



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
COMMERCIAL LIST

Case: S ECI 2019 02919

No. S ECI 2019 02919
2019 11:59 AM

B E T W E E N

**MOIRA SHIRE COUNCIL & ANOTHER
ACCORDING TO SCHEDULE 1**

Plaintiffs

-and-

**JARDINE LLOYD THOMPSON PTY LTD
ABN 69 009 098 864**

Defendant

AMENDED STATEMENT OF CLAIM
(filed pursuant to Orders of Justice Riordan dated 11 November 2019)

Date of Document: ~~28 August~~ 22 November 2019 Solicitors Code: 24875
Filed on behalf of: Plaintiffs Telephone: (02) 9146 3500
Prepared by: Quinn Emanuel Urquhart & Sullivan Ref: 06975-00003
Email: michaelmills@quinnemanuel.com and
nicholaslennings@quinnemanuel.com

The parties

The Plaintiffs and Group Members

1. The First Plaintiff (**Moira**) and the Second Plaintiff (**Hobsons Bay**) (together, the **Plaintiffs**) are, and have been at all material times:
 - (a) a council constituted by the *Local Government Act 1989* (Vic) (**LGA**);
 - (b) a body corporate with perpetual succession; and
 - (c) able to sue in its corporate name.

2. The Plaintiffs bring this proceeding as a group proceeding pursuant to ss 33C and 33D of the *Supreme Court Act 1986* (Vic), on their own behalf and on behalf of each council constituted by the *LGA*:
 - (a) to which the Defendant (**JLT**) provided insurance broking services at any time after 1 January 2009 and up to the date hereof (**Relevant Period**); and
 - (b) which, at any time during the Relevant Period, obtained Property insurance through the JLT (Municipal Asset Protection Plan) Discretionary Trust (**JMAPP**); and
 - (c) which consents in writing to being a group member in this proceeding,

(collectively, **Group Members**, individually, **Group Member**).
3. As at the date of the commencement of this proceeding, seven or more councils located within the State of Victoria have claims against JLT arising out of the circumstances pleaded herein.

The Defendant

4. JLT is, and all material times has been, a company deemed to be incorporated under the *Corporations Act 2001* (Cth) (**Corporations Act**).
5. Each of JLT, Jardine Australia Insurance Brokers Pty Ltd (**Jardine**) and JLT Group Services Pty Ltd (**JGS**) are or were related bodies corporate within the meaning of s 50 of the *Corporations Act*.
6. By a deed dated 4 September 1998 and made between Jardine as trustee and the Municipal Asset Protection Plan Advisory Committee (comprising representatives of Jardine and representatives from several municipal councils) as Promoter (**1998 Establishment Deed**), JMAPP was established to provide a pooled fund and a scheme to manage the property and financial risks of municipal councils and other local government bodies admitted as members of the scheme.
- 6A. The objects and purposes of JMAPP were to, among other things (cl 5):
 - (a) establish a fund to meet claims by members up to the limit of scheme cover and the costs of insurance cover;
 - (b) purchase insurance cover in respect of members' property and financial risks as may be needed from time to time.

6B. Pursuant to the 1998 Establishment Deed, Jardine was:

- (a) appointed to act as trustee of JMAPP (cl 4);
- (b) required to solicit and encourage municipal councils and local government bodies to become and remain members of JMAPP (cl 9);
- (c) required to engage in the following management duties:
 - (i) determine, in consultation with the Promoter, the amount of contributions to be paid by members (cl 12.1.2);
 - (ii) determine, in consultation with the Promoter, the level of scheme cover to be provided to members (12.1.3);
 - (iii) negotiate insurance cover on the best terms and at the lowest cost available (cl 12.2).

7. Moira has been a member of JMAPP since it was commenced in 1998.

7A. By a deed of variation dated 12 February 1999, JGS replaced Jardine as trustee of JMAPP (February 1999 Deed).

8. At all material times during the Relevant Period, JGS was the trustee of JMAPP.

9. On about 27 November 2000, JGS, in its capacity as trustee of JMAPP, appointed JLT to be the insurance broker for JMAPP.

Particulars

- (i) Letter of Appointment to Jardine Local Government from JGS dated 27 November 2000.

9A. By a further deed of variation dated 2 April 2003 (April 2003 Deed), the obligation of JGS as the trustee under cl 9 of the 1998 Establishment Deed (as set out in paragraph 6B(b) above) was removed and replaced by the following obligations:

- (a) the Promoter would refer all enquiries of potential members and members (referred to as “Affiliates”) relating to their becoming or remaining members of JMAPP to JLT in its capacity as the insurance broker for JMAPP (cl 2); and
- (b) each of JGS and JLT would solicit and encourage potential members and members (again referred to as “Affiliates”) to become and remain members of JMAPP (cl 2).

9B. By a further deed of variation dated 1 July 2003 (**July 2003 Deed**):

- (a) the term “Affiliate” was defined to mean an incorporated body, allied association or other body or person affiliated with the Promoter and admitted to JMAPP from time to time (see cl 3).

9C. By a further deed of variation dated 30 June 2006 (**June 2006 Deed**):

- (a) the definition of Affiliate was replaced by the definitions of “Member” and “Potential Member” (cl 4(b));
- (b) Member was defined to mean an incorporated body, person, company, trust or other body affiliated with the Promoter which has been admitted to JMAPP from time to time pursuant to these rules (cl 4(a)); and
- (c) Potential Member was defined to mean an incorporated body, person, company, trust or other body affiliated with the Promoter which is entitled to be, but has not as yet been admitted as a Member of JMAPP (cl 4(a)).

9D. By a further deed of variation dated 12 June 2014, all the provisions of the 1998 Establishment Deed were repealed and replaced by the provisions set out in the schedule to that further deed of variation (the **June 2014 Deed**).

9E. The provisions set out in the schedule in the June 2014 Deed:

- (a) restated the objects and purposes of JMAPP in substantially the same terms as the 1998 Establishment Deed (cl 5);
- (b) imposed substantially the same duties on JGS as the trustee;
- (c) restated the obligation on the Promoter to refer enquiries by members and potential members to the insurance broker (cl 9.1); and
- (d) removed the obligation on JLT to solicit members and imposed that obligation on JGS and the Promoter (cl 9.2).

10. At all material times during the Relevant Period, JLT arranged for insurance to be provided for JMAPP and its members.

Particulars

- (i) See, for example, in relation to Moira:

- (A) Insurance Declaration – Moira Shire Council, 2011, prepared by JLT.
- (B) Insurance Declaration – Moira Shire Council, March 2012, prepared by JLT, p. 42.
- (C) Insurance Declaration – Moira Shire Council, 2013-2014, prepared by JLT, p. 43.
- (D) Insurance Declaration – Moira Shire Council, 2014-2015, prepared by JLT, p. 46.
- (E) Insurance Declaration – Moira Shire Council, 2015-2016, prepared by JLT, p. 51.
- (F) Insurance Declaration – Moira Shire Council, 2016-2017, prepared by JLT, p. 52.
- (G) Insurance Declaration – Moira Shire Council, 2017-2018, prepared by JLT, p. 43.
- (H) Insurance Declaration – Moira Shire Council, 2017-2018, prepared by JLT, p. 43.
- (I) Financial Services Guide – JLT Discretionary Trust (JDT) Arrangement, June 2012 (JDT FSG June 2012), p. 2.
- (J) Financial Services Guide – JLT Discretionary Trust (JDT) Arrangement, October 2012 (JDT FSG October 2012), p. 2.
- (K) Financial Services Guide – JLT Discretionary Trust (JDT) Arrangement, August 2013 (JDT FSG August 2013), p. 5.
- (ii) The terms of the insurance arranged by JLT for JMAPP are described in, inter alia, each renewal report issued to each member of JMAPP in each year the member obtained or renewed its Property insurance through JMAPP. For example, in relation to Moira, the Renewal Reports (as defined at particular (ii)(D) to paragraph 16 below).

11. JLT received a fee, commission and/or other remuneration for arranging that insurance for JMAPP and its members.

Particulars

- (i) The particulars to paragraphs 32 and 34 below are repeated.
- (ii) Further particulars will be provided following discovery and evidence.

JLT's insurance broking services

12. At all material times during the Relevant Period, JLT carried on business as an insurance broker.
13. At all material times during the Relevant Period, JLT was and held itself out to:
- (a) the Plaintiffs; and

- (b) each of the Group Members;
- as:
- (c) one of the largest insurance brokers in Australia and the world;
 - (d) possessing the expertise to deliver the most comprehensive range of insurance and risk solution products and services available to local government authorities across Australia; and
 - (e) capable of ensuring that councils receive a well-designed insurance programme at a competitive premium cost.

Particulars

- (i) See, for example, in relation to Moira:
 - (A) Renewal Report – Moira Shire Council, 26 June 2009, prepared by JLT (**2009 Renewal Report**), pp. 3-4.
 - (B) Renewal Report – Moira Shire Council, 22 June 2010, prepared by JLT (**2010 Renewal Report**), pp. (i), 1-2.
 - (C) Renewal Report – Moira Shire Council, 29 June 2011, prepared by JLT (**2011 Renewal Report**), pp. 1, 3-4.
 - (D) Renewal Report – Moira Shire Council, 27 June 2012, prepared by JLT (**2012 Renewal Report**), pp. (i), 2-3.
 - (E) Renewal Report – Moira Shire Council, 25 June 2013, prepared by JLT (**2013 Renewal Report**), pp. (i), 2-3.
 - (F) Renewal Report – Moira Shire Council, 27 June 2014, prepared by JLT (**2014 Renewal Report**), pp. (i), 2-4.
 - (G) Renewal Report - Moira Shire Council, 26 June 2015, prepared by JLT (**2015 Renewal Report**), pp. (i), 2-3.
 - (H) Renewal Report - Moira Shire Council, 24 June 2016, prepared by JLT (**2016 Renewal Report**), pp. (i), 2-6.
 - (I) Renewal Report - Moira Shire Council, 27 June 2017, prepared by JLT (**2017 Renewal Report**), pp. 1, 3-4.
 - (J) Renewal Report - Moira Shire Council, 24 June 2018, prepared by JLT (**2018 Renewal Report**), pp. (i), 2.
- (ii) Further particulars to be provided prior to trial.

14. At all material times during the Relevant Period, JLT was and held itself out to:

- (a) the Plaintiffs; and
- (b) each of the Group Members,

as being a subscriber to the Code of Practice of the National Insurance Brokers Association (**NIBA Code**) (previously called the General Insurance Broker's Code of Practice).

Particulars

- (i) The NIBA Code is in writing, being the NIBA Insurance Brokers Code of Practice, 2007 (**2007 NIBA Code**) and the NIBA Insurance Brokers Code of Practice, 1 January 2014 (**2014 NIBA Code**).
- (ii) The terms of the 2007 NIBA Code and 2014 NIBA Code will be relied upon at trial as if they were fully set forth herein.
- (iii) JLT – Our Commitment to You and Financial Services Guide, March 2013, p. 7.
- (iv) JLT – Our Commitment to You and Financial Services Guide, March 2014, p. 7.
- (v) JLT – Our Commitment to You and Financial Services Guide, January 2015, p. 8.
- (vi) JLT – Our Commitment to You and Financial Services Guide, December 2015, p. 8.
- (vii) See further, in relation to Moira, for example:
 - (A) 2011 Renewal Report, p. 48.
 - (B) 2012 Renewal Report, p. 57.
 - (C) 2013 Renewal Report, p. 59.
 - (D) 2014 Renewal Report, p. 66.
 - (E) 2015 Renewal Report, p. 66.
 - (F) 2016 Renewal Report, p. 80.
 - (G) 2017 Renewal Report, p. 77.
 - (H) 2018 Renewal Report, p. 72.
- (viii) Further particulars to be provided prior to trial.

15. During the Relevant Period,

- (a) the Plaintiffs; and
- (b) each Group Member,

appointed JLT as their insurance broker.

Particulars

- (i) JLT offered its services to Moira as its insurance broker in each year of the Relevant Period by providing an “Insurance Broking Appointments/Service Agreement & Instructions” form in the:
 - (A) 2009 Renewal Report (pp. 38-43);

- (B) 2010 Renewal Report (pp. 21-24);
 - (C) 2011 Renewal Report (pp. 42-47);
 - (D) 2012 Renewal Report (pp. 19-23);
 - (E) 2013 Renewal Report (pp. 17- 21);
 - (F) 2014 Renewal Report (pp. 21-25);
 - (G) 2015 Renewal Report (pp. 22-27);
 - (H) 2016 Renewal Report (pp. 23-29);
 - (I) 2017 Renewal Report (pp. 19-21, 62-64); and
 - (J) 2018 Renewal Report (pp. 61-63, 68-70).
- (ii) The appointment of JLT was effected by Moira by the return of a signed “Instructions to JLT” document in each year of the Relevant Period in or around June or July of each year of the Relevant Period.
 - (iii) Further particulars to be provided prior to trial.

16. During the Relevant Period, JLT provided insurance broking services to:

- (a) the Plaintiffs; and
- (b) each Group Member,

including by designing and providing advice with respect to its annual insurance programme and placing or arranging its Property insurance with JMAPP (**Broking Services**).

Particulars

- (i) JLT provided Broking Services to Moira in respect of its Property insurance for each of the insurance years ending in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019.
- (ii) The Broking Services provided by JLT to Moira are described in and evidenced by:
 - (A) Correspondence sent to Moira by JLT regarding the renewal of their Property insurance in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018 (**Renewal Notifications**).
 - (B) Letters sent to Moira by JLT regarding the tendering of their Property insurance as part of the renewal process in or around April 2011, March 2013, February 2014, February 2015, March 2017 and March 2018 (the **Renewal and Tender Letters**).
 - (C) Moira Shire Council Insurance Declarations prepared by JLT and provided to Moira in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018 (the **Insurance Declarations**).
 - (D) the 2009 Renewal Report, 2010 Renewal Report, 2011 Renewal Report, 2012 Renewal Report, 2013 Renewal Report, 2014 Renewal Report, 2015 Renewal Report, 2016 Renewal Report,

2017 Renewal Report, 2018 Renewal Report (the **Renewal Reports**).

- (E) Moira Shire Council Summary of Insurances prepared by JLT and provided to Moira in about September 2009, September 2010, July 2012, July 2014, July 2015, July 2016 and July 2018 (the **Summary of Insurances**).
- (F) Acceptance Forms for Moira prepared by JGS and communicated to Moira by JLT in about June 2009, June 2011, June 2012, June 2013, June 2014, June 2015, June 2016, June 2017 and July 2018 (the **Acceptance Forms**).
- (G) Tax Invoices issued to Moira for insurance placed with JMAPP and for insurance placed outside JMAPP (in which case the payments were to be made to an account in the name of JLT) provided to Moira in about June or July 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018.
- (H) JLT Financial Services Guides prepared by JLT and dated April 2009, May 2013, March 2014, January 2015 and December 2015.
- (I) JMAPP Product Disclosure Statements prepared by JLT or JGS and dated June 2009, June 2011, 2015 and October 2018.
- (J) JLT Discretionary Trust (JDT) Arrangement Financial Services Guide prepared by JLT and dated June 2012, October 2012 and August 2013.

(iii) Further particulars to be provided prior to trial.

JLT's tender agent services

17. During the Relevant Period,
- (a) the Plaintiffs; and
 - (b) each Group Member,
- appointed JLT as their tender agent.

Particulars

- (i) JLT offered its services as tender agent to Moira in 2011, 2012, 2013, 2014, 2015, 2017 and 2018 by providing and recommending that Moira sign an "Appointment of Agency Form".
- (ii) Moira effected the appointment of JLT as its tender agent by the return of the signed "Appointment of Agency Form" in 2011, 2012, 2013, 2014, 2015, 2017 and 2018.
- (iii) Further particulars to be provided prior to trial.

18. During the Relevant Period, JLT provided tender agent services to:

- (a) the Plaintiffs; and

(b) each Group Member,

including by designing and implementing a tender for Property insurance, and providing advice on responses to that tender (**Tender Agent Services**).

Particulars

- (i) JLT provided Tender Agent Services to Moira in respect of its Property insurance for each of the insurance years ending in June 2012, 2013, 2014, 2015, 2017~~6~~, 2018 and 2019.
- (ii) The Tender Agent Services provided by JLT to Moira are described in and evidenced by:
 - (A) The **Renewal and Tender Letters**, stating that Moira:
 - (a) was required to tender its Property insurance;
 - (b) could appoint a tender agent to conduct the tender on its behalf, and that insurers were unlikely to respond to councils directly approaching them for quotes; and
 - (c) could appoint JLT as its tender agent.
 - (B) Moira Shire Council Tender Evaluation Reports prepared by JLT and provided to Moira in about June 2011, June 2012, June 2013, June 2014, June 2015, June 2017 and June 2018 (the **Tender Evaluation Reports**).
- (iii) Further particulars to be provided prior to trial.

The Plaintiffs' and Group Members' renewal with JMAPP

19. In the course of providing the Broking Services and Tender Agent Services during the Relevant Period, JLT advised or recommended that:

- (a) the Plaintiffs; and
- (b) each Group Member,

obtain or renew its Property insurance through JMAPP (**Recommendations**).

Particulars

- (i) In the case of Moira, JLT made the Recommendations:
 - (A) by preparing and providing to Moira:
 - a. the Insurance Declarations in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018;
 - b. the Tender Evaluation Reports in 2011, 2012, 2013, 2014, 2015, 2017 and 2018;
 - c. the Renewal Reports in 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018; and

(B) implicitly, in the absence of making recommendations or identifying any alternative Property insurance policy, arrangement or underwriter besides JMAPP.

(ii) Further particulars to be provided prior to trial.

20. During the Relevant Period and as a result of the Recommendations:

(a) the Plaintiffs; and

(b) each of the Group Members,

instructed or authorised JLT to place or arrange its Property insurance with JMAPP.

Particulars

(i) In the case of Moira, instructions to JLT to place various insurance policies on its behalf were provided by Moira signing and returning a declaration to that effect.

(ii) This declaration, and the insurance policies to be placed, were contained within the various Renewal Reports (see paragraph (i) of the particulars to paragraph 13 above).

(iii) Further particulars to be provided prior to trial.

JLT's breach of duty and/or contract

21. At all material times during the Relevant Period:

(a) JLT had knowledge of the market for Property insurance which the Plaintiffs and the Group Members lacked, including knowledge as to the terms and premium rates that were reasonably available from underwriters or insurance providers in that market; and

(b) JLT knew and intended that:

(i) the Plaintiffs; and

(ii) each of the Group Members,

would or were likely to act upon the Recommendations by authorising JLT to place or arrange their Property insurance with JMAPP.

Particulars

(i) The knowledge and intention of JLT is to be inferred from paragraphs 13 to 19 above.

(ii) Further particulars will be provided prior to trial.

22. In the premises, JLT owed:

- (a) the Plaintiffs; and
- (b) each Group Member,

a duty under the general law to exercise reasonable care and skill in providing the Broking Services, the Tender Agent Services and making the Recommendations.

23. Further or in the alternative to paragraph 22 above, JLT provided the Broking Services, the Tender Agent Services and made the Recommendations to:

- (a) the Plaintiffs; and
- (b) each Group Member,

pursuant to separate contracts for services for the Broking Services (**Broking Services Contracts**) and the Tender Agent Services (**Tender Agent Services Contracts**).

Particulars

(i) Each of the Broking Services Contracts were:

- (A) express by reason of signed 'Instructions to JLT' forms as referred to in the particulars to paragraph 15 above; or
- (B) implied by reason of the particulars to paragraphs 16 and 19 above;
- (C) between JLT and, severally, each Plaintiff and each Group Member; and
- (D) entered into at the time stated in the particular (ii) to paragraph 15 above.

~~The particulars to paragraphs 15 to 18 are repeated.~~

(ii) Each of the Tender Agent Services Contracts were:

- (A) express by reason of signed 'Appointment of Agency Form(s)' as referred to in the particulars to paragraph 17 above; or
- (B) implied by reason of the particulars to paragraphs 18 and 19 above;
- (C) between JLT and, severally, each Plaintiff and each Group Member; and
- (D) entered into at the time stated in the particular (ii) to paragraph 17 above.

(iii) Further particulars to be provided prior to trial.

24. It was a term of the Broking Services Contracts that JLT would exercise reasonable care and skill in providing the Broking Services and making the Recommendations.

Particulars

- (i) Each Broking Services Contract states expressly in writing that “JLT undertakes to provide the Services with a proper level of skill and knowledge reasonably expected of a competent Insurance Adviser”. Alternatively the term was implied in law or in fact.
 - (iA) To the extent the term was implied in fact, the term was:
 - (A) reasonable and equitable;
 - (B) necessary to give business efficacy to the Broking Services Contract;
 - (C) so obvious that ‘it went without saying’;
 - (D) capable of clear expression and reasonably certain in its operation, and is in fact clearly expressed and reasonably certain; and/or
 - (E) consistent with the Broking Services Contract, such that it did not contradict any express term of the Broking Services Contract, and was not sufficiently dealt with by the Broking Services Contract.
- (ii) Further particulars to be provided prior to trial.

25. It was an implied term of the Tender Agent Services Contracts that JLT would exercise reasonable care and skill in providing the Tender Agent Services and making the Recommendations.

Particulars

- (i) The term was implied in law and/or in fact.
- (ii) To the extent the term was implied in fact, the term was:
 - (A) reasonable and equitable;
 - (B) necessary to give business efficacy to the Tender Agent Services Contract;
 - (C) so obvious that ‘it went without saying’;
 - (D) capable of clear expression and reasonably certain in its operation, and is in fact clearly expressed and reasonable certain; and/or
 - (E) consistent with the Tender Agent Services Contract, such that it did not contradict any express term of the Tender Agent Services Contract, and was not sufficiently dealt with by the Tender Agent Services Contract.
- (iii) Further particulars to be provided prior to trial.

26. The amounts that:

- (a) the Plaintiffs; and

(b) each Group Member,

were required to pay in order to obtain or renew their Property insurance through JMAPP for the years ending 30 June 2010 to 30 June 2019 either:

(c) exceeded the premium rates that were reasonably available from alternate underwriters or providers in the market, or

(d) exceeded the contribution rates that were reasonably available from JMAPP.

Particulars

(i) For example, in relation to Moira, the contribution paid by Moira for Property insurance (inclusive of GST) procured through JMAPP for:

(A) the 2009-2010 year was \$185,660.90;

(B) the 2010-2011 year was \$236,682.37;

(C) the 2011-2012 year was \$246,261.10;

(D) the 2012-2013 year was \$302,584.48;

(E) the 2013-2014 year was \$261,437.16;

(F) the 2014-2015 year was \$239,060.21;

(G) the 2015-2016 year was \$196,462.49;

(H) the 2016-2017 year was \$149,551.68;

(I) the 2017-2018 year was \$186,428.17; and

(J) the 2018-2019 year was \$199,381.60.

(ii) The Victorian Auditor General Office's published a report entitled "Local Government Insurance Risks" in July 2018 (the 2018 VAGO Report).

(iii) The 2018 VAGO Report states that "Councils reappointed annually the same associated entities as their tender agent, broker and property insurer" (p. 50). The circumstances of the 2018 VAGO Report indicate that the "associated entities" referred to are JLT (as insurance broker and tender agent) and JMAPP (as property insurer).

(iv) Following an "open and transparent" tender of their Property insurance, the 2018 VAGO Report states (at p. 53) that certain Victorian councils made substantial savings on their premium costs on their existing Property insurance arrangements either from JMAPP or alternative property insurers:

(A) the City of Ballarat saved approximately 50%;

(B) Kingston City Council saved approximately 50%;

(C) Glen Eira City Council saved approximately 30%;

(D) Yarra City Council saved 69% in 2016-17 with an alternative insurer on the amount paid for JMAPP in 2015-16. It then saved more than 50% in 2017-18 on its Property insurance costs

obtained from JMAPP on the amount paid in 2015-16 when it obtained Property insurance through JMAPP (p. 54).

(iv) In around 2017, Procurement Australia released a press release stating that it had assisted 19 Victorian councils and 7 Western Australian councils achieve average annual cost savings on their insurances of around 31%.

(v) Further particulars, including by way of expert evidence, will be provided prior to trial.

27. During the Relevant Period, JLT:

- (a) failed to make any, or (if any) reasonable, efforts to obtain on behalf of:
 - (i) the Plaintiffs; and
 - (ii) each of the Group Members,suitable Property insurance at the best premium rates that were reasonably available to each of them in the market;
- (b) made the Recommendations to:
 - (i) the Plaintiffs; and
 - (ii) each of the Group Members,and placed or renewed their Property insurance with JMAPP:
 - (iii) in the circumstances pleaded in paragraph 26 above;
 - (iv) in circumstances where JLT had no reasonable grounds to believe that the contributions payable to JMAPP were lower than or reasonably competitive with the premium rates that were available to the Plaintiffs and each of the Group Members in the market; and/or
 - (v) in circumstances where JLT had no reasonable grounds to believe that the contributions paid to JMAPP by the Plaintiffs and each of the Group Members were lower than the contribution rates reasonably available to the Plaintiffs and each of the Group Members from JMAPP;
- (c) failed to recommend or identify to:
 - (i) the Plaintiffs; and
 - (ii) each of the Group Members,any alternative underwriter or provider of suitable Property insurance besides JMAPP;
- (d) did not make any, or (if any) reasonable, efforts on behalf of:

- (i) the Plaintiffs; and
 - (ii) each of the Group Members,
- to:
- (iii) request, solicit, negotiate or obtain from any alternative underwriter or provider of suitable Property insurance besides JMAPP a quotation, offer or terms for such insurance at lower premium rates than those payable to JMAPP; and/or
 - (iv) obtain an alternate contribution allocation from JMAPP lower than those otherwise paid by the Plaintiffs and each Group Member;
- (e) failed to make any reasonable efforts on behalf of:
- (i) the Plaintiffs; and
 - (ii) each of the Group Members,
- to engage in a reasonable, appropriate, competitive and arm's length tender process for Property insurance from an underwriter or provider besides JMAPP;

Particulars

- (i) It was not reasonable or appropriate in the circumstances that JLT act as the agent to conduct the tender for Property insurance for the Plaintiffs or any Group Member, as:
 - (A) JLT was related to JGS;
 - (B) competing insurers were aware that JGS as trustee for JMAPP would lodge a tender for the Property insurance with the tender agent;
 - (C) insurers would be concerned that if they lodged a tender, the terms of that tender might be made known to JGS; and
 - (D) in the circumstances insurers would be deterred from submitting a tender.
- (ii) In the premises, a reasonably competent broker would have advised the Plaintiffs and each Group Member to appoint an independent person to conduct the tender for Property insurance.
- (iii) JLT did not advise the Plaintiffs or any Group Member to appoint an independent person to conduct the tender.
- (iv) Consequently, in each relevant year the Plaintiffs and each Group Member appointed JLT to be its agent to conduct a public tender for the provision of their Property insurance.
- (v) In 2011 to 2015 and 2017 to 2018, JLT conducted a public tender for the provision of Property insurance to the Plaintiffs and to Group Members.

- (vi) The tender documents prepared by JLT to conduct the public tenders provided that the only person who could submit a tender was a person who could enter into a contract of insurance.
 - (vii) In 2014, Aon, an insurance broker, sought to submit a tender for the provision of Property insurance to the Plaintiffs and to Group Members.
 - (viii) At a time presently unknown to the Plaintiffs, but sometime in the period March 2014 to May 2014, JLT informed Aon that it would not be permitted to tender for the provision of Property insurance to the Plaintiffs or any Group Member as it was not an insurer. This is recorded in the following correspondence:
 - (A) Letter from AON to Moira dated 28 March 2014.
 - (B) Letter from AON to Moira dated 14 May 2014.
 - (C) Letter from JLT to Moira dated 19 May 2014.
 - (ix) In 2011 to 2015 and 2017 to 2018, only JMAPP submitted a tender to provide Property insurance for the Plaintiffs and each Group Member.
 - (x) In that circumstance, a reasonably competent broker would have directly approached insurers and invited them to provide Property insurance for the Plaintiffs and each Group Member.
 - (xi) Instead, after each tender JLT submitted a report to the Plaintiffs and to each Group Member:
 - (A) advising each of them that only one organisation had submitted a tender, namely JMAPP; and
 - (B) recommending that the tender be accepted.
 - (xii) Further particulars, including by way of expert evidence, will be provided prior to trial.
- (f) failed to advise:
- (i) the Plaintiffs; and
 - (ii) each of the Group Members,
- of:
- (iii) the circumstances pleaded in paragraph 26 above; and
 - (iv) the fact that the tender conducted by JLT as tender agent would be unlikely to result in competitive terms from alternative underwriters or providers besides JMAPP.

Particulars

The particulars to paragraph 27(e) are repeated.

(27(a) to 27(f) are together, severally, or in any combination hereafter described as the **Impugned Conduct**).

28. By reason of the Impugned Conduct, JLT breached:
- (a) the duties pleaded in paragraph 22 above;
 - (b) the terms pleaded in paragraph 24 above; and
 - (c) the terms pleaded in paragraph 25 above.
29. By reason of the breaches of duty and/or contract pleaded in paragraph 28 above:
- (a) the Plaintiffs; and
 - (b) each of the Group Members,
- have suffered loss or damage.

Particulars

- (i) The loss or damage suffered is equivalent to the value of the opportunity to obtain suitable Property insurance from alternative underwriters or providers besides JMAPP, at the best premium rates that were reasonably available to the Plaintiffs and each of the Group Members in the market, or an alternative contribution rate from JMAPP.
- (ii) The value of that opportunity is equal to the difference between:
 - (A) the amounts paid by the Plaintiffs and each Group Member to JMAPP during the Relevant Period, for their Property insurance; and
 - (B) the amount that would have been paid by the Plaintiffs and each Group Member, during the Relevant Period, but for JLT's breach of duty and/or contract,subject to any adjustment the Court finds necessary.
- (iii) Moira paid a total of \$2,203,510.16 to JMAPP for their Property insurance for the years ending 30 June 2010 to 30 June 2019, comprising (inclusive of GST):
 - (A) \$185,660.90 paid in or around July 2009, in respect of the 2010 year;
 - (B) \$236,682.37 paid in or around July 2010, in respect of the 2011 year;
 - (C) \$246,261.10 paid in or around July 2011, in respect of the 2012 year;
 - (D) \$302,584.48 paid in or around July 2012, in respect of the 2013 year;
 - (E) \$261,437.16 paid in or around July 2013, in respect of the 2014 year;
 - (F) \$239,060.21 paid in or around July 2014, in respect of the 2015 year;
 - (G) \$196,462.49 paid in or around July 2015, in respect of the 2016 year;
 - (H) \$149,551.68 paid in or around July 2016, in respect of the 2017 year;
 - (I) \$186,428.17 paid in or around July 2017, in respect of the 2018 year; and
 - (J) \$199,381.60 paid in or around July 2018, in respect of the 2019 year.

- (iv) Further particulars to be provided prior to trial.

JLT’s breaches of fiduciary duty

30. Further or in the alternative, as an insurance broker providing the Broking Services, tender agent providing the Tender Agent Services, and making the Recommendations, JLT owed:

- (a) the Plaintiffs; and
- (b) each of the Group Members,

the following fiduciary duties:

- (c) a duty to refrain from pursuing or advancing JLT’s own interests, in circumstances where there existed a conflict or a significant possibility of conflict between its own interests and those of the Plaintiffs or the Group Members (as the case may be); and
- (d) a duty to refrain from using JLT’s position or knowledge resulting from its position as insurance broker and tender agent, so as to obtain a benefit for itself or a third party or to cause detriment to the Plaintiffs or the Group Members (as the case may be).

31. At all material times during the Relevant Period, JLT or JGS was appointed to perform and performed various functions and services for JMAPP.

Particulars

- (i) 2014 Deed, esp. cl 4, 6, 8, 9.2, 10, 11, 12, 13, 14, 15, 18, 19.1, 19.2, 20, 21.1, 22, 23.1, 24.1, 25.2.

32. At all material times during the Relevant Period, in consideration for performing services for JMAPP, and for placing insurance or reinsurance on behalf of JMAPP, JLT received fees and commissions.

Particulars

- (iA) 2014 Deed, cl 16.3.
- (iB) The Audited Accounts for JMAPP disclose that JLT was paid at least the following fees for its services:

<u>Year ending</u>	<u>JLT Broking Fees</u>	<u>Risk Management Fees</u>	<u>Scheme Management Fees</u>
<u>2010</u>	<u>2,062,964.75</u>	<u>687,654.92</u>	<u>67,107.00</u>

<u>2011</u>	<u>2,171,495.29</u>	<u>707,825.10</u>	<u>75,001.15</u>
<u>2012</u>	<u>2,547,625.45</u>	<u>188,160.00</u>	<u>83,645.45</u>
<u>2013</u>	<u>2,202,358.48</u>	<u>216,658.00</u>	<u>122,401.75</u>
<u>2014</u>	<u>1,687,800.00</u>	<u>814,707.63</u>	<u>101,306.38</u>
<u>2015</u>	<u>1,518,368.74</u>	<u>933,337.09</u>	<u>117,199.75</u>
<u>2016</u>	<u>1,241,050.00</u>	<u>767,359.05</u>	<u>131,141.00</u>

- (i) Fees of as yet unknown amounts paid to JLT for its services for the years ending 2017, 2018 and 2019 during the Relevant Period.
- (iiA) JLT further received a portion of the insurance premium notionally recorded as “Insurance Premiums” in the Audited Accounts for JMAPP as commission as follows:

<u>Year ending</u>	<u>JLT Commission in Insurance Premium</u>
<u>2011</u>	<u>\$317,210.64</u>
<u>2012</u>	<u>\$1,065,268.00</u>
<u>2013</u>	<u>\$1,746,383.00</u>
<u>2014</u>	<u>\$2,124,509.70</u>
<u>2015</u>	<u>\$2,126,471.36</u>
<u>2016</u>	<u>\$2,580,289.45</u>

- (ii) Commissions of as yet unknown amounts paid to JLT by underwriters or reinsurers of JMAPP in the years ending 2010, 2017, 2018 and 2019 during the Relevant Period.
- (iii) ~~Any commission recorded as insurance premium in the Acceptance Forms provided to the Plaintiffs and each Group Member.~~
- (iv) ~~Further particulars will be provided after discovery.~~

33. By reason of the matters pleaded in paragraphs 31 and 32 above, a conflict existed between JLT’s own financial interests in earning and continuing to earn fees and commissions for, or in connection with, services it provided to JMAPP, and the interests of:

- (a) the Plaintiffs; and
- (b) each of the Group Members,

in obtaining suitable Property insurance at the best premium rates that were reasonably available to each of them in the market.

34. JLT, in performing the Broking Services, making the Recommendations, providing the Tender Agent Services and in placing or renewing:

- (a) the Plaintiffs'; and
- (b) each of the Group Members',

Property insurance with JMAPP:

- (c) pursued or advanced its own interests in earning and continuing to earn fees and commissions;
- (d) used its position or knowledge resulting from its position as their insurance broker for its own financial benefit and to the detriment of the Plaintiffs and each Group Member; and

Particulars

- (i) Paragraphs 12, 13 (including the particulars to paragraph 13), and 14 (including the particulars to paragraph 14) are repeated. JLT made the Recommendations to the Plaintiffs and each Group Member in circumstances where it was aware, or ought to have been aware, of the existence of alternative insurance at cheaper premium rates to JMAPP.
- (ii) Paragraph 21 (including the particulars to paragraph 21) is repeated. JLT made the Recommendations to the Plaintiffs and each Group Member in circumstances where it was aware that JMAPP could have provided a lower contribution rate to the Plaintiffs and each Group Member.
- (iii) JLT made the Recommendations to the Plaintiffs and each Group Member in circumstances where it was aware, or ought to have been aware, that the Plaintiffs and each Group Member:
 - (A) relied on statements by JLT that JLT “will act on [their] behalf when provided services to” the Plaintiffs and each Group Member: for example, JDT FSG June 2012, p.1; and
 - (B) relied on the Recommendations in instructing JLT to place their Property insurance.
- (iv) Paragraphs 26(d) (including the particulars to paragraph 26(d)) and 29 (including the particulars to paragraph 29) are repeated.
- (v) Paragraph 32 (including the particulars to paragraph 32) is repeated. Some or all of the fees and commissions received by JLT and JGS for services to JMAPP were contingent on the number of members sourcing their Property insurance from JMAPP.

thereby breached the fiduciary duties it owed to the Plaintiffs and Group Members pleaded in paragraph 30 above.

Undisclosed commissions

35. JLT was under a duty not to receive any fees or commissions in connection with JMAPP without the consent of the Plaintiffs or the Group Members.

Particulars

The duty arises in equity from JLT's appointment as insurance broker for the Plaintiffs and Group Members.

36. In breach of that duty JLT received certain fees or commissions in connection with JMAPP which were not known to either the Plaintiffs or to the Group Members.

Particulars

- (i) Particular (iii) to paragraph 32 is repeated.
- (ii) The contribution for JMAPP comprised a number of components, particularised in the Acceptance Forms provided by JLT to Group Members.
- (iii) The contribution included an amount for "Excess of Loss Insurance Cover Contribution" that was described in the Acceptance Forms as "...the proportion of the Total Membership Contribution payable by a Member which represents the premium paid to the Insurer for the Insurance Cover...".
- (iv) In a letter dated 3 August 2017 sent to Quinn Emanuel Urquhart and Sullivan, solicitors for Group Member Mornington Peninsula Shire Council (**Mornington**), the solicitors for JLT, Clayton Utz, disclosed that a component of the Excess of Loss Insurance Cover Contribution paid by Mornington for Property insurance from JMAPP was in fact a commission paid to JLT:

Year	JLT's commission component of Excess of Loss Insurance Cover Contribution attributable to Mornington
2010-2011	\$14,359.21
2011-2012	\$15,082.84
2012-2013	\$25,542.40
2013-2014	\$32,581.68
2014-2015	\$35,357.03
2015-2016	\$38,299.03

- (ivA) On 16 February 2018, JLT produced, pursuant to an application for preliminary discovery filed in the Federal Court of Australia (VID 984/2017), a document purporting to summarise the amount of

commission received by JLT for all members of JMAPP that was a component of the Excess of Loss Insurance Cover Contribution (the Disclosed Summary).

(ivB) The Disclosed Summary stated that in the period between 30 June 2012 and 30 June 2016, JLT received the following amounts by way of fees or commissions on the premiums paid to insurers for JMAPP's insurance cover:

<u>Year</u>	<u>Total</u>	<u>Attributable to Mornington</u>
<u>2011-2012</u>	<u>\$1,065,268</u>	<u>\$15,082.84</u>
<u>2012-2013</u>	<u>\$1,746,383</u>	<u>\$25,542.40</u>
<u>2013-2014</u>	<u>\$2,124,509.70</u>	<u>\$32,581.68</u>
<u>2014-2015</u>	<u>\$2,126,471.36</u>	<u>\$35,357.03</u>
<u>2015-2016</u>	<u>\$2,580,289.45</u>	<u>\$38,299.03</u>

(v) Further particulars will be provided prior to trial.

37. By reason of the breaches of fiduciary duty pleaded in paragraphs 34 and 36 above:

- (a) the Plaintiffs; and
- (b) each of the Group Members,

have suffered compensable loss.

Particulars

The particulars to paragraphs 29 and 36 above are repeated.

38. Further or alternatively:

- (a) JLT has earned profits from the breaches of fiduciary duty pleaded in paragraphs 34 and 36 above; and
- (b) is liable to account for and disgorge those profits to:
 - (i) the Plaintiffs; and
 - (ii) each of the Group Members.

Particulars

Particulars will be provided following discovery and prior to trial.

Relief sought

And the Plaintiffs claim on their own behalf and on behalf of the Group Members:

- A Damages.
- B Further or alternatively, equitable compensation.
- C Further or alternatively, in the event the Plaintiffs and the Group Members so elect, an account of profits.
- D Interest.
- E Costs.
- F Further or other relief as this Honourable Court deems fit.

Common questions

The questions of law or fact common to the claims of the Plaintiffs and Group Members are as follows (in respect of the Relevant Period, as defined in paragraph 2(a) above):

- (a) whether the Defendant owed the Plaintiffs and each Group Member the general law duty pleaded in paragraph 22 above;
- (b) whether the Broking Services Contracts contained the term pleaded in paragraph 24 above;
- (c) whether the Tender Agent Services Contracts contained the term pleaded in paragraph 25 above;
- (d) whether the amounts that the Plaintiffs and each Group Member paid in order to obtain or renew insurance through JMAPP exceeded the premium rates that were reasonably available from alternate underwriters or providers in the market, or exceeded the contribution rates that were reasonably available from JMAPP;
- (e) whether the breaches pleaded at paragraph 28 above occurred;
- (f) whether the Defendant owed the Plaintiffs and each Group Member the fiduciary duties pleaded in paragraphs 30 and 35 above;
- (g) what fees and commissions were received by the Defendant in consideration for, and in connection with, the performance of services for JMAPP;

- (h) whether the breaches of fiduciary duty alleged at paragraphs 34 and 36 above occurred;
- (i) quantification of damages and/or equitable compensation; and
- (j) further or alternatively, is an account of profits available and, if so, what is the appropriate measure for that remedy.

P D CRUTCHFIELD

R G CRAIG

K A LOXLEY

1. Place of trial: Melbourne
2. Mode of trial: Judge alone
3. This writ was filed for the Plaintiffs by Michael Mills, solicitor of Quinn Emanuel Urquhart & Sullivan
4. The addresses of the Plaintiffs are:
 - (a) Moira: 44 Station Street, Cobram, Victoria 3644
 - (b) Hobsons Bay: 115 Civic Parade, Altona, Victoria 3018
5. The address for service of the Plaintiffs is: C/- Quinn Emanuel Urquhart & Sullivan, Level 15, 111 Elizabeth Street, Sydney NSW 2000
6. The email address for service of the Plaintiffs is: michaelmills@quinnemanuel.com and nicholaslennings@quinnemanuel.com
7. The address of the Defendant is: Level 8, 570 Bourke Street, Melbourne VIC 3000

SCHEDULE 1

SCHEDULE OF PARTIES

MOIRA SHIRE COUNCIL

First Plaintiff

HOBSONS BAY CITY COUNCIL

Second Plaintiff