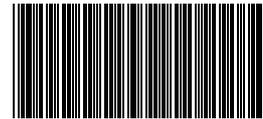




Filed: 25 November 2019 2:30 PM



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Amended Defence

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2019/00184678

TITLE OF PROCEEDINGS

First Plaintiff	Les & Zelda Investments Pty Ltd (ACN 148 907 573) as Trustee for Les & Zelda Family Trust
First Defendant	WHITEHAVEN COAL LIMITED ABN 68124425396

FILING DETAILS

Filed for	WHITEHAVEN COAL LIMITED, Defendant 1
Legal representative	GUY HAMILTON FOSTER
Legal representative reference	
Telephone	02 9230 4000
Your reference	LWJS:KJBS 120801677-003

ATTACHMENT DETAILS

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

Amended Defence (2019-11-25 - Amended Defence (Whitehaven Coal Limited).pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

AMENDED DEFENCE

(Amended pursuant to leave granted by Ward CJ in Eq on 30 October 2019)

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2019/184678

TITLE OF PROCEEDINGS

Plaintiff	Les & Zelda Investments Pty Ltd (ACN 148 907 573) as Trustee for Les & Zelda Family Trust
Defendant	Whitehaven Coal Limited (ABN 68 124 425 396)

FILING DETAILS

Filed for	Whitehaven Coal Limited (ABN 68 124 425 396), Defendant
Filed in relation to	Plaintiff's claim
Legal representative	Guy Foster (Partner) Allens, Solicitors
Legal representative reference	11274
Contact name and telephone	Guy Foster / Jonathan Light (02) 9230 4798 / (02) 9230 4423
Contact email:	Guy.Foster@allens.com.au / Jonathan.Light@allens.com.au

HEARING DETAILS

The proceedings are next listed on ~~30 October~~ 19 December 2019.

PLEADING AND PARTICULARS

In answer to the Amended Statement of Claim dated 22 July 2019 (**ASOC**), the defendant says as follows:

Preliminaries

- A The headings used by the plaintiff in the ASOC are also used in this Defence for convenience only. They do not form part of the defendant's response to the ASOC and the defendant does not admit any factual assertions contained in, or in any way implied by, any heading used in the ASOC and repeated in this Defence.
- B The terms defined by the plaintiff in the ASOC have the same meaning in this Defence, unless otherwise defined or stated. The defendant does not admit any factual assertions contained in, or in any way implied by, any defined term used in the ASOC and repeated in this Defence.

Introduction

1. In answer to the allegations in paragraph 1 of the Claim, the Defendant:
 - (a) admits that the Plaintiff has purported to commence this proceeding as a Representative Party pursuant to Part 13A of the *Civil Proceedings Act 2011* (Qld); and
 - (b) otherwise does not admit the allegations in the paragraph.
2. The Defendant does not plead to paragraph 2 of the Claim which does not allege any matter against it.
3. In answer to the allegations in paragraph 3 of the Claim, the Defendant:
 - (a) admits the allegations in subparagraph (a) of the Claim;
 - (b) as to the allegations in subparagraph (b) of the Claim:
 - (i) says that it entered into a Share Purchase Agreement dated 11 December 2011 (**Share Purchase Agreement**) with each of the entities and persons specified in the first column of Part 1 of Schedule 2 of the Share Purchase Agreement (**Boardwalk Shareholders**), being:
 - (A) Boardwalk Resources Investments Pty Ltd ATF Boardwalk Resources Trust;
 - (B) Neban Pty Ltd ATF P.J. Christensen Family Trust;

- (C) Ian Stuart Craig & Angela Craig ATF Craig Family Super Fund;
 - (D) Kahnay Group Pty Ltd ATF Kane Family Trust;
 - (E) Sally Reynolds;
 - (F) Heth Investments Pty Ltd ATF Troy Palmer Family Trust;
 - (G) Donna Dennis Investments Pty Ltd ATF Donna Dennis Family Trust;
 - (H) Les & Zelda Investments Pty Ltd ATF Les & Zelda Family Trust;
 - (I) Steven Van Barneveld;
 - (J) Ross Brims;
 - (K) Ben Lawrence;
 - (L) John Thompson;
 - (M) Matthew Thomas Keen ATF Keen Investment Trust;
 - (N) Chris Summers;
 - (O) Helen Blackney; and
 - (P) Peter Blackney;
- (ii) says that under the Share Purchase Agreement, the Boardwalk Shareholders agreed to sell to the Defendant all of the ordinary shares in Boardwalk Resources Limited (**Boardwalk**), other than New Lender Shares (as defined in the Share Purchase Agreement) on the terms set out in the Share Purchase Agreement; and
- ~~(iii) will rely on the terms of the Share Purchase Agreement for their full force and effect; and~~
- (iv) otherwise does not admit the allegations in the subparagraph.
- (c) as to the allegations in subparagraph (c) of the Claim:
- (i) says that it was a condition precedent to the sale of the ordinary shares in Boardwalk by the Boardwalk Shareholders that a proposed scheme of arrangement between Aston Resources Limited (**Aston**) and certain of its members under which the Defendant would acquire certain shares in

Aston (**Scheme**) had received court approval in the manner contemplated in the Share Purchase Agreement;

- (ii) says that the parties to the Share Purchase Agreement could agree to waive the conditions precedent under it; and
 - ~~(iii) will rely on the terms of the Share Purchase Agreement for their full force and effect; and~~
 - (iv) otherwise denies the allegations in the subparagraph;
- (d) as to the allegations in subparagraph (d) of the Claim:
- (i) says that:
 - (AA) says that in consideration for selling their shares in Boardwalk, the Boardwalk shareholders would receive consideration including certain shares in the Defendant known as "Milestone Shares", which were subject to certain 'Trigger Events' and 'Vesting' conditions;
 - (A) the Milestone Shares were fully paid up shares in Whitehaven from 2 May 2012 when the Boardwalk Transaction was implemented; and
 - (B) the 'Trigger Events' and 'Vesting' conditions are set out in clauses 3.2 and 3.3 of the Restriction Deed; and
 - ~~(ii) will rely on the terms of the Share Purchase Agreement and the Restriction Deed for their full force and effect; and~~
 - (iii) otherwise denies the allegations in the subparagraph;
- (e) as to the allegations in subparagraph (e) of the Claim:
- (i) says that:
 - (A) the Milestone Shares were fully paid up shares in Whitehaven from 2 May 2012 when the Boardwalk Transaction was implemented; ~~and~~
 - (B) the 'Trigger Events' and 'Vesting' conditions are set out in clauses 3.2 and 3.3 of the Restriction Deed;

- (C) clause 3.3(a) of the Restriction Deed provided that upon all applicable Trigger Events having occurred in respect of any of the Projects the Restrictions would cease to apply to half of each Boardwalk Shareholder's Milestone Shares;
- (D) clause 3.3(b) of the Restriction Deed provided that upon all Trigger Events having occurred in respect of an additional Project, the Restrictions would cease to apply to all remaining Milestone Shares held by the Boardwalk Shareholder; and
- (E) clause 3.3(c) of the Restriction Deed provided that there was no time limit within which Vesting under the Restriction Deed may occur;
- ~~(ii) will rely on the terms of the Share Purchase Agreement and the Restriction Deed for their full force and effect; and~~
- (ii) says further that clause 6.3(c) of the Restriction Deed contained a warranty from those Boardwalk Shareholders who were a trustee of a trust that they had carefully considered the purpose of the deed and considered that entering into the deed was for the benefit of the beneficiaries of the trust; and
- (iii) otherwise denies the allegations in the subparagraph;
- (f) denies the allegations in subparagraph (f) of the Claim;
- (g) as to the allegations in subparagraph (g) of the Claim:
- (i) says that:
- (A) in an ASX announcement dated 14 March 2012 it recommended to its shareholders that they approve the allotment and issuance of 119,905,183 ordinary shares for the acquisition of Boardwalk Resources Limited ACN 130 433 617 as referred to in the explanatory memorandum; and
- (B) in an ASX announcement dated 9 March 2012, Aston recommended to its shareholders that they vote in favour of the proposed acquisition by the Defendant of all of the issued shares in Aston by means of a members' scheme of arrangement; and
- (ii) otherwise denies the allegations in the subparagraph;

- (h) as to the allegations in subparagraph (h);
 - (i) says that on 16 April 2012:
 - (A) its shareholders voted at an extraordinary general meeting in favour of issuing Whitehaven shares to acquire Boardwalk Resources Limited; and
 - (B) Aston's shareholders voted at an extraordinary general meeting in favour of the merger between Whitehaven and Aston; and
 - (ii) otherwise denies the allegations in the subparagraph;
 - (i) as to the allegations in subparagraph (i):
 - (i) says that on 18 April 2012, the Federal Court of Australia approved the Scheme; and
 - (ii) otherwise denies the allegations in the subparagraph;
 - (j) as to the allegations in subparagraph (j):
 - (i) admits that the Scheme was implemented on 2 May 2012;
 - (ii) says that on 1 May 2012, it acquired Boardwalk Resources Limited;
 - (iii) says that on or about 2 May 2012, each of the Boardwalk Shareholders were issued with the Whitehaven Shares and the Milestone Shares set out opposite their names in Schedule 2 to the Share Purchase Agreement; and
 - (iv) otherwise denies the allegations in the subparagraph;
 - (k) as to the allegations in subparagraph (k):
 - (i) says that the 'Trigger Events' in clause 3.2 of the Restriction Deed have not occurred and therefore no 'Vesting' under clause 3.3 of the Restriction Deed has taken place; and
 - (ii) otherwise denies the allegations in the subparagraph.
4. The Defendant does not plead to the allegations in paragraph 4 of the Claim which does not allege any matter against it.
 5. The Defendant denies the allegations in paragraph 5 of the Claim.
 6. The Defendant does not admit the allegations in paragraph 6 of the Claim.

The Plaintiff

7. The Defendant admits the allegations in paragraph 7 of the Claim.
8. The Defendant admits the allegations in paragraph 8 of the Claim.
- 8A. In answer to the allegations in paragraph 8A of the Claim, the Defendant:
- (a) does not admit the allegations in subparagraph (a);
 - (b) does not admit the allegations in subparagraph (b);
 - (c) admits that Mr Tinkler was:
 - (i) a director of BRI between 9 September 2010 and 9 February 2016; and
 - (ii) a director of Aston between 23 January 2008 and 6 August 2010 and between 17 November 2011 and 3 May 2012, and Chairman of Aston immediately before the Merger; and
 - (d) otherwise denies the allegations in the paragraph.
9. [Deleted in Claim.]

The Defendant

10. The Defendant admits the allegations in paragraph 10 of the Claim.
11. As to the allegations in paragraph 11 of the Claim, the Defendant:
- (a) admits the allegations in subparagraph (a);
 - (b) admits the allegations in subparagraph (b); and
 - (c) as to the allegations in subparagraph (c):
 - (i) admits that the Defendant was a listed company on the ASX; and
 - (ii) otherwise denies the allegations in the subparagraph.

Funding initiatives for the development of Boardwalk Projects***Boardwalk IPO***

- 11A. As to the allegations in paragraph 11A of the Claim, the Defendant:
- (a) admits that Boardwalk was not listed on the ASX; and
 - (b) otherwise does not admit the allegations in the paragraph.

12. In answer to the allegations in paragraph 12 of the Claim, the Defendant:
- (a) admits that as at 30 June 2011, Boardwalk had certain interests in the Boardwalk Projects;
 - (b) says that Boardwalk also had a 19.9% interest in Coalworks Limited which:
 - (i) had a portfolio of coal assets which included the Oaklands North Project;
 - (ii) had a 92.5% interest in the Ferndale Project which would reduce upon completion of farm-in obligations by Boardwalk; and
 - (iii) had a 71% interest in the Vickery South Project which would reduce to a 51% interest upon completion of a bankable feasibility study to be funded by Coalworks' joint venture partner, ICRA Vickery Pty Ltd;
 - (c) says that:
 - (i) footnote 62 of the table from section 5.8.6 of the Scheme Booklet replicated in the Plaintiff's particulars states 'The potential quantity and quality of the Exploration Targets is conceptual in nature, there has been insufficient exploration to define Resources and it is uncertain if further exploration will result in determination of Resources'; and
 - (ii) the 'Port Infrastructure' of the 'Monto Project' in the table from section 5.8.6 of the Scheme Booklet says 'Gladstone (160km away)'; and
 - (d) otherwise does not admit the allegations in the paragraph.
- 12A. The Defendant does not admit the allegations in paragraph 12A of the Claim.

Proposed Acquisition and Merger

Boardwalk Acquisition

- 12B. The Defendant does not admit the allegations in paragraph 12B of the Claim.
- 12C. In answer to the allegations in paragraph 12C of the Claim, the Defendant:
- (a) says that on or about 2 November 2011, the Defendant signed a confidentiality deed with Boardwalk to allow for the exchange of confidential information for the purpose of considering, evaluating, negotiating and finalising documentation relating to and implementing a proposal whereby Aston or a subsidiary of Aston may acquire all or some of the business, assets or share capital of Boardwalk and the Defendant (**Confidentiality Deed**); and
 - (b) otherwise does not admit the allegations in the paragraph.

- 12D. In answer to the allegations in paragraph 12D of the Claim, the Defendant:
- (a) admits that:
 - (i) following execution of the Confidentiality Deed, the Defendant was granted access to a data room; and
 - (ii) the data room contained written information relating to Boardwalk; and
 - (b) otherwise does not admit the allegations contained in the paragraph.
- 12E. In answer to the allegations in paragraph 12E, the Defendant:
- (a) admits that on 25 November 2011, Boardwalk, Aston and the Defendant executed a non-binding term sheet headed "Project Trifecta" (**Term Sheet**); and
 - (b) otherwise does not admit the allegations in the paragraph.
- 12F. In answer to the allegations in paragraph 12F, the Defendant:
- (a) admits the allegations in paragraph 12F of the Claim; and
 - (b) ~~will rely on the terms of the Term Sheet for their full force and effect.~~ says further that the Term Sheet provided that:
 - (i) it was not binding on any party; and
 - (ii) Aston was to draft the scheme booklet in relation to the proposed Scheme with input from the Defendant as required.
- 12G. The Defendant denies the allegations in paragraph 12G of the Claim.
- 12H. The Defendant denies the allegations in paragraph 12H of the Claim.
- 12I. The Defendant denies the allegations in paragraph 12I of the Claim.
- 12J. The Defendant denies the allegations in paragraph 12J of the Claim.
- 12K. The Defendant denies the allegations in paragraph 12K of the Claim.
13. The Defendant admits the allegations in paragraph 13 of the Claim. ~~In answer to the allegations in paragraph 13 of the Claim, the Defendant:~~
- ~~(a) admits the allegations in paragraph 13; and~~
 - ~~(b) will rely on the terms of the Share Purchase Agreement for their full force and effect.~~
- 13A. The Defendant denies the allegations in paragraph 13A of the Claim.

13B. The Defendant denies the allegations in paragraph 13B of the Claim.

14. In answer to the allegations in paragraph 14 of the Claim, the Defendant:

(a) as to subparagraph (a):

(i) says that Whitehaven agreed to acquire all of the Sale Shares on the terms and conditions of the Share Purchase Agreement;

(ii) ~~will rely on the terms of the Share Purchase Agreement for their full force and effect; and~~ says that the Share Purchase Agreement contained terms to the following effect:

(A) the Milestone Shares that were to be issued to the Boardwalk Shareholders were to be subject to the Restriction Deed;

Particulars

Share Purchase Agreement, clause 2.4

(B) Boardwalk Resources Investments Pty Ltd as trustee for the Boardwalk Resources Trust (BRI) warranted to the Defendant that the Boardwalk Information (as defined in the Share Purchase Agreement) as included or incorporated by reference in the scheme booklet in respect of the Scheme would not as at the date of dispatch of the scheme booklet contain any statement which is misleading or deceptive in any material respect (by omission or otherwise); and

Particulars

Share Purchase Agreement, clause 4.11(b)(ii)

(C) The Share Purchase Agreement superseded all previous agreements about its subject matter and embodied the entire agreement between the parties; and

Particulars

Share Purchase Agreement, clause 15.6(a)

(iii) otherwise denies the allegations in the subparagraph;

- (aa) as to subparagraph (aa):
- (i) says that ~~Boardwalk~~ BR or its nominee was required to either subscribe, or procure one or more other Vendors or a Warrant Holder or New Lender to subscribe, for the 75,786,713 Subscription Shares in Boardwalk for the Subscription Amount of \$150,000,000 (including any amount loaned pursuant to clause 4.8 of the Share Purchase Agreement); and
 - ~~(ii) will rely on the terms of the Share Purchase Agreement for their full force and effect; and~~
 - (iii) otherwise denies the allegations in the subparagraph;
- (ab) as to subparagraph (ab):
- (i) says that clause 4.1(a) of the Share Purchase Agreement obliged the Vendors to procure that Boardwalk and its subsidiaries, in the period between 11 December 2011 and the Completion Date, conduct its business and operations in the ordinary course and substantially consistent with the Boardwalk Budget and substantially consistent (subject to any applicable laws, regulations and Regulatory Approvals) with the manner in which each such business and operation had been conducted in the period prior to 11 December 2011;
 - (ii) says that the Boardwalk Budget in Annexure B of the Share Purchase Agreement included a figure of \$23,634,676 under the 'Total FY12' column with respect to 'Total JV costs' which included:
 - (A) \$17,068,102 for the Ferndale Project;
 - (B) \$1,012,335 for the Sienna Project;
 - (C) \$4,749,571 for the Dingo Project; and
 - (D) \$804,668 for the Monto Project; and
 - ~~(iii) will rely on the terms of the Share Purchase Agreement for their full force and effect; and~~
 - (iv) otherwise denies the allegations in the subparagraph;
- (b) admits the allegations in subparagraph (b);
- (ba) admits the allegations in subparagraph (ba);

- (c) as to subparagraph (c):
 - (i) says that Schedule 2 of Part 1 of the Share Purchase Agreement sets out the consideration for the acquisition as 73,361,477 Whitehaven shares and 29,059,232 Milestone Shares; and
 - (ii) otherwise denies the allegations in the subparagraph;
- (ca) admits the allegations in subparagraph (ca); and
- (d) as to subparagraph (d):
 - (i) says that:
 - (A) the Milestone Shares were fully paid up shares in Whitehaven from 2 May 2012 when the Boardwalk Transaction was implemented; and
 - (B) the 'Trigger Events' and 'Vesting' conditions are set out in clauses 3.2 and 3.3 of the Restriction Deed; and
 - ~~(ii) will rely on the terms of the Share Purchase Agreement and the Restriction Deed for their full force and effect; and~~
 - (iii) otherwise denies the allegations in the subparagraph.

15. [Deleted in Claim.]

Aston Resources & Merger

15A. The Defendant admits the allegations in paragraph 15A of the Claim.

16. [Deleted in Claim.]

17. In answer to the allegations in paragraph 17 of the Claim, the Defendant:

- (a) admits that the ASX Announcement of 12 December 2011 contained statements to the effect of those set out in subparagraphs (a) to (e) of paragraph 17; and
- ~~(b) will rely on the terms of the ASX Announcement for their full force and effect; and~~
- (c) otherwise denies the allegations in the paragraph.

18. [Deleted in Claim.]

Statements as to the proposed Merger and Boardwalk Transaction**ASX Announcement**

- 18A. In answer to the allegations in paragraph 18A of the Claim, the Defendant:
- (a) admits that the ASX Announcement of 12 December 2011 contained the text quoted in subparagraphs (a) to (c) of paragraph 18A of the Claim;
 - (b) says that the ASX Announcement stated that further details on timing and implementation of the Boardwalk Transaction would be made available to shareholders upon release of the Aston Scheme Booklet; will rely on the terms of the ASX Announcement for their full force and effect; and
 - (c) otherwise denies the allegations in the paragraph.

Investor Presentations

19. In answer to the allegations in paragraph 19 of the Claim, the Defendant:
- (a) admits that an Investor Presentation entitled "Creating a leading independent Australian Coal Company" was released on the Defendant's ASX platform on 12 December 2011;
 - (b) admits that an Investor Presentation entitled "Creating a leading independent Australian Coal Company" was released on the Defendant's ASX platform on 12 March 2012; and
 - (c) otherwise does not admit the allegations in the paragraph.
20. In answer to the allegations in paragraph 20 of the Claim, the Defendant:
- (aa) admits that page 3 of the Investor Presentation dated 12 December 2011 contained the text quoted in subparagraph (aa);
 - (ab) admits that page 13 of the Investor Presentation dated 12 December 2011 contained the text quoted in subparagraph (ab);
 - (a) admits that page 10 of the Investor Presentation dated 12 March 2012 contained the text quoted in subparagraph (a);
 - (b) admits that page 20 of the Investor Presentation dated 12 March 2012 contained a statement to the effect of that set out in subparagraph (b);
 - (c) admits that page 20 of the Investor Presentation dated 12 March 2012 contained a statement to the effect of that set out in subparagraph (c);

- (d) admits that page 20 of the Investor Presentation dated 12 March 2012 contained a statement to the effect of that set out in subparagraph (d);
- (e) admits that page 20 of the Investor Presentation dated 12 March 2012 contained a statement to the effect of that set out in subparagraph (e);
- (f) as to subparagraph (f):

- (i) says that page 21 of the Investor Presentation dated 12 March 2012, in relation to the Dingo Project, states:

Three stage drilling program focussed on Pearl Creek with the objective of defining a JORC Resource by May 2012

- Stage 1 completed – 640 boreholes

- Stage 2 substantially completed – 42 open holes

- Stage 3 completion in March 2012 – 29 cored holes;

- (ii) says that page 21 of the Investor Presentation dated 12 March 2012, in relation to the Dingo Project, also contains the following footnote:

The potential quantity and quality of the Exploration Target is conceptual in nature, there has been insufficient exploration to define Resources and it is uncertain if further exploration will result in the determination of Resources;

and

- (iii) otherwise denies the allegations in the subparagraph;

- (g) as to subparagraph (g):

- (i) says that page 21 of the Investor Presentation dated 12 March 2012 , in relation to the Sienna Project, contains the following footnote:

The potential quantity and quality of the Exploration Target is conceptual in nature, there has been insufficient exploration to define Resources and it is uncertain if further exploration will result in the determination of Resources;

and

- (ii) otherwise admits the allegations in the subparagraph;

(h) as to subparagraph (h):

(i) says that page 23 of the Investor Presentation dated 12 March 2012, in relation to the Ferndale Project, states:

Stage 3 infill drilling underway to confirm open-pit area (planned completion in March 2012, with defined resources in May 2012)

Boardwalk has rights to earn up to 50% direct interest in Ferndale through farm-in

- Stage 1 of farm-in (25%): minimum resource of 50 Mt or incur exploration expenditure of A\$10m. Expected to be completed by end of March 2012

- Stage 2 of farm-in (25%): completion of bankable feasibility study or total exploration expenditure of A\$25m;

(ii) says that page 23 of the Investor Presentation dated 12 March 2012, in relation to the Ferndale Project, also contains the following footnote:

The potential quantity and quality of the Exploration Target is conceptual in nature, there has been insufficient exploration to define Resources and it is uncertain if further exploration will result in the determination of Resources;

and

(iii) otherwise denies the allegations in the subparagraph;

(i) as to subparagraph (i):

(i) says that page 24 of the Investor Presentation dated 12 March 2012, in relation to the Monto Project, states:

- Planned exploration program over four target zones based on regional geological data and known coal intersections

- Drilling program planned for completion in April 2012, further defining existing exploration target;

(ii) says that page 23 of the Investor Presentation dated 12 March 2012, in relation to the Monto Project, also contains the following footnote:

The potential quantity and quality of the Exploration Target is conceptual in nature, there has been insufficient exploration to

define Resources and it is uncertain if further exploration will result in the determination of Resources;

and

- (iii) otherwise admits the allegations in the subparagraph; ~~and~~
- (j) ~~otherwise relies on the terms of the Investor Presentations dated 12 December 2011 and 12 March 2012 for their full force and effect. says further that the 12 December 2011 Investor Presentation stated:~~
 - ~~(i) that the presentation provided information in summary form and should be read in conjunction with the announcement in relation to the proposed merger of the Defendant and Aston and the proposed acquisition by the Defendant of Boardwalk released on that day (page 1);~~
 - ~~(ii) that some of the information in the presentation was based on publicly available sources or internal estimates by the Defendant, Aston or Boardwalk, has not been independently verified and may not be complete (page 1);~~
 - ~~(iii) that the presentation did not purport to contain all the information that investors may require in order to make a decision in relation to the transaction (page 1);~~
 - ~~(iv) that the presentation contained forward-looking statements which involved a number of risks and uncertainties and that these statements reflected current expectations, beliefs, hopes, intentions or strategies regarding the future and assumptions based on currently available information and that such forecasts, prospects or returns were by their nature subject to significant uncertainties and contingencies (page 1);~~
 - ~~(v) that if one or more risks or uncertainties were to materialise, or should underlying assumptions prove incorrect, actual results may vary from the expectations, beliefs, hopes, intentions and strategies described in the presentation and that readers of the presentation were cautioned not to place undue reliance on any forward-looking statement (page 1);~~
 - ~~(vi) that no representation or warranty was made as to the accuracy, completeness, reliability, fairness or correctness of the information, conclusions and opinions (including any forward-looking statements) contained in the presentation (page 1);~~

- (vii) that to the maximum extent permitted by law, no person accepted any liability or responsibility for loss arising from the use of the information contained in the presentation (page 1);
- (viii) that no representation or warranty, express or implied, was given as to the accuracy, completeness or correctness, likelihood of achievement of any forecasts, prospects or returns contained in the presentation (page 1);
- (ix) that the information contained in the presentation was not investment or financial product advice and was not intended to be used as the basis for making an investment decision (page 1);
- (x) that the statements in the presentation were, unless otherwise stated, made only as at the date of the presentation and remained subject to change without notice (page 1);
- (xi) that a reader of the presentation should seek his or her own independent professional advice in relation to the technical, financial and commercial matters relating to the information and rely on their own due diligence and analysis (page 1);
- (xii) that a reader of the presentation should not assume that quantities reported as “resources” will be converted to reserves under the JORC Code 2004 Edition or any other reporting regime or that the merged entity would be able to legally and economically extract them (page 1);
- (xiii) that all references to future exploration, production, exploration targets and production targets made in relation to Boardwalk were subject to completion of all necessary feasibility studies, delivery of all necessary approvals, construction and financing arrangements, as well as certain other risks (page 1);
- (xiv) the stage of each of the Sienna, Dingo, Monto and Ferndale Projects was identified as either “Exploration” or “Exploration/Pre-Feasibility”, being the two earliest stages that a project could have (pages 5 and 8); and
- (xv) the resources of the merged Aston/Whitehaven entity were not represented as including the Dingo, Sienna, Ferndale or Monto Projects as Boardwalk had not delineated any resources or reserves for those assets (page 21); and

- (k) says further that the 12 March 2012 Investor Presentation:
- (i) repeated statements to the effect of those pleaded in paragraphs (i)(i)-(xiii);
 - (ii) stated the stage of each of the Sienna, Dingo, Monto and Ferndale Projects as either "Exploration" or "Exploration/Pre-Feasibility", being the two earliest stages that a project could have (pages 3 and 13);
 - (iii) stated that the net present value of synergies in respect of assets held by Boardwalk related to a future matter which involved risk and uncertainty and, accordingly, no assurance could be given that the actual value of the synergies achieved would not materially differ from those anticipated (page 5); and
 - (iv) in respect of the Exploration Targets for each of the Sienna, Dingo, Monto and Ferndale Projects, stated that the potential quantity and quality of the Exploration Targets was conceptual in nature, there had been insufficient exploration to define Resources and it was uncertain if further exploration would result in the determination of Resources (page 19).

Roadshow Presentations

- 20A. The Defendant does not admit the allegations in paragraph 20A of the Claim.
- 20B. The Defendant does not admit the allegations in paragraph 20B of the Claim.
- 20C. In answer to the allegations in paragraph 20C of the Claim, the Defendant:
 - (a) admits that the 'Project Trifecta – Potential Investor Questions' document (Investor Questions Document) set out a number of possible responses to anticipated investor questions;
 - (b) admits that the Investor Questions Document contained the text quoted in subparagraphs (a) to (j) of paragraph 20C;
 - (c) says that officers of Aston and the Defendant were provided with the Investor Questions Document; and
 - (d) otherwise does not admit the allegations in the paragraph.
- 21. In answer to the allegations in paragraph 21 of the Claim, the Defendant:
 - (a) admits that its officers Tony Haggarty, John Conde and Allan Davies attended and appeared at a series of investor roadshows until March 2012; and
 - (b) otherwise does not admit the allegations in the paragraph.

22. The Defendant denies the allegations in paragraph 22 of the Claim.
- 22A. The Defendant denies the allegations in paragraph 22A of the Claim.
- 22B. The Defendant does not admit the allegations in paragraph 22B of the Claim.
- 22C. The Defendant denies the allegations in paragraph 22C of the Claim.
23. [Deleted in Claim.]
24. [Deleted in Claim.]

Scheme Booklet

25. In answer to the allegations in paragraph 25 of the Claim, the Defendant:
- (a) admits that Aston issued the written Scheme Booklet on 9 March 2012;
 - (b) denies that the Defendant issued the written Scheme Booklet;
 - (c) says that a copy of the written Scheme Booklet was uploaded on the Defendant's ASX platform on 9 March 2012; and
 - (d) otherwise admits the allegations in the paragraph.
26. In answer to the allegations in paragraph 26 of the Claim, the Defendant:
- (a) admits that page 4 of the Scheme Booklet contained a recommendation to the effect of that set out in subparagraph (a);
 - (b) admits that page 5 of the Scheme Booklet contained a recommendation to the effect of that set out in subparagraph (b);
 - (c) admits that page 6 of the Scheme Booklet contained a statement to the effect of that set out in subparagraph (c);
 - (d) as to subparagraph (d):
 - (i) says that at part 5.8.1 of the Scheme Booklet it states:

During the period between execution of the Boardwalk Transaction Documents and 31 March 2012, BRI will make loans to Boardwalk to assist with funding of Boardwalk's operations. Existing Boardwalk Securityholders will contribute A\$150 million cash to Boardwalk if the Scheme becomes Effective, which will be used for the ongoing development of its assets including repayment of

existing debt. This amount will include the amount of any loans made to Boardwalk by BRI after 11 December 2011 to assist in funding Boardwalk's operations. ;

and

- (ii) otherwise denies the allegations in the subparagraph;
- (e) admits that page 12 of the Scheme Booklet contained the text quoted in subparagraph (e);
- (f) admits that page 13 of the Scheme Booklet contained the text quoted in subparagraph (f) and says further that the Scheme Booklet stated that the consideration payable by the Defendant in respect of Boardwalk (whether taking into account the Milestone Shares or not) exceeded the valuation of Boardwalk determined by the independent expert;
- (g) admits that page 28 of the Scheme Booklet contained the text quoted in subparagraph (g);
- (h) admits that page 67 of the Scheme Booklet contained the text quoted in subparagraph (h);
- (i) admits that page 67 of the Scheme Booklet contained the text quoted in subparagraph (i);
- (j) in answer to the allegations in subparagraph (j):
 - (i) denies that subparagraphs 20(b) to (i) accurately summarise the terms of the Scheme Booklet; and
 - (ii) otherwise does not admit the allegations in the subparagraph;
- (k) admits that page 79 of the Scheme Booklet contained the text quoted in subparagraph (k);
- (l) admits that page 92 of the Scheme Booklet contained the text quoted in subparagraph (l) but says that such text was expressed as the basis on which pro forma adjustments to the Historical Financial Information set out in the Scheme Booklet had been made;
- (m) admits that page 94 of the Scheme Booklet contained the text quoted in subparagraph (m);

- (n) admits that page 117 of the Scheme Booklet contained the text quoted in subparagraph (n);
- (o) admits that page 125 of the Scheme Booklet contained the text quoted in subparagraph (o);
- (p) in answer to the allegations in subparagraph (p):
- (i) says that section 9.3.3 on pages 205 and 206 of the Scheme Booklet also says:

The interplay between these restrictions results in a wide range of potential outcomes.

For example, the maximum dilution impact would arise in the event of a takeover of the Merged Group without any further exploration activity in relation to the Boardwalk Assets.

On the other hand, the minimum dilution is, by definition, zero, reflecting a situation where none of the Milestone Shares vest, or the continued exploration outcomes are very favourable such that the increase in value on the Boardwalk assets outweigh any potential dilution from the contingent consideration.

To assess a precise estimate of the impact of the contingent consideration requires allowance for a wide variety of uncertain factors including:

- the prospects and timing of both exploration success, and achievement of the required approvals;*
- the economics of any proposed mining activity;*
- the coal price and exchange rate levels at the time the mines begin and continue to operate;*
- the share price performance and dividend policy of the merged group during the period of restriction;*
- the prospects, potential outcomes and timing of takeover activity in relation to the merged group;*

and

- (ii) otherwise admits that section 9.3.3 on pages 205 and 206 of the Scheme Booklet contain the text quoted in subparagraph (p); and

- (q) will otherwise rely on the terms of the Scheme Booklet for their full force and effect. says further that the Scheme Booklet contained statements to the following effect:
- (i) the Scheme Booklet was addressed to shareholders of Aston (page i);
 - (ii) it was important for readers of the Scheme Booklet to read it in its entirety (page i);
 - (iii) the Scheme Booklet contained both historical and forward-looking statements and that statements other than of historical fact were, or were deemed to be, forward-looking statements (page i);
 - (iv) all forward-looking statements in the Scheme Booklet reflected views only as at the date of the booklet (page i);
 - (v) Statements in the Scheme Booklet that described the Defendant's or Boardwalk's objectives, plans, goals or expectations were, or may be, forward-looking statements (page i);
 - (vi) Forward-looking statements involved known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to differ materially from the anticipated results, performance or achievements, expressed, projected or implied by the forward-looking statements (page i);
 - (vii) The forward-looking statements contained in the Scheme Booklet were made only as at 9 March 2012 (page i);
 - (viii) Any forward-looking statements in the Aston Information or the Whitehaven Information (as defined in the Scheme Booklet) did not carry an assurance that they would prove to be correct (page i);
 - (ix) The Defendant did not make any representation or warranty as to likelihood of fulfilment of any forward-looking statement, or any events or results expressed or implied in any forward-looking statement, except to the extent required by law, and readers were cautioned to not place any undue reliance on any forward-looking statement in the Scheme Booklet (page i);

- (x) Any subsequent forward-looking statement by the Defendant or any person acting on its behalf was qualified by the matters set out at pages i – ii of the Scheme Booklet (page i);
- (xi) Subject to any obligations under relevant laws or the listing rules of an exchange, the Defendant did not give any undertaking to update or revise any statements after the date of the Scheme Booklet to reflect any change in expectations or any change in events, conditions or circumstances on which any such statement was based (page i);
- (xii) Boardwalk had been solely responsible for preparing the Boardwalk Information contained in the Scheme Booklet, which information was set out in section 5.8 of the Scheme Booklet other than section 5.8.2, and that such information was the responsibility of Boardwalk (page i);
- (xiii) that a reader of the Scheme Booklet should not assume that quantities reported as “resources” will be converted to reserves under the JORC Code 2004 Edition or any other reporting regime or that the merged entity would be able to legally and economically extract them (page ii);
- (xiv) that the Scheme Booklet’s references to exploration targets in respect of the Ferndale, Dingo, Sienna and Monto Projects had not been subject to sufficient sampling to be defined as a resource under the JORC Code and that the potential quantity and quality of these potential coal resources was conceptual in nature since there had been insufficient work completed to define them beyond exploration targets and that it was uncertain if further exploration would result in the determination of a resource (page ii);
- (xv) that Aston understood that Boardwalk had set its exploration targets based on Boardwalk’s understanding to date of the geology of the projects and the number and type of exploration targets it had identified (page ii);
- (xvi) in respect of the Boardwalk Projects, that mineral exploration was an inherently uncertain activity and that there could be no assurance that further exploration of the exploration targets for the Boardwalk projects would be successful or lead to the estimation of additional resources or reserves of the quantity indicated by exploration targets or at all (page ii);

(xvii) that the value of the consideration payable for Boardwalk (even excluding the Milestone Shares) exceeded the valuation of Boardwalk determined by the independent expert for the Scheme;

Particulars

Scheme Booklet, page 2 (fn 2), page 5 (fn 8), page 10, pages 13 – 14, page 19, page 26 (fn 20), page 31, page 67

(xviii) that the Milestone Shares would only be freed from the Restrictions contained in the Restriction Deed if certain conditions were met;

Particulars

Scheme Booklet, page 4 (fn 5), pages 67 – 68, page 90, page 117, page 134

(xix) the resources of the merged Aston/Whitehaven entity were not represented as including the Dingo, Sienna, Ferndale or Monto Projects as Boardwalk had not delineated any resources or reserves for those assets (page 26 (fn 23), page 29 (fn 27), page 30 (fn 30), page 80 (fn 69), page 81 (fn 72));

(xx) the stage of each of the Sienna, Dingo, Monto and Ferndale Projects was either “Exploration” or “Exploration/Pre-Feasibility”, being the two earliest stages that a project could have (page 28);

(xxi) the Boardwalk Projects provided the Defendant with “future development options” and a “platform for growth in the medium to longer term”, rather than any assurance that those Projects would be developed (page 67);

(xxii) the key risks to the Boardwalk Projects included:

(A) there was no guarantee that future exploration on Boardwalk’s existing tenements would lead to economically viable resourced being identified and developed;

(B) Boardwalk may be unable to meet, or be delayed in meeting, its farm-in obligations;

(C) there may be delays in obtaining or the inability to obtain relevant authorisations and permits (including mining leases) which could adversely impact on the viability of new projects or their cost and development time frames; and

(D) changes to laws, regulations and government policy may adversely impact Boardwalk's ability to conduct future exploration activities (page 68);

(xxiii) the Board of a merged Aston/Whitehaven intended to explore opportunities to optimize the group's existing operations and development projects and maximise value for shareholders, but final decisions regarding such matters would be made by the Board in light of material information and circumstances at the relevant time (page 85); and

(xxiv) that there were significant risks associated with investment in the merged Aston/Whitehaven entity and the development of the projects that it would hold; and

Particulars

Scheme Booklet, sections 7.1, 7.2 and 7.4

(r) says that the Scheme Booklet contained an Independent Expert's report prepared by Pricewaterhouse Coopers Securities and which contained statements to the following effect:

(i) there were risks resulting from uncertainties in the estimation of exploration targets and/or mineral resources and variances in expected production and forecast cashflows to those achieved (page 128);

(ii) there were risks and possible additional costs related to the successful development of the exploration stage assets to be acquired from Boardwalk, which included the enactment of legislation, environmental regulations, title to existing tenements, and the obtainment of authorisations, licenses and other approvals (page 128);

(iii) the asset portfolio comprising the Boardwalk Projects represented only potential projects, which were subject to whether they could be successfully developed; and

Particulars

Scheme Booklet, pages 162, 163, 165, 205

(iv) the value of the consideration payable for Boardwalk (even excluding the Milestone Shares) exceeded the valuation of Boardwalk determined by the independent expert for the Scheme.

Particulars

Scheme Booklet, pages 204 – 206

27. [Deleted in Claim.]

28. [Deleted in Claim.]

Whitehaven Notice of Meeting

28A. In answer to the allegations in paragraph 28A of the Claim, the Defendant:

- (a) admits that page 2 of the letter from the Chairman in the Notice of Meeting contained the text quoted in subparagraph (a);
- (b) admits that page 2 of the letter from the Chairman in the Notice of Meeting contained the text quoted in subparagraph (b);
- (c) admits that page 4 of the explanatory memorandum in the Notice of Meeting contained the text quoted in subparagraph (c);
- (d) admits that page 5 of the explanatory memorandum in the Notice of Meeting contained the text quoted in subparagraph (d);

(e) as to subparagraph (e):

- (i) says that the sentence before the quoted text states:

Other than the Ferndale project, the Boardwalk assets do not currently have JORC Code-compliant Resources delineated as to date there has been insufficient geological and financial analysis (including drilling work) undertaken to provide the required level of evidence to convert the assets' Exploration Targets into Resources;

and

- (ii) otherwise admits that page 6 of the explanatory memorandum in the Notice of Meeting contained the text quoted in subparagraph (e);
- (f) in answer to the allegations in subparagraph (f):
- (i) denies that subparagraphs 20(b) to (i) accurately summarise the terms of the Scheme Booklet;
 - (ii) otherwise does not admit the allegations in the subparagraph;
- (g) admits that page 15 of the explanatory memorandum in the Notice of Meeting contained the text quoted in subparagraph (g);

- (h) admits that page 17 of the explanatory memorandum in the Notice of Meeting contained the text quoted in subparagraph (h); and
- (i) ~~will otherwise rely on the terms of the Notice of Meeting for their full force and effect.~~ says further that the letter from the Chairman in the Notice of Meeting stated that the Milestone Shares would be subject to restrictions on voting and transfer until various development milestones were met (page 2); and
- (j) says further that the explanatory memorandum in the Notice of Meeting made statements to the effect that:
 - (i) the Milestone Shares would be subject to certain restrictions until the occurrence of certain trigger events (pages 3 – 4);
 - (ii) the Boardwalk Projects provided the Defendant with “future development options” and a “platform for growth in the medium to longer term”, rather than any assurance that those Projects would be developed (page 14);
 - (iii) changes to laws, regulations and Government policy may adversely impact Boardwalk’s ability to conduct further exploration activities (page 14);
 - (iv) the value of the consideration payable for Boardwalk (even excluding the Milestone Shares) exceeded the valuation of Boardwalk determined by the independent expert for the Scheme (page 15); and
 - (v) the Boardwalk Projects were characterized as undeveloped and early stage coal properties (pages 15 – 16).

Completion of Boardwalk Transaction and the Merger

- 29. The Defendant admits the allegations in paragraph 29 of the Claim.
- 30. The Defendant admits the allegations in paragraph 30 of the Claim.
- 31. In answer to the allegations in paragraph 31 of the Claim, the Defendant:
 - (a) admits the allegations in subparagraph (a); and
 - (b) as to subparagraph (b):
 - (i) says that the Boardwalk Transaction was completed on 1 May 2012; and
 - (ii) otherwise denies the allegations in the subparagraph.

32. In answer to the allegations in paragraph 32 of the Claim, the Defendant:
- (a) says that Schedule 2 of Part 1 of the Share Purchase Agreement sets out the consideration for the acquisition as 73,361,477 Whitehaven shares and 29,059,232 Milestone Shares;
 - (b) says further that:
 - (i) approximately \$50,000,000 of the Payment was applied to the repayment of Boardwalk debt as set out in section 1.3 of the 'Independent Expert's Report on the proposed merger with Whitehaven Coal Limited' on page 134 of the Scheme Booklet;
 - (ii) approximately \$9,500,000 of the Payment was applied to pre-committed funding; and
 - (iii) \$10,000,000 of the Payment was applied to the balance of the deferred consideration for the acquisition of the Sienna Project as set out in Section 5.8.7 of the Scheme Booklet; and
 - (c) otherwise admits the allegations in the paragraph.
33. The Defendant admits the allegations in paragraph 33 of the Claim.
- 33A. The Defendant denies the allegations in paragraph 33A of the Claim and further repeats paragraphs 18A, 19, 20, 20A, 21, 22, 22A, 25, 26 and 28A above.
- 33B. The Defendant denies the allegations in paragraph 33B of the Claim and further repeats paragraphs 18A, 19, 20, 20A, 21, 22, 22A, 25, 26 and 28A above.
- 33C. The Defendant denies the allegations in paragraph 33C of the Claim and further repeats paragraph 18A, 19, 20, 20A, 21, 22, 22A, 25, 26 and 28A above.
- 33D. The Defendant denies the allegations in paragraph 33D of the Claim and further repeats paragraph 18A, 19, 20, 20A, 21, 22, 22A, 25, 26 and 28A above.
- 33E. The Defendant denies the allegations in paragraph 33E of the Claim.
- 33F. The Defendant denies the allegations in paragraph 33F of the Claim.
- 33G. The Defendant denies the allegations in paragraph 33G of the Claim.
- 33H. The Defendant denies the allegations in paragraph 33H of the Claim.

The Boardwalk Projects have not been developed

33I. In answer to the allegations in paragraph 33I of the Claim, the Defendant:

- (a) admits that the mining leases and environmental approvals for the Boardwalk Projects have not yet been obtained as at the date of this Defence; ~~and~~
- (aa) says that the mining leases and environmental approvals for the Boardwalk Projects have not been obtained as at the date of this Defence in circumstances where it is not in the best interests of the Defendant to do so; and

Particulars

It is not in the best interests of the Defendant to develop the Boardwalk Projects for reasons including:

- (a) the decrease in coal prices in the period following the implementation of the Scheme;
- (b) the coal quality, coal type, coal concentration and coal depth in respect of the Boardwalk Projects when taking into account coal prices;
- (c) further consideration of drilling results that has revealed that it would not be economically rational to develop the Boardwalk Projects;
- (d) in respect of the Sienna Project, legislative changes by reason of the Queensland Urban Exploration Ban Policy;
- (e) in respect of the Dingo Project, geological complexities which would impede development;
- (f) in respect of the Dingo Project, the fact that the joint venture partner in respect of that project was placed into voluntary administration in November 2015; and
- (g) in respect of the Ferndale Project, anticipated difficulties in obtaining exploration licences and environmental licenses.

Further and better particulars may be provided after the service of evidence.

- (b) otherwise denies the allegations in the paragraph.

33J. The Defendant denies the allegations in paragraph 33J of the Claim.

33K. The Defendant denies the allegations in paragraph 33K of the Claim.

34. [Deleted in Claim.]

35. [Deleted in Claim.]

Breach of Contract

35A. The Defendant denies the allegations in paragraph 35A of the Claim and says further that in the event that the pleaded implied term existed (which is denied) it was not breached in circumstances where a reasonable time to obtain the relevant mining leases and environmental approvals has not elapsed.

Particulars

An assessment of the reasonable time must require consideration of whether obtaining the relevant mining leases is in the best interests of the Defendant. In light of the matters set out in the particulars to paragraph 33I(b) above, that reasonable time has not yet elapsed.

Further and better particulars may be provided after the service of evidence.

36. [Deleted in Claim.]

Misleading or Deceptive Conduct

37. The Defendant denies the allegations in paragraph 37 of the Claim and says further that in the event that it is found that the representation, implied representation or the Representations were made (which is denied), the Defendant had reasonable grounds for those representations.

Particulars

The Defendant's reasonable grounds included that the Boardwalk Projects carried the potential to be suitable developments by reason of the fact that:

(a) Neighbouring mines had disclosed reserves/resources and current or targeted production as set out in the 12 March 2012 Investor presentation at pages 21, 22, 23, 24;

(b) Boardwalk supplied for the purposes of the Scheme Booklet and otherwise information in relation to the Exploration Targets for each of the Dingo, Sienna, Ferndale and Monto Projects, which information was

expressed to have been compiled by Brad Willis who was a Competent Person as defined in the JORC Code 2004 Edition: Scheme Booklet pages 70 – 71.

(c) an expert had opined that global demand for coking coal was expected to remain firm in the short term and robust in the medium to long term and that global demand for thermal coal was expected to grow moderately in the short term and remain robust in the medium term: Scheme Booklet pages 173 – 174.

(d) An expert had opined that Boardwalk’s tenements were generally well-located with respect to coal prospectivity and existing logistics infrastructure; Scheme Booklet pages 242 and 332 – 371.

Further and better particulars may be supplied following the service of evidence.

38. [Deleted in Claim.]

39. [Deleted in Claim.]

39A. The Defendant denies the allegations in paragraph 39A of the Claim.

40. [Deleted in Claim.]

Damages

Boardwalk Shareholders

40A. The Defendant denies the allegations in paragraph 40A of the Claim and says further that if any pleaded contravention of s 18 of the *Australian Consumer Law* is established (which is denied) any loss or damage is to be assessed as at the date of acquisition of the relevant shares.

40B. The Defendant denies the allegations in paragraph 40B of the Claim.

40C. The Defendant denies the allegations in paragraph 40C of the Claim.

40D. The Defendant denies the allegations in paragraph 40D of the Claim and says further that if any pleaded contravention of s 18 of the *Australian Consumer Law* is established (which is denied), the Boardwalk Shareholders have not suffered loss or damage in circumstances where:

(a) the value of the consideration payable for Boardwalk (even excluding the Milestone Shares) exceeded the valuation of Boardwalk determined by the independent expert for the Scheme; or

(b) alternatively, where the Boardwalk Shareholders continue to hold the Milestone Shares.

Particulars

The Defendant repeats paragraph 26(r)(iv) above.

Further and better particulars may be provided following the service of evidence.

40E. The defendant denies the allegations in paragraph 40E of the Claim.

41. [Deleted in Claim.]

42. [Deleted in Claim.]

40F. The Defendant denies the allegations in paragraph 40F of the Claim and repeats paragraphs 12 to 33E, 33J and 33K above.

40G. The Defendant denies the allegations in paragraph 40G of the Claim and says further:

(a) that the Plaintiff has failed to identify the circumstances that are alleged to cause the pleaded acts or omissions to be oppressive to, unfairly prejudicial to or unfairly discriminatory against the Boardwalk Shareholders;

(b) that at all material times the Boardwalk Shareholders understood, or ought reasonably to have understood, that the Milestone Shares were subject to certain restrictions and that the lifting of those restrictions was contingent on the occurrence of certain defined events, the occurrence of which was not guaranteed; and

Particulars

The Defendant repeats paragraphs 14(a)(ii)(A), 14(d)(i), 18A(b), 20, 26 and 28A above.

(c) repeats paragraph 33I above.

40H. The Defendant denies the allegations in paragraph 40H of the Claim.

43. In further answer to the Plaintiff's and Group Members' claims for breach of contract pleaded in paragraph 35A of the Claim, if the Plaintiff or any Group Member establishes any such breach (which is denied), the Defendant says that:

- (a) such claims are subject to the limitation period set out in section 14 of the *Limitation Act 1969 (NSW)*;
- (b) any such claims arose no later than a reasonable period of time after the Scheme;
- (c) to the extent that it is determined that a reasonable time elapsed before 20 December 2012, the Plaintiff's and Group Members' claims are statute barred.

44. In further answer to the Plaintiff's and Group Members' claims for damages pursuant to s 236 of the *Australian Consumer Law*, if the Plaintiff or any Group Member establishes any contravention of s 18 of the *Australian Consumer Law* (which is denied) and establishes that it has suffered loss or damage (which is denied), the Defendant says:

- (a) such claim is subject to the limitation period set out in section 236(2) of the *Australian Consumer Law*;
- (b) any loss or damage was suffered by the Plaintiff and any Group Member ~~at~~ by no later than the time at which it acquired the Milestone Shares in May 2012;
- (c) the Plaintiff's and Group Members' causes of action arose no later than the time at which they acquired the Milestone Shares; and
- (d) in the premises, the Plaintiff's and Group Members' claims are statute barred.

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 to the claim for damages in these proceedings has reasonable prospects of success.

Signature

M Stephens

Capacity

Solicitor for the defendant *by his partner, Malcolm Stephens*

Date of signature

25/11/19

AFFIDAVIT VERIFYING

Name: Timothy Burt

Address: Level 28, 259 George Street, Sydney, NSW

Occupation: General Counsel and Company Secretary, Whitehaven Coal Limited

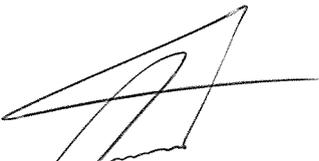
Date: 25 November 2019

I affirm:

1. I am the General Counsel and Company Secretary of Whitehaven Coal Limited and am authorised to verify this defence on its behalf.
2. I believe that the allegations of fact contained in the defence are true.
3. I believe that the allegations of fact that are denied in the defence are untrue.
4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

AFFIRMED at Sydney, New South Wales

Signature of deponent



Signature of witness



Name of witness

Carmen Pantlin

Address of witness

Level 28, 259 George Street, Sydney, NSW

Capacity of witness

Solicitor

CERTIFICATE UNDER SECTION 34(1)(C) OF OATHS ACT 1900

I, Carmen Partin, solicitor, certify the following matters concerning the making of this affidavit by the person who made it:

1. I saw the face of the person.
2. I have known the person for at least 12 months.

Signature of
authorised witness



Date:

25 November 2019

FURTHER DETAILS ABOUT FILING PARTY

Filing party

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