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Principal Registrar &  
Chief Executive Officer

## EIGHTH CROSS CLAIM

### COMMERCIAL LIST CROSS CLAIM STATEMENT

#### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	List
Registry	Sydney
Case number	2018/76580

#### TITLE OF PROCEEDINGS

First plaintiff	<b>Giabal Pty Ltd (ACN 009 863 807)</b>
Second plaintiff	<b>Geoffrey Edward Underwood</b>
Third defendant	<b>Wayne Leonard Chapman</b>
Number of defendants	11

#### TITLE OF THIS EIGHTH CROSS CLAIM

Cross Claimant to the Eighth Cross Claim	<b>Catlin Australia Pty Limited (ACN 108 319 786) for and on behalf of S.J. Catlin &amp; Others, Syndicate 2003 at Lloyd's</b>
First Cross Defendant to Eighth Cross Claim	<b>Andrew Gray</b>
Second Cross Defendant to Eighth Cross Claim	<b>Matthew Wallace</b>
Number of Cross Defendants	<b>13</b>

#### FILING DETAILS

Filed for	<b>Catlin Australia Pty Limited (ACN 108 319 786) for and on behalf of S.J. Catlin &amp; Others, Syndicate 2003 at Lloyd's, the Eighth Cross Claimant</b>
Filed in relation to	Eighth Cross Claim
Legal representative	Matt Andrews Kennedys Level 22, 85 Castlereagh Street, Sydney, NSW, 2000
Legal representative reference	921843 MJA
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## A. NATURE OF DISPUTE

- 1 The Cross Claimant to the Eighth Cross Claim (**Catlin**) is the Twelfth Defendant in this Proceeding.
- 2 The Proceeding was commenced as a representative proceeding under Part 10 of the *Civil Procedure Act 2005* (NSW) by the Plaintiffs on their own behalves and on behalf of other persons (**Group Members**).
- 3 The Group Members claim to have suffered losses as a consequence of making investments in several managed investment schemes of which the former First Defendant, Gunns Plantations Limited (In Liquidation) ACN 091 232 209 (**GPL**), was the Responsible Entity.
- 4 The Plaintiffs allege breaches of common law, equitable and statutory duties by the Third Defendant, former Fourth Defendant, Mr Gay, and Fifth to Ninth Defendants (**GPL Directors**) and allege, *inter alia*, breaches of trust and common law, equitable and statutory duties against GPL, giving rise to the Plaintiffs' and the Group Members' alleged losses.
- 5 Leave to proceed against GPL was revoked on 4 December 2019 and it is no longer an active party to the Proceeding.
- 6 Catlin is the first excess layer insurer of GPL and the GPL Directors under a policy of insurance described as 'Financial and Professional Risks Excess Insurance' for the period 30 November 2011 to 30 November 2012 (**Catlin Policy**).
- 7 By their Further Amended Commercial List Statement filed 21 August 2020 (**Plaintiffs' CLS**), the Plaintiffs allege that if GPL or the GPL Directors have a liability to them and the Group Members, then the Plaintiffs and Group Members have remedies against Catlin as the claims against GPL and the GPL Directors are covered claims under the Catlin Policy.
- 8 As set out in their respective Commercial List Responses, the GPL Directors and Catlin deny liability to the Plaintiffs. In its Commercial List Response filed prior to leave being revoked for the claim against it, GPL denied liability to the Plaintiffs.
- 9 Catlin is also sued by the Eighth Defendant (**Gray**), one of the GPL Directors, by way of a Commercial List Cross Claim Statement filed 2 July 2021 (**Gray's CLCCS**) and associated Fifth Cross Claim Cross Summons. Gray separately challenges Catlin's denials of indemnity and seeks, *inter alia*, an order that Catlin pay funds to him, including in relation to any liability he has to the Plaintiffs and Group Members. As set out in its Commercial List Response to that claim, Catlin denies liability to Gray.

- 10 However, if Catlin is found to be liable to the Plaintiffs and/or to Gray, which is denied, Catlin says that it is entitled to contribution from the Cross Defendants to the Eighth Cross Claim.

## **B. ISSUES LIKELY TO ARISE**

- 1 Whether Catlin is entitled to recover contribution from the Cross Defendants.
- 2 The quantum of contribution which Catlin is entitled to recover from the Cross Defendants.

## **C. CROSS CLAIMANT'S CONTENTIONS**

For the purposes of this Eighth Cross Claim only and without admissions, Catlin contends as follows:

### **C1 GPL**

- 1 GPL as Responsible Entity operated the following managed investment schemes pursuant to Chapter 5C of the *Corporations Act 2001* (Cth) (**Act**):

- 1.1 Gunns Plantation Limited Woodlot Project 2002;
- 1.2 Gunns Plantation Limited Woodlot Project 2003;
- 1.3 Gunns Plantation Limited Woodlot Project 2005;
- 1.4 Gunns Plantation Limited Woodlot Project 2006;
- 1.5 Gunns Plantation Limited Woodlot Project 2008;
- 1.6 Gunns Plantation Limited Woodlot Project 2009;

(together, **Gunns Woodlot Schemes**).

### **C2 The GPL Directors**

- 2 The Third Defendant, Wayne Leonard Chapman, was an officer of GPL from 21 February 2000 to 11 August 2010.
- 3 The former Fourth Defendant, John Eugene Gay (deceased), was an officer of GPL from 21 February 2000 to 3 June 2010.
- 4 The Fifth Defendant, Rodney John Loone, was an officer of GPL from 21 February 2000 to 27 November 2012.
- 5 The Sixth Defendant, Leslie Ralph Baker, was an officer of GPL from 21 February 2000 to 13 August 2010.
- 6 The Seventh Defendant, Robert Henry Graham, was an officer of GPL from 16 April 2008 to 27 November 2012.

7 The Eighth Defendant, Gray, was an officer of GPL from 24 February 2009 to 3 February 2011.

8 The Ninth Defendant, Paul Desmond Teisseire, was an officer of GPL from 3 June 2010 to 27 November 2012.

**C3. The Cross Defendants**

9 The Cross Defendants were each partners of KPMG (A Firm) ABN 20 238 520 534 (**KPMG**), which was at all material times:

9.1 a partnership operating from offices at 3/100 Melville Street, Hobart, Tasmania, 33 George Street, Launceston, Tasmania and elsewhere;

9.2 carrying on business as auditors and accountants;

9.3 as particularised below, the auditor of the Original Compliance Plans and Replacement Compliance Plans (collectively, the **Compliance Plans**) referred to at paragraphs 54 and 55 of the Plaintiffs' Contentions in the Plaintiffs' CLS, and responsible for the conduct of the compliance plan audits for the Compliance Plans;

**Particulars**

Catlin repeats the particulars to paragraphs 12, 54 and 55 of the Plaintiffs' Contentions contained in the Plaintiffs' CLS, a copy of which is already in the possession of the Cross Defendants.

**C4. Primary actions**

10 Without admission and for the purposes of this Eighth Cross Claim only, Catlin repeats:

10.1 paragraphs 1 to 13 and 14 to 104 (inclusive) of the contentions in the Plaintiffs' CLS;

10.2 paragraphs 1 to 8 and 11 to 31 (inclusive) of the contentions in the Cross-Claim Statement filed by certain of the GPL Directors on 5 September 2018.

**C5. Contribution**

11 Without admission and for the purposes of this Eighth Cross Claim only, on the basis of the facts and matters alleged by the Plaintiffs and certain of the GPL Directors, and repeated as set out in paragraph 10 above:

11.1 each of the Cross Defendants is liable in respect of the same damage as GPL and/or the GPL Directors and/or Catlin within the meaning of s 3(1)(c) of the *Wrongs Act 1954 (TAS)* (**TAS Act**), or alternatively s 5(1)(c) of the *Law*

*Reform (Miscellaneous Provisions) Act 1946 (NSW) (NSW Act)*, or alternatively any other similar or equivalent provision of any other applicable legislation;

11.2 to the extent the Plaintiffs' and Gray's claims against GPL, the GPL Directors and Catlin (set out in the contentions in the Plaintiffs' CLS and Gray's CLCCS) are not apportionable, then GPL, the GPL Directors and Catlin are entitled to contribution from the Cross Defendants in relation to those claims to the extent as may be found by the Court to be just and equitable pursuant to s 3(1)(c) and (2) of the Tas Act, or alternatively s 5(1)(c) and (2) of the NSW Act, or alternatively any other similar or equivalent provision of any other applicable legislation;

11.3 further or alternatively:

(a) GPL and the GPL Directors are entitled to contribution in equity from the Cross Defendants in relation to the Plaintiffs' claims against each of GPL, the GPL Directors and the Cross Defendants (set out in the contentions in the Plaintiffs' CLS) on the basis that the Cross Defendants are liable in equity to make good the Plaintiffs' losses;

(b) Catlin is entitled to contribution in equity from the Cross Defendants in relation to the Plaintiffs' and Gray's claims against each of Catlin and the Cross Defendants (set out in the contentions in the Plaintiffs' CLS and Gray's CLCCS) on the basis that the Cross Defendants are liable in equity to make good the Plaintiffs' and Gray's losses.

12 If Catlin is liable to the Plaintiffs and/or Group Members and/or Gray for the liability (if any) of GPL or the GPL Directors to the Plaintiffs and/or Group Members for any of the reasons set out in the contentions in the Plaintiffs' CLS (which is denied), then Catlin is entitled to be subrogated to the rights of GPL and the GPL Directors in paragraph 11 to contribution from the Cross Defendants.

**C6. Relief**

13 Accordingly, Catlin claims against each of the Cross Defendants the relief set out in the Eighth Cross Summons filed with this Commercial List Eighth Cross Claim Statement.

**D. QUESTIONS APPROPRIATE FOR REFERRAL TO REFEREE**

1. N/A.

**E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION;  
WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN  
APPROPRIATE TIME**

1. Catlin has not participated in a mediation with the Cross Defendants.
2. Catlin is prepared to attend a 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 defence in these proceedings has reasonable prospects of success.

Signature

Capacity

Date



Matt Andrews solicitor for the Eighth Cross Claimant

25 February 2022