with s 286 of the CA;

(b) the FY14 Financial Statements complied with Australian Accounting Standards; and

(c) the FY14 Financial Statements gave a true and fair view of the financial position and performance of DSH.

100C On 18 August 2014:

(a) Potts joined with the other directors of DSH in passing a resolution that the FY14 Financial Statements be adopted (the **FY14 Adoption Resolution**); and

(b) Potts thereby joined with the other directors of DSH in declaring, as stated in the FY14 Financial Statements, that they were of the opinion that the FY14 Financial Statements were:

(i) in accordance with the CA, including compliance with Australian Accounting Standards and giving a true and fair view of the financial position and performance of DSH and the consolidated entity; and

(ii) in compliance with the IFRS as stated in note 2 to the financial statements.

(the **FY14 Directors' Declaration**)

100D On 18 August 2014, DSH issued the FY14 Financial Statements in the form approved by the DSH directors pursuant to the resolution in paragraph 100C(a) above.

100E In reliance on the FY14 Rebate Representations, the representations in paragraphs 81C-82 above, the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation, Potts was of the view, as at 18 August 2014, that the accounting treatment of rebates in the FY14 Financial Statements complied with Australian Accounting Standards.

100F In reliance on the FY14 Inventory Representations, the representations in paragraphs 81C-82 above, the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation, Potts was of the view, as at 18 August 2014, that the assumptions and methodology used by DSH to determine inventory provisions in the FY14 Financial Statements were appropriate and resulted in a provision which complied with Australian Accounting Standards.

101. In reliance on ~~Deloitte's FY13 Express Representations~~ the FY13 Unqualified Audit Statements, ~~Deloitte's FY13 Implied Representations,~~ the FY13 Audit Report Representation, the FY14 Rebate Representations, the FY14 Inventory Representations, the FY14 Warranty Sign On Liability Representations, the Onerous Lease Provision Representation, the representations in paragraphs 81C-82 above, the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation, Potts:

(a) ~~formed~~ was of the view as at 18 August 2014, that the FY14 Financial Statements:

(i) complied with Australian Accounting Standards;

(ii) gave a true and fair view of the position and performance of DSH and the DSH Group as at 29 June 2014; and

(iii) complied with the CA; and

~~(a)~~(b) signed the FY14 Management Representation Letter;

~~(b) formed the view that the FY14 Financial Statements:~~

~~(i) gave a true and fair view of the position and performance of DSH and the DSH Group as at 29 June 2014;~~

~~(ii) complied with the CA;~~

~~(iii) was prepared in accordance with Australian Accounting Standards; and~~

(c) gave the ~~declaration pleaded in paragraph 89 of the Amended Joint Statement of Claim (the **FY14 Directors' Declaration**)~~FY14 Section 295A Declaration; ~~and~~

(d) joined in the FY14 Adoption Resolution and the FY14 Directors' Declaration; and

~~(d)~~(e) joined in the resolution of the board of DSH approving the issue of the FY14 Financial Statements and the FY14 ASX Announcement & Results Briefing.

102. If ~~the plaintiffs~~it is established (which is denied) that:

(a) the recording of rebates in the FY14 Financial Statements did not comply with Australian Accounting Standards (as pleaded in paragraphs 166-169, 182-187 and 190-192 of the Further Amended Joint Statement of Claim);

(b) the provisions in respect of inventory obsolescence in the FY14 Financial Statements did not comply with Australian Accounting Standards (as pleaded in paragraphs 145-148 and 150 of the Further Amended Joint Statement of Claim);

(c) the accounting treatment of the Warranty Sign On Liability in the FY14 Financial Statements did not comply with Australian Accounting Standards (as pleaded in paragraph 201 of the Further Amended Joint Statement of Claim);

(d) the accounting treatment of the Onerous Leases Provision in the FY14 Financial Statements did not comply with Australian Accounting Standards (as pleaded in paragraph 218 of the Further Amended Joint Statement of Claim);

(e) by reason of the matters in paragraphs (a), (b), (c) and/or (d) above, the FY14 Financial Statements did not:

(i) give a true and fair view of the position and performance of DSH and the DSH Group as at 29 June 2014; and/or

(ii) comply with Australian Accounting Standards;.

(as pleaded in paragraphs 240-241 of the Further Amended Joint Statement of Claim); and

(f) by reason of the matters in paragraphs (a)-(e) above, the issue and publication by DSH of the FY14 Financial Statements, including the FY14 Directors' Declaration, and the FY14 ASX Announcement & Results Briefing was misleading or deceptive, or likely to mislead

or deceive in contravention of the ACL, the CA and/or the ASIC Act (as pleaded in paragraphs 239-244 of the Further Amended Joint Statement of Claim);

(g) Potts engaged in misleading and deceptive conduct in contravention of the ACL, the CA and/or the ASIC Act:

(i) by joining in the resolution authorising the issue and publication of the FY14 Financial Statements; and/or

(ii) by making the FY14 Directors' Declaration;

(iii) by participating in authorising the issue and publication of the FY14 ASX Announcement & Results Briefing; and/or

(iv) by presenting the results briefing forming part of the FY14 ASX Announcement & Results Briefing;

(as pleaded in paragraphs 321-339 of the Further Amended Joint Statement of Claim)

(h) such misleading or deceptive conduct caused the plaintiffs and the Group Members to suffer loss and damage, for which Potts is liable to compensate them (as pleaded in paragraphs 357-358 and 360-365 of the Further Amended Joint Statement of Claim),

(i) alternatively, by reason of the matters in paragraphs (a)-(e) above:

(i) Potts engaged in misleading or deceptive conduct by signing the FY14 Management Representation Letter, and/or by giving the FY14 Section 295A Declaration, and/or by joining in the FY14 Adoption Resolution and/or the FY14 Directors' Declaration;

(ii) Deloitte relied on the FY14 Management Representation Letter, the FY14 Section 295A Declaration, the FY14 Adoption Resolution and/or the FY14 Directors' Declaration in providing the FY14 Audit Report; and

(iii) to the extent that Deloitte is liable to any of the Defendants by reason of having provided the FY14 Audit Report, Potts is liable to pay compensation to Deloitte for such loss.

(as pleaded in the Deloitte Cross-Claims)

then Potts will have suffered loss or damage as the result of the misleading or deceptive conduct of Deloitte in contravention of the ACL, the CA and/or the ASIC Act, which is pleaded in paragraphs 28-30, 51-53, 69-70, 79-80, 90 and 92-94 above.

Particulars

Potts repeats the particulars to paragraphs 28-30, 51-53, 69-70, 79-80, 90 and 92-94 above.

If Deloitte had complied with Auditing Standards in respect of the FY14 Audit, and had taken:

- the steps in respect of the inventory provisions in the FY14 Financial Statements which it failed to take (pleaded in paragraph 27-28 above)
- the steps in respect of the accounting treatment of rebates in the FY14 Financial Statements which it failed to take (pleaded in paragraph 50-51 above);
- the steps in respect of the Warranty Sign On Liability in the FY14 Financial Statements which it failed to take (pleaded in paragraph 67 above); and
- the steps in respect of the Onerous Lease Provision Release in the FY14 Financial Statements which it failed to take (pleaded in paragraph 78 above);

then, on the basis that the plaintiffs establish (which is denied) that the FY14 Financial Statements did not comply with Australian Accounting Standards by reason of any or all of these matters, Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH that, by reason of such non-compliance, the FY14 Financial Statements had not been prepared in accordance with Australian Accounting Standards, and did not give a true and fair view of the financial position and performance of DSH and the DSH Group as at 29 June 2014. See further Report of Andrew Archer dated 28 June 2019 (Archer Report), section 6, and Report of Chris Westworth regarding Cross Claims against Deloitte Touche Tohmatsu and Deloitte Corporate Finance Pty Limited dated 26 August 2019 (Westworth Report on Deloitte), section 8, and Report of Brian Morris dated 3 September 2019 (**Morris Report**), paragraphs [5.50] - [5.166] and [10.45] - [10.123].

Further or alternatively, if Deloitte had complied with Auditing Standards in respect of the FY13 Audit, and had taken the steps which the Plaintiffs plead Deloitte ought to have taken (in paragraphs 427-444 of the Further Amended Joint Statement of Claim), then, on the basis that the plaintiffs establish (which is denied) that the FY13 Financial Statements did not comply with

Australian Accounting Standards by reason of any or all of these matters, Deloitte would have ascertained such non-compliance and would have reported the matters pleaded at paragraph 503 of the Further Amended Joint Statement of Claim. See further Archer Report, section 5.

Had Deloitte informed Potts and the other directors of DSH of those matters, then:

(1A) Potts would not have signed the FY14 Management Representation Letter or given the FY14 Section 295A Declaration in relation to the FY14 Financial Statements in their then current form, and Potts and the other directors would not have joined in the FY14 Adoption Resolution or given the FY14 Directors' Declaration in relation to the FY14 Financial Statements in their then current form, and would not have approved the issue of the FY14 Financial Statements in the form in which they were in fact issued;

(1B) Potts would not have provided the FY14 Audit Report in respect of the FY14 Financial Statements in their then current form;

(1) Potts and the other directors of DSH would have ensured that the FY14 Financial Statements (which included the FY13 balance sheet and profit and loss statement) complied with Australian Accounting Standards and gave a true and fair view, by addressing such deficiencies as were identified by Deloitte;

(2) the FY14 Financial Statements would have been issued in a form which did comply with Australian Accounting Standards, in particular as regards the matters referred to in paragraphs 102(a)-(d) above, and which did present a true and fair view of the financial position and performance of DSH and the DSH Group as at 29 June 2014, and the FY14 Audit Report would have been given in respect of financial statements in that form; and

(3) the FY14 ASX Announcement & Results Briefing which was issued and published by DSH, and which was presented in part by Potts, would have reflected the form of the FY14 Financial Statements referred to in (2) above.

The consequence of (1A) to (3) above is that, but for Deloitte's misleading conduct, the FY14 Financial Statements and the FY14 ASX Announcement & Results Briefing would not have been issued in the form in which they were in fact issued, and Potts would not have engaged in the conduct

referred to in paragraph 102(g) above which the plaintiffs plead as giving rise to his liability to them and the Group Members (which is denied), or the conduct referred to in paragraph 102(i) above which Deloitte pleads as giving rise to liability to Deloitte (which is also denied).

Accordingly, if Potts is found liable to the plaintiffs and/or the Group Members in respect of the alleged conduct in paragraph 102(g) above, then Potts will have suffered, by reason of Deloitte's misleading conduct, loss and damage in the amount of any order made against him in the main proceeding for damages, compensation, interest and/or costs, together with the amount of his own legal costs.

Further, if Potts is found liable to Deloitte for any loss allegedly suffered by reason of the alleged conduct in paragraph 102(i) above, then Potts will have suffered loss and damage as a result of the misleading conduct of Deloitte, in the amount of any order made against Potts in the Deloitte Cross-Claims for damages, compensation, interest and/or costs, together with the amount of his own legal costs.

Claim by Potts in relation to the FY15 Financial Statements

103. ~~As at~~By 17 August 2015, Potts had reviewed the FY14 Audit Report and was aware of the representations made by that report, including the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation, had reviewed the FY15 FAC Report and was aware of the statements and representations which Deloitte made by that report, including the matters which are pleaded in paragraphs 20, 22-23, 43 and 46 above, and was aware of the representations made or to be made by Deloitte at the conclusion of the FY15 Audit, as pleaded in paragraphs 84A~~85~~-87 above.

103A On or around 17 August 2015, Potts signed a management representation letter addressed to Deloitte (**FY15 Management Representation Letter**).

103B On 17 August 2015, Potts gave a declaration pursuant to section 295A of the CA for the year ended 28 June 2015 (the **FY15 Section 295A Declaration**) that, in his opinion:

(a) the financial records of DSH for the financial year had been properly maintained in accordance with s 286 of the CA;

(b) the FY15 Financial Statements complied with Australian Accounting Standards; and

(c) the FY15 Financial Statements gave a true and fair view of the financial position and performance of DSH.

103C On 17 August 2015:

(a) Potts joined with the other directors of DSH in passing a resolution that the FY15 Financial Statements be adopted (the **FY15 Adoption Resolution**); and

(b) Potts thereby joined with the other directors of DSH in declaring, as stated in the FY15 Financial Statements, that they were of the opinion that the FY15 Financial Statements were:

(i) in accordance with the CA, including compliance with Australian Accounting Standards and giving a true and fair view of the financial position and performance of DSH and the consolidated entity; and

(ii) in compliance with the IFRS as stated in note 2 to the financial statements.

(the **FY15 Directors' Declaration**).

103D On or around 17 August 2015, DSH issued the FY15 Financial Statements in the form approved by the DSH directors pursuant to the resolution in paragraph 103C(a) above.

103E In reliance on the FY15 Rebate Representations, the representations in paragraphs 84A-85 above, the FY15 Unqualified Audit Statements and the FY15 Audit Report Representation, Potts was of the view, as at 17 August 2015, that the accounting treatment of rebates in the FY15 Financial Statements complied with Australian Accounting Standards.

104. In reliance on the FY14 Unqualified Audit Statements, the FY14 Audit Report Representation, the FY15 Rebate Representations, the FY15 Inventory Representations, the representations pleaded in paragraphs 84A-85 above, the FY15 Unqualified Audit Statements and the FY15 Audit Report Representation, Potts:

(a) ~~formed~~ was of the view as at 17 August 2015 that the FY15 Financial Statements;

(b) complied with Australian Accounting Standards;

~~(a) formed the view that the FY15 Financial Statements:~~

(i) gave a true and fair view of the position and performance of DSH and the DSH Group as at 28 June 2015; and

(ii) complied with the CA;

(c) signed the FY14 Management Representation letter, and gave the FY15 Section 295A Declaration;

~~(b)~~(d) joined in the resolution by which the directors of DSH authorised the issue and publication of the FY15 Financial Statements (pleaded in paragraph 341 of the Further Amended Joint Statement of Claim);

~~(c)~~(e) joined in the FY15 Adoption Resolution and the FY15 Directors' Declaration~~joined in the declaration by the directors of DSH (pleaded in paragraphs 95-97 of the Amended Joint Statement of Claim) that, in their opinion, the FY15 Financial Statements was in accordance with the CA, including as to compliance with accounting standards and gave a true and fair view of the financial position and performance of DSH and the DSH Group as at 28 June 2015 (the **FY15 Directors' Declaration**)~~; and

~~(d)~~(f) joined in the resolution by which the directors of DSH authorised the issue and publication of the FY15 ASX Announcement & Results Briefing (pleaded in paragraphs 109 and 351 of the Further Amended Joint Statement of Claim).

105. If ~~the plaintiffs~~it is established (which is denied) that:

(a) the recording of rebates in the FY15 Financial Statements did not comply with Australian Accounting Standards (as pleaded in paragraphs 159-162, 166-169, 182-187 and 190-192 of the Further Amended Joint Statement of Claim);

(b) the provision in respect of inventory obsolescence in the FY15 Financial Statements did not comply with Australian Accounting Standards (as pleaded in paragraphs 145-148 and 151 of the Further Amended Joint Statement of Claim);

(c) by reason of the matters in paragraphs (a) and/or (b) above, the FY15 Financial Statements did not:

(i) give a true and fair view of the position and performance of DSH and the DSH Group as at 28 June 2015; and/or

(ii) comply with Australian Accounting Standards; or

(as pleaded in paragraphs 245-247 of the Further Amended Joint Statement of Claim);

(d) by reason of the matters in paragraphs (a)-(c) above, the issue and publication by DSH of the FY15 Financial Statements, including the FY15 Directors' Declaration, and the FY15 ASX Announcement & Results Briefing was misleading or deceptive, or likely to mislead or deceive in contravention of the ACL, the CA and/or the ASIC Act (as pleaded in paragraphs 245-250 of the Further Amended Joint Statement of Claim);

(e) Potts engaged in misleading and deceptive conduct in contravention of the ACL, the CA and/or the ASIC Act:

(i) by joining in the resolution authorising the issue and publication of the FY15 Financial Statements; or

(ii) by making the FY15 Directors' Declaration; or

(iii) by joining in the resolution authorising the issue and publication of the FY15 ASX Announcement & Results Briefing and/or by presenting the Results Briefing;

(f) such misleading or deceptive conduct caused the plaintiffs and the Group Members to suffer loss and damage, for which Potts is liable to compensate them (as pleaded in paragraphs 357-358 and 360-365 of the Further Amended Joint Statement of Claim),

(g) alternatively, by reason of the matters in paragraphs (a)-(c) above:

(i) Potts engaged in misleading or deceptive conduct by signing the FY15 Management Representation Letter, and/or by giving the FY15 Section 295A Declaration, and/or by joining in the FY15 Adoption Resolution and/or the FY15 Directors' Declaration;

(ii) Deloitte relied on the FY15 Management Representation Letter, the FY15 Section 295A Declaration, the FY15 Adoption Resolution and/or the FY15 Directors' Declaration in providing the FY15 Audit Report; and

~~(c)~~(iii) to the extent that Deloitte is liable to any of the Defendants by reason of having provided the FY15 Audit Report, Potts is liable to pay compensation to Deloitte for such loss,

~~(iv)~~ (as pleaded in the Deloitte Cross-Claims),

then Potts will have suffered loss or damage as the result of the misleading or deceptive conduct of Deloitte in contravention of the ACL, the CA and/or the ASIC Act, which is pleaded in paragraphs 32-34, 56-58 and 96-98 above.

Particulars

Potts repeats the particulars to paragraphs 32-34, 56-58, 96-98 and 102 above.

If Deloitte had complied with Auditing Standards in respect of the FY15 Audit, and had taken:

- the steps in respect of the accounting treatment of rebates in the FY15 Financial Statements which it failed to take (pleaded in paragraph 55 above); and
- the steps in respect of the inventory provisions in the FY15 Financial Statements which it failed to take (pleaded in paragraph 31 above);

then, on the basis that the plaintiffs establish (which is denied) that the FY15 Financial Statements did not comply with Australian Accounting Standards

by reason of any or all of these matters, Deloitte would have ascertained such non-compliance and would have reported to Potts and the other directors of DSH that, by reason of such non-compliance, the FY15 Financial Statements had not been prepared in accordance with Australian Accounting Standards, and did not give a true and fair view of the financial position and performance of DSH and the DSH Group as at 28 June 2015. See further Archer Report, section 7, Westworth Report on Deloitte, section 10, and Morris Report [7.38] - [7.147], [12.23] - [12.29] and [12.35] to [12.74].

Had Deloitte informed Potts and the other directors of DSH of those matters, then:

(1A) Potts would not have signed the FY15 Management Representation Letter or given the FY15 Section 295A Declaration in relation to the FY15 Financial Statements in their then current form, and Potts and the other directors would not have joined in the FY15 Adoption Resolution or given the FY15 Directors' Declaration in relation to the FY15 Financial Statements in their then current form, and would not have approved the issue of the FY15 Financial Statements in the form in which they were in fact issued;

(1B) Deloitte would not have provided the FY15 Audit Report in respect of the FY15 Financial Statements in their then current form;

(1) Potts and the other directors of DSH would have taken steps to ensure that the FY15 Financial Statements complied with Australian Accounting Standards, and gave a true and fair view, by addressing such deficiencies as were identified by Deloitte;

(2) the FY15 Financial Statements would have been issued in a form which did comply with Australian Accounting Standards, in particular as regards the matters in paragraphs 105(a)-(b) above, and which did present a true and fair view of the financial position and performance of DSH and the DSH Group as at 28 June 2015, and the FY15 Audit Report would have been given in respect of financial statements in that form; and

(3) the FY15 ASX Announcement & Results Briefing which was issued and published by DSH, and which was presented in part by Potts, would have reflected the form of the FY15 Financial Statements referred to in (2) above.

The consequence of (1A) to (3) above is that, but for Deloitte's misleading conduct, the FY15 Financial Statements and the FY15 ASX Announcement & Results Briefing would not have been issued in the form in which they were in fact issued, and Potts would not have engaged in the conduct referred to in paragraph (e) above which the plaintiffs plead as giving rise to his liability to them and the Group Members (which is denied), or the conduct referred to in paragraph 105(g) above which Deloitte pleads as giving rise to liability to Deloitte (which is also denied).

Accordingly, if Potts is found liable to the plaintiffs and/or the Group Members in respect of the alleged conduct in paragraph (e) above, then Potts will have suffered, by reason of Deloitte's misleading conduct, loss and damage in the amount of any order made against him in the main proceeding for damages, compensation, interest and/or costs, together with the amount of his own legal costs.

Further, if Potts is found liable to Deloitte for any loss allegedly suffered by reason of the alleged conduct in paragraph 105(g) above, then Potts will have suffered loss and damage as a result of the misleading conduct of Deloitte, in the amount of any order made against Potts in the Deloitte Cross-Claims for damages, compensation, interest and/or costs, together with the amount of his own legal costs.

Claim by Potts for equitable contribution

106. In the event only that Potts is found liable to the Plaintiffs and/or any of the Group Members in respect of any claim which is not an apportionable claim within the meaning of s. 1041L of the CA, s. 12GP of the ASIC Act or s. 87CB of the *Competition and Consumer Act 2010* (Cth) (which is denied), then Potts pleads as follows.

Coordinate liability – Claims in respect of FY14

107. The FY14 Audit Report, which was addressed to members of DSH, was issued on or about 18 August 2014, and was published to the ASX together with the FY14 Financial Statements.

108. By the issuing of the FY14 Audit Report, Deloitte made the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation.

109. By issuing the FY14 Audit Report, and thereby making the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation to members of DSH and to the ASX, Deloitte engaged in misleading or deceptive conduct in contravention of ~~section~~ s 18 of the ACL or alternatively ~~section~~ s 1041H of the CA or alternatively ~~section~~ s 12DA of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph 92-93 above.

110. Further or alternatively, by making the FY14 Audit Report Representation to members of DSH and to the ASX, Deloitte made a false or misleading representation:

(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, in contravention of ~~section~~ s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, in contravention of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph 94 above.

111. The plaintiffs allege (which is denied) that:

(a) the conduct by Potts in respect of the FY14 Financial Statements which is alleged to have contravened the ACL, the CA and/or the ASIC Act, referred to in paragraph 102 above, caused, after 18 August 2014, the market price of DSH Shares to be substantially greater than (i) their true value or (ii) the market price that would have prevailed but for that contravening conduct; and

(b) the plaintiffs and the Group Members have suffered loss by purchasing shares in DSH after 18 August 2014, in the circumstances where the market price of those shares was substantially greater than (i) their true value or (ii) the market price that would have prevailed but for that contravening conduct.

112. If the matters in paragraph 111 above are established, then:

(a) the conduct by Deloitte in respect of the FY14 Audit which contravened the ACL, the CA and/or the ASIC Act, which is pleaded in paragraphs 109-110 above, also caused, after 18 August 2014, the market price of DSH Shares to be substantially greater than (i) their true value or (ii) the market price that would have prevailed but for that contravening conduct; and

(b) the plaintiffs and the Group Members have suffered loss by purchasing shares in DSH after 18 August 2014, in the circumstances where the market price of those shares was substantially greater than (i) their true value or (ii) the market price that would have prevailed but for Deloitte's contravening conduct.

Particulars

If not for Deloitte's contravening conduct, the FY14 Financial Statements would not have been issued in the form in which they were in fact issued. Potts repeats the particulars to paragraph 102 above.

Further or alternatively, if Deloitte had issued a report to members of DSH in relation to the FY14 Audit which reported any or all of the matters referred to in paragraph 102 above, and if a report by Deloitte including such information had been published to the ASX on or about 18 August 2014, then such information would have been taken into account in the market price of DSH Shares from the date of such report.

113. Further or alternatively, insofar as the plaintiffs and/or some of the Group Members establish that they:

(a) acquired an interest in DSH Shares after 18 August 2014 in reliance on the FY14 Financial Statements and the FY14 Directors' Declaration, and

(b) thereby suffered loss or damage from the alleged contraventions by Potts in authorising the issue and publication of the FY14 Financial Statements and in making the FY14 Directors' Declaration (as pleaded in paragraph 365 of the Further Amended Joint Statement of Claim, which is denied),

then any such person likewise:

(c) acquired the interest in DSH Shares referred to in subparagraph (a) above in reliance on the FY14 Audit Report which was published with the FY14 Financial Statements, and which made the FY14 Unqualified Audit Statements and the FY14 Audit Report Representation; and

(d) thereby suffered the loss or damage referred to in subparagraph (b) above as a result of the conduct by Deloitte pleaded in paragraphs 107-110 above which contravened the ACL, the CA and/or the ASIC Act.

Particulars

Particulars of such reliance will be provided after evidence and disclosure from the plaintiffs and/or Group Members.

114. Further or in the alternative to paragraphs 107-113 above, and for the purposes only of this cross claim, Potts repeats paragraphs 411-421, 427-455, 467-490, 503-508 and 512-515 of the Further Amended Joint Statement of Claim.

115. By reason of the matters pleaded in paragraphs 107-113 above, and further or in the alternative by reason of the matters referred to in paragraph 114 above, if the plaintiffs establish (which is denied) that Potts contravened the ACL, the CA and/or the ASIC Act by his alleged conduct in respect of the FY14 Financial Statements, the FY14 Directors' Declaration and the FY14 ASX Announcement and Results Briefing, and that such contravention caused the loss or damage claimed by the plaintiffs and Group Members in these proceedings in respect of shares in DSH acquired after the issue of the FY14 Financial Statements, then Deloitte's conduct in contravention of the ACL, CA and/or ASIC Act, pleaded in paragraph 107-110 above and/or paragraph 114 above, caused the same loss and damage.

116. In the premises, Deloitte and Potts are co-ordinately liable to the plaintiffs and Group Members in respect of any such loss or damage suffered by reason of having acquired shares in DSH after the issue of the FY14 Financial Statements and the FY14 Audit Report.

117. By reason of the matters pleaded in paragraphs 107-116 above, if it is established (which is denied) that Potts contravened the ACL and/or the CA and/or the ASIC Act by his alleged conduct in respect of the FY14 Financial Statements, the FY14 Directors' Declaration and the FY14 ASX Announcement and Results Briefing, and that he is liable to compensate the plaintiffs and Group Members for the loss and damage allegedly suffered by them as a result of their having acquired shares in DSH after the issue and publication of the FY14 Financial Statements, then Potts is entitled to recover contribution to any such liability from Deloitte in equity.

Coordinate liability – Claims in respect of FY15

118. The FY15 Audit Report, which was addressed to members of DSH, was issued on or about 17 August 2015, and was published to the ASX together with the FY15 Financial Statements.

119. By the issuing of the FY15 Audit Report, Deloitte made the FY15 Unqualified Audit Statements and the FY15 Audit Report Representation to members of DSH and to the ASX.

120. By issuing the FY15 Audit Report, and thereby making the FY15 Unqualified Audit Statements and the FY15 Audit Report Representation to members of DSH and to the ASX, Deloitte engaged in misleading or deceptive conduct in contravention of ~~section~~ s 18 of the ACL or alternatively ~~section~~ s 1041H of the CA or alternatively ~~section~~ s 12DA of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph 97 above.

121. Further or alternatively, by making the FY15 Audit Report Representation to members of DSH and to the ASX, Deloitte made a false or misleading representation:

(a) in connection with the supply of services, that services were of a particular standard, quality, value or grade, in contravention of ~~section~~ s 29(1)(b) of the ACL; and/or

(b) in connection with the supply of financial services, that services were of a particular standard, quality, value or grade, in contravention of ~~section~~ s 12DB(1)(a) of the ASIC Act.

Particulars

Potts repeats the particulars to paragraph 98 above.

122. The plaintiffs allege (which is denied) that:

(a) the conduct by Potts alleged to have contravened the ACL, the CA and/or the ASIC Act, referred to in paragraph 105(f) above, caused, after 18 August 2015, the market price of DSH Shares to be substantially greater than (i) their true value or (ii) the market price that would have prevailed but for that contravening conduct; and

(b) the plaintiffs and the Group Members have suffered loss by purchasing shares in DSH after 18 August 2015, in the circumstances where the market price of those shares was substantially greater than (i) their true value or (ii) the market price that would have prevailed but for that contravening conduct.

123. If the matters in paragraph 122 above are established, then:

(a) the conduct by Deloitte which contravened the ACL, the CA and/or the ASIC Act, pleaded in paragraphs 118–121 above, also caused, after 18 August 2015, the market price of DSH Shares to be substantially greater than (i) their true value or (ii) the market price that would have prevailed but for that contravening conduct; and

(b) the plaintiffs and the Group Members have suffered loss by purchasing shares in DSH after 18 August 2015, in the circumstances where the market price of those shares was substantially greater than (i) their true value or (ii) the market price that would have prevailed but for Deloitte's contravening conduct.

Particulars

If not for Deloitte's contravening conduct, the FY15 Financial Statements would not have been issued in the form in which they were in fact issued. Potts repeats the particulars to paragraph 105 above.

Further or alternatively, if Deloitte had issued a report to members of DSH in relation to the FY15 Audit which reported any or all of the matters referred to in paragraph 105(a)-(d) above, and if a report including such information had been published to the ASX on or about 17 August 2015, then such

information would have been taken into account in the market price of DSH Shares from the date of such report.

124. Further or alternatively, insofar as the plaintiffs and/or some of the Group Members establish that they:

(a) acquired an interest in DSH Shares after 18 August 2015 in reliance on the FY15 Financial Statements and the FY15 Directors' Declaration, and

(b) thereby suffered loss or damage from the alleged contraventions by Potts in joining in the resolution authorising the issue of FY15 Financial Statements and in making the FY15 Directors' Declaration (as pleaded in paragraph in paragraph 365 of the Further Amended Joint Statement of Claim, which is denied),

then any such person likewise:

(c) acquired the interest in DSH Shares referred to in subparagraph (a) above in reliance on the FY15 Audit Report which was published with the FY15 Financial Statements, and which made the FY15 Unqualified Audit Statements and the FY15 Audit Report Representation; and

(d) thereby suffered the loss or damage referred to in subparagraph (b) above as a result of the conduct by Deloitte pleaded in paragraphs 118-121 above which contravened the ACL, the CA and/or the ASIC Act.

Particulars

Particulars of such reliance will be provided after evidence and disclosure from the plaintiffs and/or Group Members.

125. Further or in the alternative to paragraphs 118-124 above, and for the purposes only of this cross claim, Potts repeats paragraphs 411-515 of the Further Amended Joint Statement of Claim.

126. By reason of the matters pleaded in paragraphs 118-124 above, and further or in the alternative by reason of the matters referred to in paragraph 125 above, if the plaintiffs establish (which is denied) that Potts contravened the ACL, the CA and/or the ASIC Act by his alleged conduct in respect of the FY15 Financial Statements, the FY15 Directors' Declaration and the FY15 ASX Announcement and Results Briefing, and that such contravention caused the loss or damage claimed by the plaintiffs and Group Members in these proceedings in respect of shares in DSH acquired after the issue of the FY15 Financial Statements, then Deloitte's conduct in contravention of the ACL, CA and/or ASIC Act, pleaded in paragraph 118-121 above and/or paragraph 125 above, caused the same loss and damage.

127. In the premises, Deloitte and Potts are co-ordinately liable to the plaintiffs and Group Members in respect of any such loss or damage suffered by reason of having acquired shares in DSH after the issue of the FY15 Financial Statements and the FY15 Audit Report.

128. By reason of the matters pleaded in paragraphs 118-127 above, if it is established (which is denied) that Potts contravened the ACL, the CA and/or the ASIC Act by his alleged conduct in respect of the FY15 Financial Statements, the FY15 Directors' Declaration and the FY15 ASX Announcement and Results Briefing, and that he is liable to compensate the plaintiffs and Group Members pursuant to the CA for the loss and damage allegedly suffered by them as a result of their having acquired shares in DSH after the issue of the FY15 Financial Statements, then Potts is entitled to recover contribution to any such liability from Deloitte in equity.

CLAIM AGAINST DCF

129. For the purposes only of this cross claim, Potts repeats paragraphs 160 to 178 of the Amended First Cross-Claim Statement filed in this proceeding on 8 April 2019 (the **DSH Cross-Claim**).

130. By reason of the matters pleaded in paragraph 129 above, DCF engaged in misleading or deceptive conduct, in contravention of the CA, the ASIC Act and/or the ACL in making the Due Diligence Sign-Off Representations and/or the IAR Representations.

131. Potts relied on the Due Diligence Sign-Off Representations and the IAR Representations:

(a) in signing the Prospectus Management Certificate;

(b) in joining with the other directors of DSH in providing the Prospectus Representation Letter to DCF;

(c) in joining with the other directors of DSH in making the Directors' Prospectus Confirmations; and

(d) in joining with the other directors of DSH in giving the Directors' Approval of the Prospectus.

132. If it is established (which is denied) that Potts has any liability to Deloitte and/or DCF by reason of his conduct in relation to the Prospectus alleged in paragraphs 33-36, 56, 58 and/or 65 of the Deloitte Cross-Claims, then Potts will have suffered loss or damage by reason of DCF having made the Due Diligence Sign-Off Representations and/or the IAR Representations.

Particulars

If DCF had not made the Due Diligence Sign-Off Representations and/or the IAR Representations and had instead informed the DDC and DSH management that the provisioning for the cost of inventory adopted by DSH

was not appropriate, and that the carrying value for inventory as at FY13 was overstated, then:

(1) Potts would not have signed the Prospectus Management Certificate (as pleaded in paragraph 33 of the Deloitte Cross-Claims), and Potts would not have thereby made the representations alleged in paragraph 35 of the Deloitte Cross-Claims;

(2) the Prospectus Representation Letter would not have been provided to DCF (as pleaded in paragraph 34 of the Deloitte Cross-Claims), and Potts would not have thereby made the representations alleged in paragraph 36 of the Deloitte Cross-Claims;

(3) Potts and the other directors would not have adopted the Financial Information and provided it to DCF (as pleaded in paragraph 56 of the Deloitte Cross-Claims);

(4) Potts and the other directors of DSH would not have made the alleged Directors' Prospectus Confirmations or given the Directors' Approval of the Prospectus (as pleaded in paragraph 58 of the Deloitte Cross-Claims);

(5) the Directors would not have issued the Prospectus (as pleaded in paragraph 65 of the Deloitte Cross-Claims) containing the Financial Information in the form in which it was in fact issued; and

(6) DCF would not have made the Due Diligence Sign-Off Representations or the IAR Representations in relation to the Financial Information in the Prospectus in the form in which it was in fact issued.

The consequence of (1) to (6) above is that, but for DCF's misleading conduct, the Prospectus would not have been issued in the form in which it was in fact issued, and Potts would not have engaged in the conduct in relation to the Prospectus (pleaded in paragraphs 33-36, 56, 58 and 65 of the Deloitte Cross-Claims) which Deloitte and DCF plead as giving rise to liability to them (which is denied).

Accordingly, if Potts is found liable to Deloitte and/or DCF for any loss allegedly suffered by reason of his alleged pleaded in paragraphs 33-36, 56, 58 and 65 of the Deloitte Cross-Claims, then Potts will have suffered loss and damage as a result of the misleading conduct of DCF, in the amount of any order made against Potts in the Deloitte Cross-Claims for damages,

compensation, interest and/or costs, together with the amount of his own legal costs.

E. MEDIATION STATEMENT

The parties have attempted mediation on 26-27 February 2019 and did not succeed in resolving the dispute. The Cross-Claimant is willing to proceed to a further mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to 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 this statement of cross-claim has reasonable prospects of success.

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

Signature  for Tobin Meagher

Capacity Solicitor for the Cross-Claimant

Date of signature 8 October 2019

SCHEDULE 1 - SECOND TO 454TH CROSS-DEFENDANTS

2. Brett Douglas Streatfeild
3. Sneza Pelusi
4. James Patrick Hickey
5. Alastair Banks
6. Tara Cathy Hill
7. Paul Jeremy Klein
8. Frank Scott Farrall
9. Christopher Donald Noble
10. Alec Paul Bash Insky
11. George Nicholas Kyriakacis
12. Roan Rolles Fryer
13. Stuart Johnston
14. Kaylene O'Brien
15. Craig Patrick O'Hagan
16. Leanne Karamfiles
17. Neil Graham Smith
18. Demostanies Krallis
19. David John Lombe
20. Christian John Biermann
21. Jonathan Paul
22. Michael James Clarke
23. Roger Jeffrey
24. Rachel Andrea Foley-Lewis

25. Franco Claudio Santucci

26. Michelle Robyn Hartman

27. Matthew Christopher Saines

28. Francis Thomas

29. Robert Basker

30. Alan Eckstein

31. Donal Graham

32. Andrew Raymond Hill

33. Patrick McLay

34. Paul Bernal Liggins

35. David Ocello

36. Paul Scott Holman

37. Paul Robert Wiebusch

38. Murray Peck

39. Julie Michelle Stanley

40. John Bland

41. Timothy Carberry

42. Alvaro Ramos

43. Graeme John Adams

44. Suzanne Archbold

45. Tim Richards

46. Timothy Geoffrey Maddock

47. Xenia Delaney

48. Reuben Saayman

49. Ronaldus Lambertus Van Beek

50. Liesbet Ann Juliette Spanjaard

51. Christopher John Richardson

52. Martin Harry Read

53. Mark Reuter

54. Stuart Thomas Ciocarelli

55. Paul Wayne Hockridge

56. Vikas Khanna

57. Paul Thomas Carr

58. Weng Yen Ching

59. Rodger Stewart Muir

60. Mark Cover

61. Robert Hillard

62. Michael John Lynn

63. Gaile Anthea Pearce

64. Isabelle Emilienne Lefrevre

65. Phillip Andrew Roberts

66. Stuart Alexander Rodger

67. Paul Leonard Wensor

68. Claudio Cimetta

69. Simon Tarte

70. Stephen Charles Gustafson

71. Geoffrey William Cowen

72. Geoffrey Gill

73. Steven John Simionato

74. Jason John Handel

75. Declan O'Callaghan

76. Michael Andrew Kissane

77. Kurt Proctor-Parker

78. Richard Davies Wanstall

79. Johan Simon Duivenvoorde

80. Benjamin John Shields

81. John Meacock

82. Ian Michael Turner

83. David Harradine

84. Muhunthan Kanagaratnam

85. Marc Philipp

86. Kamlee Anne Coorey

87. Hugh William Mosley

88. Paul Masters

89. David Shane Egan

90. Alison Margaret Brown

91. Stavroula Papadatos

92. Damien Tampling

93. Alexandra Jane Spark

94. Monica Ellen Campigli

95. Craig Peter Mitchell

96. Robert John McConnel

97. Alyson Rodi

98. Andrew Charles Price

99. Mark Hadassin

100. Anthony James Robinson

101. Garry Ian Millhouse

102. Ashley Graham Miller

103. Craig Stephen Smith

104. Margaret Lynne Pezzullo

105. Adam Barringer

106. Campbell James Jackson

107. Jason Charles Crawford

108. Kevin Michael Russo

109. Adele Christine Watson

110. Neil Anthony Brown

111. Gordon James Thring

112. Brett William Greig

113. Steven James Shirtliff

114. Robert Donald Collie

115. Spyros Kotsopoulos

116. Austin John Scott

117. Jenny Lyn Wilson

118. Peter John Bars

119. Elizma Bolt

120. Stephen Thomas Harvey

121. Fiona Lea Cahill

122. Jonathan Mark Schneider

123. Michael McNulty

124. Katherine Louise Howard

125. Juliet Elizabeth Bourke

126. Peter Gerard Forrester

127. Carl Jonathan Gerrard

128. Jody Michelle Burton

129. Rachel Frances Smith

130. Peter Martin Rupp

131. Helen Elena Fisher

132. Geoffrey Ronald Sincock

133. Nicholas Harwood

134. John Clement Malcom Randall

135. Todd Kayle Fielding

136. Geoffrey Bruce Stalley

137. Russell Bradley Norman Mason

138. Paul Leon Rubinstein

139. Andrew Ignatius Muir

140. Lisa Barry

141. Alfred Alan Nehama

142. Michael Paul Stibbard

143. Paul Childers

144. Angelo Karelis

145. Sarah Caroline Woodhouse

146. Richard John Hughes

147. Christopher Robert Masterman

148. Robin Polson

149. Megan Joy Field

150. Christopher Guy Nunns

151. Clare Helen Harding

152. Simon Cook

153. Stephen Carl Tarling

154. Leslie Coleman

155. Samuel James Vorvverg

156. Helen Hamilton-James

157. Coert Grobbelaar Du Plessis

158. Stephen George Stavrou

159. Steven Christopher Cunico

160. Mark Ekkel

161. Soulla McFall

162. Leigh Matthew Pieroni

163. Mark Colin Woodley

164. Stephen James Healey

165. Sandeep Chadha

166. Margaret Clare Bower

167. Anna Victoria Crawford

168. Robert Howard Dowling

169. Greg Janes

170. Colin Mckay Methven Scott

171. Richard Mark Simes

172. Dharmalingum Shunmugam Chithiray

173. Nicole Marie Vignaroli

174. John Giannakopoulos

175. Vaughan Neil Strawbridge

176. Judith Anne Donovan

177. Nicole Wakefield

178. Paula Teresa Capaldo

179. Michael Rath

180. Karen Rachel Stein

181. Brett Todd

182. Julian Craig Dolby

183. Robert Kim Arvai

184. Catherine Jane Hill

185. Richard Michael Thomas

186. Timothy John Gullifer

187. Peter James Pagonis

188. Michael Damon Cantwell

189. Joseph Frank Galea

190. Nicolette Louise Ivory

191. John Leotta

192. Darren James Hall

193. Stephen Huppert

194. Elma Von Vielligh-Louw

195. Michael Anthony Kennedy

196. Stuart James Alexander

197. Yi Mei Tsang

198. Christopher Wilson

199. Joshua David Tanchel

200. Tendal Sitenisiyo Mkwananzi

201. Richard Nigel Raphael

202. Jacqueline Ann Clarke

203. Rodney James Whitehead

204. Heather Park

205. John Lethbridge Greig

206. Adrian Charles O'Dea

207. Grant Cameron

208. Gregory Couttas

209. Steven Allan Hernyl

210. Gary John McLean

211. Jonathan Ma

212. Suzie Gough

213. Mark Douglas Ian Allsop

214. Jennifer Anne Exner

215. Ryan Quintin Hansen

216. Jamie Brian Hamilton

217. David Mark Hill

218. Jason Bruce Dunnachie

219. John Christopher McCourt

220. Gerhard Vorster

221. David John Boyd

222. Andrew Kingsley Johnstone-Burt

223. Dwayne Barrie Sleep

224. David Black

225. Gerard Michael Meade

226. Francis Patrick O'Toole

227. Tony Garrett

228. Danny Rezek

229. Mark Goldsmith

230. David Watkins

231. Patrick Broughan

232. Jeremy Drumm

233. Michael John Whyte

234. Mark Andrew Stretton

235. Weng Wee Ching

236. Robert Malcolm Spittle

237. Marisa Orbea

238. Frances Rita Borg

239. David Barrie Brown

240. David Sherwin McCloskey

241. Philip Walter Teale

242. Jan Hein Alexander Alperts

243. Katherine Anne Milesi

244. Kevin Kiazim Nevrous

245. Andrew Paul Annand

246. Carl Richard Harris

247. Philip Malcolm Moore Hardy

248. Derek Rodney Bryan

249. Gregory Gyorgy Janky

250. David John Redhill

251. Guillaume Johannes Swiegers

252. Peter Ronald Ryan

253. Brennan Ursula

254. Fiona Dawn Craig

255. Sarah Lane

256. George Stathos

257. Richard Adam Young

258. Marc Hofmann

259. Brad Joel Pollock

260. Mark Justin Kuzma

261. Warren Green

262. Stuart Osborne

263. Garry Lance Bourke

264. Andrew Vaughn Griffiths

265. Adam Powick

266. Margaret Dreyer

267. Timothy Bryce Norman

268. David McCarthy

269. Neil Pereira

270. Michael Robert Gastevich

271. Elizabeth Ann Brown

272. Lakshman Kumar Gunaratnam

273. Monish Paul

274. Alexander Collinson

275. Bruce John Williamson

276. Luke Bramwell Houghton

277. Aldrin Anthony De Zilva

278. Neil McLeod

279. Gerard Lucien Belleville

280. Michael Kaplan

281. Mark David Irving

282. Alison Lorna White

283. Haiderali Hussein Hussein

284. Martyn Charles Barrett Strickland

285. Caroline Jane Bennet

286. Christopher Robert Campbell

287. Gary Peter Doran

288. Mark Steven Wright

289. Peter Matruglio

290. John Koutsogiannis

291. Selvvyn Peter D'Souza

292. Keith William Skinner

293. Clive Charles Alan Mottershead

294. Karen Lynette Green

295. Jason Mark Thorne

296. Andrew Stuart Christopher Reid

297. Mark Richard Weaver

298. Matthew Robert Broadfoot

299. Michael Mauro De Palo

300. Peter Arthur Caldwell

301. Tracey Con Dous

302. Shelley Rae Nolan

303. Ian Grant Levi

304. Grant Arthur Hyde

305. Timothy Francis Nugent

306. Andrea Csontos

307. Geoffrey Colin Lamont

308. Christopher John Nicoloff

309. Craig Maxwell Bryan

310. Peter Madden

311. Jeremy Jurriaan Walton Cooper

312. Neil Robert Cussen

313. Robert Southern

314. Andy Peck

315. Colin Radford

316. Hendri Mentz

317. Robert Nguyen

318. Shinji Tsutsui

319. Philippa Simone Dexter

320. Timothy Fleming

321. Cynthia Hook

322. James Campbell Down

323. Kate McDonald

324. Stephen John Coakley

325. Keith Francis Jones

326. Serg Duchini

327. Stephen James Reid

328. Max Andreas Persson

329. Graham Mott

330. Anthony John Viel

331. David Joseph Murray

332. Richard Antony Jamieson

333. Bradley James Burt

334. Anthony Goroslav Buntic

335. Paul Gerard Fogarty

336. Jamie Christopher Gatt

337. Geoffrey Ian Roberts

338. Melissa Jayne Cabban

339. Matthew Fraser

340. Thomas Fredrick Viljoen

341. Julie Christine Crisp

342. Paul Bernard Riley

343. Salvatore Algeri

344. Ross Ian Jerrard

345. Avi Sharabi

346. Ian Geoffrey Sanders

347. Dale McCaauley

348. Iain Maxwell Gerrard

349. David Hobbis

350. Scott Conrad Bailey

351. Stephen Gregory Brown

352. Ian Ross Harper

353. Shashi Vicknekumeran Sivayoganathan

354. Jowita Gartlan

355. Mark Ingham

356. Viswa Phani Kumar Padisetti

357. Ian Charles Thatcher

358. Ian Andrew Trevorah

359. Dennis Leslie Moth

360. Jacques Louis Van Rhyn

361. Paul Swinhoe

362. Greg Fitzgerald

363. Steven Alexander Hallam

364. Stuart Lynn Black

365. Stephen Woosnam

366. Andrew John Culley

367. Stephen James Ferris

368. Timothy Arbuckie

369. David Amis Rumbens

370. Matthew James Williams

371. Jason Frederick Bender

372. Patrick Lane

373. Martin Paul Langridge

374. Caithlin Mary McCabe

375. Simon Alexander Wallace-Smith

376. Adrian Clyde Batty

377. Tapan Parekh

378. Masaaki Mark Nakamura

379. Roger Geoffrey McBain

380. Graeme John Hodge

381. Rick Shaw

382. Marina Ruth Stuart

383. Tom Christopher Imbesi

384. Eric Angelucci

385. Harvey Christophers

386. John Kingsley Rawson

387. Mark Richard Sercombe

388. Phillip Kravaritis

389. Gary Christie

390. Wayne Edward Walker

391. John Womack

392. Peter Grainger

393. Samantha Louise Lewis

394. Ashley Jonathon King

395. Peter Francis Williams

396. Alexander Aitken

397. Timothy Gordon Biggs

398. Ian McCall

399. Johannes Laubscher Venter

400. Roberto Dimonte

401. Alan Gordon Weeks

402. Ian John Breedon

403. Peter Michael Roberson

404. Michael David Nelson

405. Lindsay James Stanton

406. Craig Paul Johnson

407. Timothy Riordan

408. Anthony James Cipriano

409. Phil Hopwood

410. Dai-Trang Le Duncanson

411. David Jonathan Graham

412. Andre Spnovic

413. William Harold Wardrop

414. David Erskine Thompson

415. David Kyffin Willington

416. Stephen Mark Holdstock

417. Dean John Grandy

418. Harold Scott Payne

419. Jean-Marie Abi-Ghanem

420. Fraser Ross

421. Roberto Krizman

422. Caroline McGlashan

423. William Robert McAinsh

424. Osamu Uchimura

425. Glendon Moss Sanford

426. Simon James Lester

427. Stephen James Jones

428. Kristen Jay Wydell

429. John Guthrie Hood

430. Paul Martin Radici

431. Frank Klasic

432. Mark John Pittorino

433. David Anthony Cooper

434. Matthew Sheerin

435. Tony Brain

436. Henry John Kidd

437. Matt Gerald Tengu Whitesky Kuperholz

438. Gordon Pattison

439. Branko Panich

440. Julian Christopher Cheng

441. David William Pring

442. Peter Andre Jovic

443. Craig Goldberg

444. Bruce Robert Dungey

445. Dean Robert Edward Kingsley

446. David Alan Watson

447. Bernard Spencer Gild

448. Graham John Newton

449. Dwight Murray Hooper

450. Michael Rosendorfer

451. Richard Roy Porter

452. John George Azarias

453. Donna Maree Carey

454. Christopher Paul Cass