

**COMMERCIAL LIST ~~SIXTH CROSS-CLAIM~~ RESPONSE TO
AMENDED COMMERCIAL LIST SIXTH CROSS-CLAIM STATEMENT**

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2019/00232749

TITLE OF PROCEEDINGS

First plaintiff	Terry Walter Williamson
Second plaintiff	Helen Therese Williamson
Defendant	Sydney Olympic Park Authority ABN 68 010 941 405

TITLE OF THIS AMENDED CROSS-CLAIM

Cross-claimant	Evolution Precast Systems Pty Ltd ABN 17 608 136 518
Cross-defendant	WSP Structures Pty Limited ABN 78 006 769 339

FILING DETAILS

Filed for	WSP Structures Pty Limited , Cross-Defendant
Filed in relation to	Sixth Cross-Claim
Legal representative	Tricia Hobson, Norton Rose Fulbright DLA Piper Australia
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A. NATURE OF DISPUTE

- 1 The Cross-Defendant, WSP Structures Pty Limited (**WSP**), generally agrees with the description of the Nature of Dispute set out in the [Amended Commercial List Fourth Cross-Claim Statement](#) filed by Icon Co (NSW) Pty Ltd (**Icon**) referred to by the Cross-Claimant, Evolution Precast Systems Pty Ltd (**Evolution**) in Part A of its [Amended Commercial List Sixth Cross-Claim Statement](#) filed in these proceedings on ~~6 May 2020~~ [13 August 2021](#) (**the Cross-Claim**).
- 42 [WSP otherwise refers to the matters set out in Part A of its Commercial List Response to the Plaintiffs' Amended Commercial List Response filed 18 June 2021 \(WSP's List Response to the Plaintiffs' Claim\), Part A of its Commercial List Response to SOPA's Amended Commercial List Cross-Claim Statement filed 23 July 2021 \(WSP's List Response to SOPA's Cross-Claim\) and Part A of its Commercial List Response to Icon's Amended Commercial List Second Cross-Claim Statement filed 19 August 2021 \(WSP's List Response to Icon's Cross-Claim\).](#)
- 23 WSP denies that it is liable to Evolution, [or any other party](#).

B. ISSUES LIKELY TO ARISE

- 1 The issues set out in Part B of the Cross-Claim.
- 1A [The issues set out in Part B of WSP's List Response to the Plaintiffs' Claim.](#)
- 1B [The issues set out in Part B of WSP's List Response to SOPA's Cross-Claim.](#)
- 2 The issues set out in Part B of WSP's List Response to [Icon's Cross-Claim](#) ~~the Second Cross-Claim Statement filed 31 January 2020 (WSP's List Response to Icon's Cross-Claim)~~.
- 3 The issues set out in Part B of WSP's [Amended Commercial List Third Cross-Claim Statement](#) filed ~~20 December 2019~~ [6 September 2021](#) (**Third Cross-Claim**).

C. [CROSS-DEFENDANT'S RESPONSE TO CROSS-CLAIMANT'S CONTENTIONS](#)

In response to Evolution's allegations contained in Part C of the Cross-Claim (adopting the defined terms contained in the Cross-Claim, unless otherwise defined):

Parties

- 1 WSP admits the allegations in paragraph 1.
- 2 WSP admits the allegations in paragraph 2.
- 3 WSP admits the allegations in paragraph 3.

Evolution's Cross-Claim against WSP

4 WSP denies the allegations in paragraph 4, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

4A As to the allegations in paragraph 4A, WSP:

(a) repeats paragraphs 5 to 10, 23 to 25, 65 and 66 of WSP's List Response to Icon's Cross-Claim;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

Contribution between tortfeasors

4B. As to the allegations in paragraph 4B, WSP:

(a) admits subparagraphs 11(a) and 11(d) of the Second Cross-Claim;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

5 As to the allegations in paragraph 5, WSP:

(a) assumes that the reference to "WSP Consultancy Agreement" is a reference to "Consultancy Agreement" as defined in the Fourth Cross-Claim ~~Statement~~ and relies on the express words of the Consultancy Agreement;

(b) admits that the WSP Consultancy Agreement was a contract for professional services;

~~(b)~~(c) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3 ~~admits the paragraph.~~

6 As to the allegations in paragraph 6, WSP:

(a) assumes that the reference to "WSP Consultancy Agreement" is a reference to "Consultancy Agreement" as defined in the Fourth Cross-Claim ~~Statement~~ and relies on the express words of the Consultancy Agreement;

(b) admits that WSP owed Icon a duty to carry out its obligations under the WSP Consultancy Agreement with due care and skill;

(c) denies that Icon was vulnerable as alleged;

~~(b)~~(d) otherwise admits denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3 ~~paragraph.~~

7 As to the allegations in paragraph 7, WSP:

(a) repeats paragraph 6 above;

~~(a)~~(b) _____ assumes that the reference to “WSP Consultancy Agreement” is a reference to “Consultancy Agreement” as defined in the Fourth Cross-Claim ~~Statement~~ and relies on the express words of the Consultancy Agreement;

~~(b)~~(c) _____ otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

8 As to the allegations in paragraph 8, WSP:

(a) says that Evolution breached its duty of care to Icon and is liable to Icon in respect of the loss or damage claimed by Icon in the Fourth Cross-Claim, by reason of the matters set out in paragraphs 60 to 67 of the Third Cross-Claim;

(b) repeats paragraphs 112, 113 and 114 of WSP’s List Response to Icon’s Cross-Claim;

~~(b)~~(c) _____ denies that it breached any duty to Icon or was negligent;

~~(e)~~(d) _____ denies that it is liable to Icon;

~~(d)~~(e) _____ denies that it is a ~~joint~~ tortfeasor;

~~(e)~~(f) _____ denies that Evolution is entitled to indemnity or contribution from WSP in accordance with section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (LRA);

~~(f)~~(g) _____ repeats paragraphs 166 to ~~222~~181 of WSP’s List Response to Icon’s Cross-Claim;

~~(g)~~(h) _____ says that in the event (which is denied) that Evolution is entitled to contribution in respect of the same damage, the amount of contribution is to be determined having regard to the matters set out in paragraphs 60 to ~~83~~68 of the Third Cross-Claim;

~~(h)~~(i) _____ otherwise denies the allegations therein.

Misleading or deceptive conduct

9 As to the allegations in paragraph 9, WSP:

(a) as to paragraph 9(a), WSP:

(i) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 26 July 2016 at 5:46 pm (mail no. NSWIcon-TRANSMIT-000200);

(ii) relies on the Aconex from Icon to Bates Smart and WSP dated 29 August 2016 (mail no. NSWIcon-HCADV-002191);

- (iii) relies on the Aconex from Icon to Evolution, Bates Smart and WSP (cc others) dated 30 August 2016 (mail no. NSWIcon-HCADV-002204);
- (iv) relies on the Aconex from Evolution to Bates Smart, Icon and WSP dated 8 September 2016 at 2:38 pm (mail no. EVOPS-TRANSMIT-000002);
- (v) relies on the Aconex from Icon to Bates Smart (cc others) dated 8 September 2016 at 4:40 pm (mail no. NSWIcon-WTRAN-000088);
- (vi) relies on the Aconex from Icon to Bates Smart, Evolution and WSP (cc others) dated 8 September 2016 at 6:18 pm (mail no. NSWIcon-HCADV-002425);
- (vii) relies on the Aconex from Icon to WSP (cc others) dated 12 September 2016 at 12:50 pm (mail no. NSWIcon-WTRAN-000089);
- (viii) relies on the Aconex from Icon to AMA Windows (cc others) dated 12 September 2016 at 12:51 pm (mail no. NSWIcon-WTRAN-000090);
- (ix) relies on the Aconex from Icon to Icon (cc others) dated 12 September 2016 at 12:54 pm (mail no. NSWIcon-WTRAN-000092);
- (x) relies on the Aconex from Evolution to Bates Smart, Icon and WSP (cc others) dated 12 September 2016 at 1:11 pm (mail no. EVOPS-TRANSMIT-000003);
- (xi) relies on the Aconex from Icon to Bates Smart (cc others) dated 12 September 2016 (mail no. NSWIcon-WTRAN-000098);
- (xii) relies on the Aconex from Bates Smart to Icon and WSP (cc others) dated 12 September 2016 (mail no. B Smart-CADV-000707);
- (xiii) relies on the Aconex from Icon to Evolution and Icon (cc others) dated 15 September 2016 at 12:39 pm (mail no. NSWIcon-HCADV-002518);
- (xiv) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 19 September 2016 at 10:34 am (mail no. NSWIcon-TRANSMIT-000389);
- (xv) relies on the Aconex from WSP to Evolution and Icon (cc others) dated 19 September 2016 at 3:29 pm (mail no. WSP(SA)-CADV-000562) and says that it did not approve any design change by that communication;
- (xvi) relies on the Aconex from Icon to Evolution (cc others) dated 19 September 2016 at 4:55 pm (mail no. NSWIcon-RFI-000229) and says

that it did not approve any design change by the Aconex from WSP to Evolution and Icon (cc others) dated 19 September 2016 at 3:29 pm (mail no. WSP(SA)-CADV-000562);

- (xvii) relies on the Aconex from Evolution to Icon (cc others) dated 21~~9~~ September 2016 (mail no. EVOPS-SUBADV-000028);
- (xviii) relies on the Aconex from WSP to Icon and Evolution (cc others) dated 21 September 2016 (mail no. WSP(SA)-CADV-000573);
- (xix) relies on the Aconex from Bates Smart to Evolution and Icon (cc others) dated 21 September 2016 at 8:19 pm (mail no. B Smart-CADV-000750);
- (xx) relies on the Aconex from Icon to AMA Windows, Bates Smart and Evolution (cc others) dated 22 September 2016 at 11:55 am (mail no. NSWIcon-HCADV-002668);
- (xxi) relies on the Aconex from WSP to Icon and Evolution (cc others) dated 22 September 2016 (mail no. WSP(SA)-CADV-000581) and says that it did not approve any design change by that communication;
- (xxii) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3;

(a1) as to the allegations in paragraph 9(a1), WSP:

(i) repeats paragraphs 39 and 39A of WSP's List Response to Icon's Cross-Claim:

(ii) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3:

(b) paragraph 9(b) is admitted;

(c) as to paragraph 9(c), WSP:

(i) relies on the Aconex from WSP to Evolution and Icon (cc others) dated 19 September 2016 at 3.29 pm (mail no. WSP(SA)-CADV-000562);

(ii) otherwise admits the paragraph;

(d) as to paragraph 9(d), WSP:

(i) repeats paragraphs 9(a) to 9(c) above;

(ii) otherwise denies the paragraph.

10 As to the allegations in paragraph 10, WSP:

(a) repeats paragraph 9(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

11 As to the allegations in paragraph 11, WSP:

(a) repeats paragraph 9(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

12 As to the allegations in paragraph 12, WSP:

(a) repeats paragraph 9(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

12A As to the allegations in paragraph 12A, WSP:

(a) repeats paragraph 123 of WSP's List Response to Icon's Cross-Claim;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

13 As to the allegations in paragraph 13, WSP:

(a) as to paragraph 13(a), repeats paragraph 9(a) above;

(b) paragraph 13(b) is admitted;

(c) as to paragraph 13(c), WSP:

(i) relies on the Aconex from WSP to Icon and Evolution (cc others) dated 22 September 2016 (mail no. WSP(SA)-CADV-000581);

(ii) otherwise admits the paragraph;

(d) as to paragraph 13(d), WSP:

(i) repeats paragraphs 13(a) to 13(c) above;

(ii) otherwise denies the paragraph.

14 As to the allegations in paragraph 14, WSP:

(a) repeats paragraph 13(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

15 As to the allegations in paragraph 15, WSP:

(a) repeats paragraph 13(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

16 As to the allegations in paragraph 16, WSP:

(a) repeats paragraph 13(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

17 As to the allegations in paragraph 17, WSP:

(a) as to paragraph 17(a), WSP:

- (i) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 26 July 2016 at 5:46 pm (mail no. NSWIcon-TRANSMIT-000200);
- (ii) relies on the Aconex from Icon to A&K Plumbing P/L, Evolution and others dated 19 September 2016 at 10:34 am (mail no. NSWIcon-TRANSMIT-000389);
- (iii) relies on the Aconex from Evolution to Icon (cc others) dated 22 September 2016 (mail no. EVOPS-TRANSMIT-000004);
- (iv) relies on the Aconex from Evolution to Icon (cc others) dated 22 September 2016 at 9:32 pm (mail no. EVOPS-TRANSMIT-000005);
- (v) relies on the Aconex from Icon to Evolution (cc others) dated 23 September 2016 at 12:37 pm (mail no. NSWIcon-HCADV-002721);
- (vi) relies on the Aconex from Icon to Air Conditioning Engineering Services Pty Ltd and others dated 13 October 2016 (mail no. NSWIcon-TRANSMIT-000516);
- (vii) relies on the Aconex from Evolution to Icon (cc others) dated 31 October 2016 (mail no. EVOPS-TRANSMIT-000014);
- (viii) relies on the Aconex from Icon to WSP and others dated 31 October 2016 (mail no. NSWIcon-TRANSMIT-000579);
- (ix) relies on the Aconex from Bates Smart to Australian Prestressing Services Pty Ltd and others dated 1 November 2016 (mail no. B Smart-CADV-000912);
- (x) relies on the Aconex from WSP to Icon (cc others) dated 3 November 2016 (mail no. WSP(SA)-CADV-000684) and says that it did not approve any design change by that communication;

(xi) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3;

(b) paragraph 17(b) is admitted;

(c) as to paragraph 17(c), WSP:

(i) relies on the Aconex from WSP to Icon (cc others) dated 3 November 2016 (mail no. WSP(SA)-CADV-000684);

(ii) relies on the Aconex from Icon to Evolution dated 3 November 2016 at 5.30 pm (mail no. NSWIcon-RFI-000411);

(iii) otherwise admits the paragraph;

(d) as to paragraph 17(d), WSP:

(i) repeats paragraphs 17(a) to 17(c) above;

(ii) otherwise denies the paragraph.

18 As to the allegations in paragraph 18, WSP:

(a) repeats paragraph 17(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

19 As to the allegations in paragraph 19, WSP:

(a) repeats paragraph 17(d) above;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

19A As to the allegations in paragraph 19A, WSP:

(a) repeats paragraphs 130 to 132 inclusive of WSP's List Response to Icon's Cross-Claim;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

19B As to the allegations in paragraph 19B, WSP:

(a) repeats paragraphs 9(d), 13(d) and 17(d) above;

(b) otherwise denies the allegations therein.

19C WSP denies the allegations in paragraph 19C.

19D As to the allegations in paragraph 19D, WSP:

(a) repeats paragraph 19B above;

(b) otherwise denies the allegations therein.

19E WSP denies the allegations in paragraph 19E.

19F WSP denies the allegations in paragraph 19F.

19G. WSP denies the allegations in paragraph 19G.

20 As to the allegations in paragraph 20, WSP:

(a) repeats paragraphs 9(d), 13(d) and 17(d) above;

(b) otherwise denies the allegations therein, ~~having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.~~

20A WSP denies the allegations in paragraph 20A.

21 WSP denies the allegations in paragraph 21.

21A As to the allegations in paragraph 21A, WSP:

(a) repeats paragraphs 135 to 139 of WSP's List Response to Icon's Cross-Claim;

(b) otherwise denies the allegations therein, having regard to the terms of paragraph 11(b) of Practice Note SC Eq 3.

22 WSP denies the allegations in paragraph 22.

23 WSP denies the allegations in paragraph 23.

24 WSP denies the allegations in paragraph 24 and says that in the event that WSP is liable (which is denied), Evolution suffered the loss and damage as a result partly of its own failure to take reasonable care, and the amount of loss that Evolution may recover under s 236(1) of the Australian Consumer Law is to be reduced to the extent to which the Court thinks just and equitable having regard to Evolution's share in the responsibility for the loss or damage, pursuant to s 137B of the *Competition and Consumer Act 2010* (Cth).

Particulars

WSP repeats paragraphs 60 to ~~83~~66 of the Third Cross-Claim.

25 WSP denies the allegations in paragraph 25.

Co-ordinate liability

26 WSP denies the allegations in paragraph 26.

27 WSP denies the allegations in paragraph 27.

28 As to the allegations in paragraph 28, WSP repeats paragraphs 20 and 21 of WSP's List Response to Icon's Cross-Claim.

29 WSP denies the allegations in paragraph 29.

Section 50 of the CLA

30 Further, and without admissions, in complete answer to Evolution's claim for damages, WSP says that:

(a) it was a professional carrying out a professional service within the meaning of s. 50 of the Civil Liability Act 2002 (NSW) (CLA);

(b) at the time WSP's services were provided it acted in a manner that was widely accepted in Australia by peer professional opinion as competent professional practice,

such that, pursuant to s. 50 of the CLA, it is not liable to Evolution.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

1 At this stage, none.

E. STATEMENT AS TO MEDIATION

1 The parties have not attempted mediation.

2 WSP is willing to proceed to mediation at an appropriate time.

SIGNATURE

Signature of legal representative

by her Partner

Capacity

Date of signature



Solicitor

~~29 May~~ 13 September 2021