



FORM 5A

Rule 5.02(1)

WRIT

Case: S ECI 2022 02887

Filed on: 29/07/2022 05:37 PM

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

No. S ECI

BETWEEN

DAMIAN CHRISTOPHER NORRIS

Plaintiff

AND

INSURANCE AUSTRALIA GROUP LIMITED (ACN 090 739 923)

Defendant

Date of document: 29 July 2022

Solicitors' code: 24875

Filed on behalf of: the Plaintiff

Telephone: (02) 9146 3888

Prepared by:

Ref: 00811-00368

Quinn Emanuel Urquhart & Sullivan
Level 15, 111 Elizabeth Street
Sydney NSW 2000

Email: damianscattini@quinnemanuel.com

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a “Notice of Appearance” in the Prothonotary’s office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff’s address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.
THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

FILED 29 JULY 2022

Prothonotary

1. Place of trial—

Melbourne.

2. Mode of trial—

Trial will be before a Judge of the Court sitting alone.

3. This writ was filed—

For the Plaintiff by Damian Scattini of Quinn Emanuel Urquhart & Sullivan, solicitor, of Level 15, 111 Elizabeth Street, Sydney, New South Wales, 2000.

4. The address of the Plaintiff is—

50/538 Warrigal Road, Eight Mile Plains, Queensland, 4113.

5. The address for service of the Plaintiff is—

Level 4, 555 Lonsdale Street, Melbourne, Victoria 3000 c/o David Weinberger at KCL Law.

6. The email address for service of the Plaintiff is—

damiandscattini@quinnemanuel.com

7. The addresses of the Defendant is—

Insurance Australia Group Limited
Level 13, Tower 2 Darling Park, 201 Sussex Street, Sydney, New South Wales, 2000.

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

No. S ECI

BETWEEN

DAMIAN CHRISTOPHER NORRIS

Plaintiff

AND

INSURANCE AUSTRALIA GROUP LIMITED (ACN 090 739 923)

Defendant

Statement of Claim

Date of document: 29 July 2022

Solicitors' code: 24875

Filed on behalf of: the Plaintiff

Telephone: (02) 9146 3888

Prepared by:

Ref: 00811-00368

Quinn Emanuel Urquhart & Sullivan
Level 15, 111 Elizabeth Street
Sydney NSW 2000

Email: damianscattini@quinnemanuel.com

A. THE PLAINTIFF AND GROUP MEMBERS

1. This proceeding is commenced as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) by the Plaintiff on his own behalf and on behalf of persons who:
 - a. acquired or acquired an interest in, or entered into a contract to acquire an interest in, one or more shares in Insurance Australia Group Limited (**IAG**) (**Shares**) during the period commencing on 11 March 2020 and ending on 20 November 2020 when IAG made its announcement to the Australian Securities Exchange (**ASX**) pleaded in paragraph 146 below (**Relevant Period**);
 - b. have suffered loss or damage by reason of the conduct of IAG pleaded in this Statement of Claim; and
 - c. are not any of the following:
 - i. a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of IAG;
 - ii. a related body corporate (as defined by s 50 of the *Corporations Act*) of IAG;
 - iii. an associated entity (as defined by s 50AAA of the *Corporations Act*) of IAG;
 - iv. an officer or close associate (as defined by s 9 of the *Corporations Act*) of IAG; or
 - v. one of the persons referred to in s 33E(2) of the *Supreme Court Act 1986* (Vic).

(collectively, **Group Members**).

2. As at the commencement of this proceeding, seven or more Group Members have claims against IAG.
3. On or about 4 September 2020, the Plaintiff acquired 6,000 Shares on the financial market operated by the ASX at a cost of A\$4.75 per Share (the total being A\$28,500).

B. THE DEFENDANT**I. IAG's business and relevant obligations to which IAG was subject**

4. At all material times, IAG:
 - a. was the parent company of a general insurance group with controlled operations in Australia and New Zealand; and
 - b. carried on as one of its principal activities the underwriting of general insurance.
5. IAG is and was at all material times:
 - a. a company incorporated under the Corporations Act and capable of being sued;
 - b. a “person” within the meaning of s 1041H of the Corporations Act;
 - c. a “person” within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - d. a “person” within the meaning of s 18 of the *Australian Consumer Law (ACL)*, being Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
6. At all material times, IAG was:
 - a. included in the official list of the financial market operated by the ASX, with ordinary shares in IAG trading under the ticker “IAG”;
 - b. an entity the shares in which were “ED securities” for the purpose of s 111AE of the Corporations Act;
 - c. a “listed disclosing entity” within the meaning of s 111AL(1) of the Corporations Act;
 - d. subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and
 - e. obliged by ss 111AP and 674 of the Corporations Act to notify the ASX of information where the requirements of s 674(2) of the Corporations Act were met.

7. The Shares are and have at all material times been financial products within the meaning of each of:
 - a. the Corporations Act; and
 - b. the ASIC Act.
8. At all material times, IAG was prohibited from engaging in conduct that was misleading or deceptive or likely to mislead or deceive:
 - a. in relation to a financial product or a financial service, pursuant to s 1041H of the Corporations Act;
 - b. in relation to financial services, pursuant to s 12DA of the ASIC Act; and
 - c. in trade or commerce, pursuant to s 18 of the ACL.

II. Relevant personnel

a. Directors

9. Elizabeth Bryan AM:
 - a. was a Non-Executive Director of IAG from 5 December 2014 to 22 October 2021; and
 - b. was Chairman of IAG from 31 March 2016 to 21 October 2021.
10. Simon Allen has been a Non-Executive Director of IAG since 12 November 2019.
11. Duncan Boyle was a Non-Executive Director of IAG from 23 December 2016 to 22 October 2021.
12. Sheila McGregor has been a Non-Executive Director of IAG since 13 March 2018.
13. Jonathan Nicholson has been a Non-Executive Director of IAG since 1 September 2015.
14. Helen Nugent AC has been a Non-Executive Director of IAG since 23 December 2016.
15. Thomas Pockett has been:
 - a. a Non-Executive Director of IAG since 1 January 2015; and
 - b. Chairman of IAG since 22 October 2021.

16. George Savvides AM has been a Non-Executive Director of IAG since 12 June 2019.
17. Michelle Tredenick has been a Non-Executive Director of IAG since 13 March 2018.
18. Peter Harmer was the Managing Director and Chief Executive Officer (**CEO**) of IAG from 16 November 2015 to 1 November 2020.
19. Nicholas Hawkins has been the Managing Director and CEO of IAG since 2 November 2020.

b. Group Leadership Team

20. At all material times, there was a group leadership team of IAG part of whose role was to support IAG's core businesses and its focus on its strategic priorities (**Group Leadership Team**).
21. Mr Harmer was a member of the Group Leadership Team from 16 November 2015 to 1 November 2020.
22. Mr Hawkins has been a member of the Group Leadership Team since 2008:
 - a. from 2008 to 8 April 2020 in his capacity as Chief Financial Officer of IAG;
 - b. from 8 April 2020 to 1 November 2020 in his capacity as Deputy CEO of IAG; and
 - c. since 2 November 2020 in his capacity as Managing Director and CEO of IAG.
23. Peter Horton has been the Group General Counsel and Company Secretary of IAG, and a member of the Group Leadership Team, since December 2019.
24. Julie Batch:
 - a. was the Chief Strategy & Innovation Officer of IAG from 24 February 2020 to 10 March 2021;
 - b. was the Acting Group Executive, Intermediated Insurance Australia from 2 November 2020 to 10 March 2021;
 - c. has been the Group Executive, Direct Insurance Australia from 10 March 2021; and
 - d. has been a member of the Group Leadership Team since 24 February 2020.

25. Michelle McPherson:

- a. was the Acting Chief Financial Officer of IAG from 8 April 2020 to 1 November 2020;
- b. has been the Chief Financial Officer of IAG since 2 November 2020; and
- c. has been a member of the Group Leadership Team since 8 April 2020.

26. Neil Morgan:

- a. was the Group Executive Technology & Digital of IAG from 24 February 2020 to 1 November 2020;
- b. was the Group Executive Technology & Operations of IAG from 2 November 2020 to 9 March 2021;
- c. has been Chief Operating Officer of IAG since 10 March 2021; and
- d. has been a member of the Group Leadership Team since 24 February 2020.

27. Craig Olsen:

- a. was the Chief Executive, New Zealand from December 2015 to 30 June 2021;
- b. was the Group Executive Strategic Projects from 1 July 2021 to February 2022; and
- c. was a member of the Group Leadership Team from December 2015 to February 2022.

28. Christine Stasi has been the Group Executive, People Performance & Reputation of IAG, and a member of the Group Leadership Team, since November 2019.

29. David Watts was the Chief Risk Officer of IAG from September 2018 to February 2022, and was a member of the Group Leadership Team throughout that period.

30. Amanda Whiting:

- a. has been the CEO, IAG New Zealand since 1 July 2021;
- b. was Acting Group Executive, Intermediated Insurance Australia from 10 March 2021 to 13 September 2021;

- c. was Acting Group Executive, Direct Insurance Australia from 2 November 2020 to 9 March 2021; and
- d. has been a member of the Group Leadership Team since 2 November 2020.

31. Mark Milliner:

- a. was Chief Operating Officer of IAG from April 2016 to 18 July 2017;
- b. was CEO, Australia of IAG from 19 July 2017 to December 2020; and
- c. was a member of the Group Leadership Team from April 2016 to December 2020.

c. Officers of IAG

32. Each of the persons referred to in paragraphs 9 to 19 and 21 to 31 above was, during his or her occupancy of the position referred to in the relevant paragraph, an “officer” of IAG within the meaning of s 9 of the Corporations Act and therefore r 19.12 of the ASX Listing Rules (and remains such an officer to the extent the position is still occupied).

III. IAG’s policies concerning disclosure

a. Continuous Disclosure Policy

33. At all material times, IAG had a “Continuous Disclosure Policy” which it published on its website (**Continuous Disclosure Policy**).
34. IAG’s Continuous Disclosure Policy contained statements to the effect that:
- a. IAG must immediately (i.e., promptly and without delay) disclose to the market any information concerning it that a reasonable person would expect to have a material effect on the price or value of the Shares, unless an exception applies;
 - b. information is “material” if it would be likely to influence persons who commonly invest in shares in deciding whether to buy, sell or hold IAG shares;
 - c. IAG becomes aware of information as soon as a Board Director, senior manager or Company Secretary has, or ought reasonably to have, become aware of the information;

- d. IAG is deemed to be aware of information if it is known to anyone within IAG, and it is of such significance that it should reasonably have been brought to the attention of a Board Director, senior manager or Company Secretary;
- e. everyone at IAG must report any potentially material information upwards to a Disclosure Officer as soon as they become aware of that information (either directly or via their line manager), and keep all information concerning IAG confidential;
- f. IAG's Disclosure Officers are responsible for referring potentially material information to the Continuous Disclosure Committee (CDC), where the information is potentially disclosable in accordance with IAG's disclosure obligations;
- g. the CDC is responsible for: managing IAG's continuous disclosure obligations on a day-to-day basis, including determining whether a disclosure is required and approving the form of that disclosure (unless it is a Board reserved matter or procedural matter); IAG's reporting processes, controls and guidelines for the release of market announcements; and referring matters to the Board, or through the rapid response process;
- h. the Board is ultimately responsible for the oversight of IAG's continuous disclosure obligations.

b. Code of Conduct

- 35. At all material times, IAG had a "Code of Ethics and Business Conduct" dated July 2017 (updated November 2020) which it published on its website (**Code of Conduct**).
- 36. IAG's Code of Conduct contained statements to the following effect:
 - a. if persons to whom the Code of Conduct applies (being all employees of IAG and subsidiary companies, as well as officers and directors of IAG and its subsidiaries) see someone breaching the Code of Conduct, that person has an obligation to speak up and report their concerns;
 - b. IAG's expectations are that persons to whom the Code of Conduct applies:
 - i. will be responsible for understanding and complying with all relevant laws and regulations in the location(s) in which those persons work or which apply to the work those persons are doing;
 - ii. will complete ongoing training and education programs relevant to their role to build and maintain awareness of relevant laws, policies, procedures and practices;

- iii. will ensure any compliance breaches are reported and managed in an open and timely manner;
- iv. will consult their manager or Risk Partner whenever they are unsure about a particular law, obligation, policy or procedure.

c. Board Charter

37. At all material times, IAG had a “Board Charter” which it published on its website (**Board Charter**).

Particulars

IAG published a Board Charter dated 29 April 2019. This Board Charter was replaced by a revised Board Charter on 21 May 2020. The differences between the two versions are immaterial for present purposes, and the defined term Board Charter therefore refers to both.

38. In its Board Charter, IAG made statements to the following effect:
- a. the Board’s principal role is to govern and oversee IAG and its subsidiaries (Group) by ensuring that there is a proper governance framework in place to promote and protect IAG’s interests for the benefit of all its stakeholders;
 - b. without limiting its role, the Board is responsible for the overall oversight of IAG and will undertake tasks including but not limited to the following:
 - i. monitoring the Group’s financial position, performance and statutory reporting;
 - ii. approving capital management transactions, including return of capital, allotment of new capital and capital raising transactions, to ensure that IAG’s capital structure is optimal;
 - iii. approving the Group’s half year and full year statutory reports;
 - iv. monitoring all key risk and compliance matters by ensuring the implementation of an adequate and effective risk management and internal controls framework;
 - v. approving reinsurance renewal strategies and the implementation of reinsurance renewal programmes;
 - vi. overseeing an appropriate corporate governance framework for the Group;

- vii. approving Group policies or delegate responsibilities to a Board Committee to approve certain Group policies;
- viii. monitoring the exercise of delegated authority by Management;
- c. the Board has delegated responsibility for the overall management and profit performance of IAG, including day-to-day operations and administration of IAG, to the CEO;
- d. the CEO is principally responsible for matters including:
 - i. the efficient and effective operation of IAG;
 - ii. ensuring the ongoing development, implementation and monitoring of IAG's risk management and internal controls frameworks;
 - iii. ensuring the Board is provided with relevant and accurate and clear information in a timely manner to promote effective decision-making; and
 - iv. ensuring all material matters affecting IAG are brought to the Board's attention;
- e. the Board may establish committees to assist it in exercising its authorities. The standing Board Committees are: Audit Committee; Risk Committee; People and Remuneration Committee; and Nomination Committee;
- f. minutes of all Committee meetings are circulated to all Directors and the Committee Chairs will report on the business of Committee meetings at the next Board meeting;
- g. the Board will have free and unfettered access to Group Executives, Senior Management and any other persons (internal or external) required to fulfil its responsibilities.

IV. IAG's risk management

- 39. At all material times, the IAG Board had established a Risk Committee to assist the Board to discharge its risk management and compliance responsibilities (**Risk Committee**).
- 40. At all material times, IAG had a "Risk Committee Charter" dated 14 November 2019 which it published on its website (**Risk Committee Charter**).
- 41. In its Risk Committee Charter, IAG made statements to the following effect:
 - a. the purpose of the Risk Committee is to assist the IAG Board to discharge its risk management and compliance responsibilities;

- b. the responsibilities of the Risk Committee include:
 - i. overseeing Management's monitoring and management of material risks consistent with the strategic objectives, risk appetite and policies approved by the Board and the Committee;
 - ii. overseeing the Group's compliance with standards, applicable laws, regulations, regulatory requirements, listing authorities' listing rules, and internal policies;
 - iii. escalating compliance risk issues to the Board as relevant to provide assurance that material compliance risk issues are being considered on a timely basis and addressed in a consistent manner;
 - iv. challenging Management's proposals and decisions on all aspects of risk management arising from the Group's activities;
- c. the Chair of the Risk Committee will report on the business of Committee meetings to the Board and make recommendations, as appropriate;
- d. the Risk Committee will immediately escalate any actual or suspected material risk that is outside the Group's risk appetite or any other material concern to the Chair of the Board or to the Chair of the appropriate Board Committee;
- e. minutes of Risk Committee meetings will be circulated to all directors;
- f. the Risk Committee will meet at least four times annually and as often as required to undertake its role effectively;
- g. all Directors will have access to Risk Committee papers and may attend Risk Committee meetings;
- h. the Risk Committee will have free and unfettered access to Management, the Global External Peer Review Actuary, the External Auditor, risk and financial control personnel and any other persons (internal or external) required by the Committee to fulfil its responsibilities;
- i. the Risk Committee may engage and consult and/or seek independent advice from such consultants or experts as required by the Committee to carry out the responsibilities and delegations outlined in the Risk Committee Charter.

V. IAG's internal controls

42. At all material times, the IAG Board had established an Audit Committee to assist the Board in fulfilling its statutory and fiduciary obligations (**Audit Committee**), by monitoring:
- a. the integrity of IAG and subsidiary external and internal financial reporting, including compliance with applicable laws, regulations and other requirements in relation to external financial reporting;
 - b. tax and financial risks;
 - c. the provision of high quality financial and audit related non-financial information that can be relied upon by the Board to make informed judgements; and
 - d. the safeguarding of the independence of the Auditor, Group General Manager Internal Audit and Global External Peer Review Actuary.
43. At all material times, the Audit Committee had an "Audit Committee Charter" dated 14 November 2019 which it published on its website (**Audit Committee Charter**).
44. In the Audit Committee Charter, IAG made statements to the following effect:
- a. the Audit Committee's main responsibilities cover the following areas: external financial reporting; external audit and the auditor; internal audit; global external peer review actuary; and chief actuary, together with a series of other responsibilities;
 - b. the Audit Committee's responsibilities include (adopting the definitions appearing in the Audit Committee Charter):
 - i. provide an independent review and recommend to the Board for approval the Group's half year and full year statutory reports, annual APRA regulatory return and financial data related declarations and key aspects of the Group's market presentations;
 - ii. oversee any tax and financial risks and their potential impact on the Group's statutory reports;
 - iii. provide oversight of audit reports issued by the External Auditor on the Group's financial reports and APRA returns;

- iv. assess information from the External Auditor, the Executive General Manager Internal Audit and Management regarding the quality of both external and internal financial reports;
- v. oversee development of and approve the Audit Plan to ensure it covers all material risks and financial reporting requirements of the Group, discuss audit results with the External Auditor, consider and critique Management's responsiveness to the External Auditor's recommendations and consider the implications of the external audit findings for the control environment.

C. BUSINESS INTERRUPTION INSURANCE

I. The nature of business interruption cover

- 45. Insurance policies providing business interruption cover (**BI Policies**) provide cover against the happening of events likely to cause loss or damage in the conduct of a business.

II. Bird Flu and APRA pandemic stress testing

- 46. In February 2003, avian influenza H5N1 (**Bird Flu**), being a highly pathogenic influenza virus that was first detected in humans in 1997 in Hong Kong, re-emerged in Hong Kong amongst a family with a recent travel history to mainland China.

Particulars

The Plaintiff refers to the World Health Organization (**WHO**) news release entitled "One case of 'bird flu' confirmed in Hong Kong – investigation ongoing" issued on 19 February 2003.

- 47. Between 2003 and 2006, outbreaks of Bird Flu were identified in birds in a number of countries around the world, and human cases were identified in China, Vietnam, Thailand, Cambodia, Indonesia, Turkey, Iraq, Azerbaijan, Egypt and Djibouti.

Particulars

The Plaintiff refers to the World Bank's Policy Research Working Paper entitled "Aviation Influenza and the Poultry Trade" dated March 2008.

- 48. During 2005 and 2006, the WHO raised concerns regarding the potential for a human influenza pandemic to emerge from Bird Flu outbreaks around the world.

Particulars

By way of example, the Plaintiff refers to "Avian influenza: assessing the pandemic threat" issued by the WHO in January 2005 and to "Epidemiology of WHO-confirmed cases of avian influenza A(H5N1) infection" issued by the WHO in June 2006.

49. In late 2006, the Australian Prudential Regulations Authority (**APRA**) asked all life and general insurers in Australia to consider their potential claims exposures from a mild to a quite severe pandemic, in order to provide a baseline for understanding the possible financial impacts from a range of pandemic scenarios.

Particulars

The request is referred to in APRA's "Insight" publication (Issue 3, 2007) entitled "Results of pandemic stress test of insurance industry" at p 2.

50. Following the receipt of the information from insurers requested in late 2006, APRA's analysis demonstrated that, for the general insurance industry, the largest amount of additional gross claims anticipated in a pandemic scenario would arise from business interruption and industrial special risk policies, with an anticipated percentage increase in claims for business interruption averaging more than 400 per cent.

Particulars

APRA's "Insight" publication (Issue 3, 2007) entitled "Results of pandemic stress test of insurance industry" at p 6.

51. Following its analysis in late 2006, APRA observed that, as a result of its analysis conducted in late 2006, most Australian general insurers reduced their coverage of pandemic infectious disease in new BI Policies.

Particulars

APRA's "Insight" publication (Issue 3, 2007) entitled "Results of pandemic stress test of insurance industry" at p 6.

III. BI Insurance Policies offered by IAG and its subsidiaries

52. At all material times, IAG and its subsidiaries have issued BI Policies.

a. The Quarantinable Disease Exclusion

53. On or about 30 September 2006, IAG and its subsidiaries adopted a policy of excluding pandemic risk from BI Policies issued by them.

Particulars

The policy is referred to in IAG 1H07 Investor Report at p 41, which stated that 30 September 2007 was the anniversary of the Group commencing its policy of excluding pandemic risk from its commercial insurance policies.

Further particulars may be provided following discovery.

54. At the time IAG and its subsidiaries adopted the policy pleaded in paragraph 53 above, IAG knew, or ought to have known, of the matters pleaded in paragraphs 49 to 51 above.

55. In accordance with the policy pleaded in paragraph 53 above, from around September 2006, IAG and its subsidiaries incorporated an exclusion into new and renewed BI Policies to the effect that the insurer would not cover interruption or interference to businesses in respect of Bird Flu or any other diseases declared to be quarantinable diseases under the *Quarantine Act 1908* (Cth) (the **Quarantine Act**) and subsequent amendments (the **Quarantinable Diseases Exclusion**).

b. Repeal of the Quarantine Act and impact on the Quarantinable Disease Exclusion

56. On 16 June 2016, the Quarantine Act was repealed, and the *Biosecurity Act 2015* (Cth) (the **Biosecurity Act**) came into force.

Particulars

The Plaintiff refers to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Cth).

57. The Quarantine Act (as it stood immediately prior to repeal) and the Biosecurity Act differ in material respects, including:

- a. the term “quarantinable disease” appears in the Quarantine Act, but does not appear in the Biosecurity Act;
- b. the term “listed human disease” appears in the Biosecurity Act, but does not appear in the Quarantine Act;
- c. under the Quarantine Act, the Governor-General may, by proclamation, declare a disease to be a “quarantinable disease” in certain circumstances, whereas no one is empowered to declare a disease a “quarantinable disease” under the Biosecurity Act;
- d. under the Biosecurity Act, the Director of Human Biosecurity (being the person who occupies or is acting in the position of the Commonwealth Chief Medical Officer) may, in writing, determine that a human disease is a “listed human disease” in certain circumstances, whereas the Director of Human Biosecurity has no power to declare a disease to be either a “listed human disease” or a “quarantinable disease” under the Quarantine Act;
- e. the Quarantine Act provides for the exercise of a range of coercive statutory powers in relation to a “quarantinable disease”, whereas the Biosecurity Act does not provide for the exercise of any coercive statutory powers in relation to a “quarantinable disease”; and

- f. the Biosecurity Act provides for the exercise of a range of coercive statutory powers in relation to a “listed human disease”, whereas the Quarantine Act does not provide for the exercise of any coercive statutory powers in relation to a “listed human disease”.

58. In the premises, on and from 16 June 2016:

- a. there was no longer any power reposed in the Governor-General or any other person under the Quarantine Act to declare a disease to be a “quarantinable disease”; and
- b. there was, instead, a power reposed in the Director of Human Biosecurity to determine that a disease would be a “listed human disease” in accordance with s 42 of the Biosecurity Act.

c. Failure to amend all BI Policies

59. Following the repeal of the Quarantine Act and the Biosecurity Act coming into force on 16 June 2016, including throughout the Relevant Period:

- a. certain BI Policies issued by IAG and its subsidiaries included an exclusion for interruption or interference to businesses in respect of any disease determined to be a listed human disease under the Biosecurity Act (as opposed to a disease declared to be a quarantinable disease under the Quarantine Act); and
- b. certain BI Policies issued by IAG and its subsidiaries continued to include the Quarantinable Disease Exclusion, notwithstanding the fact that the Quarantine Act had been repealed on 16 June 2016 (the **Unamended BI Policies**).

Particulars

So far as the Plaintiff is presently able to say, IAG and its subsidiaries had approximately 76,000 BI Policies on issue as at 22 November 2020, approximately 50% of which were Unamended BI Policies, meaning approximately 38,000 Unamended BI Policies were issued by IAG and its subsidiaries, including through the NRMA, CGU and SGIO brands.

The date from which IAG and its subsidiaries ceased to issue Unamended BI Policies is presently unknown to the Plaintiff.

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

60. The Unamended BI Policies did not in terms exclude claims arising out of business interruption caused by an outbreak of a disease classified as a “listed human disease” under the Biosecurity Act,

at least not unless the disease had also been declared to be a “quarantinable disease” under the Quarantine Act.

61. COVID-19 has never been declared to be a “quarantinable disease” under the Quarantine Act.
62. There were reasonable grounds upon which to conclude that the Unamended BI Policies did not exclude claims arising out of business interruption caused by an outbreak of a disease classified as a “listed human disease” under the Biosecurity Act because:
 - a. the Quarantinable Diseases Exclusion contained in the Unamended BI Policies referred to an Act (namely, the Quarantine Act) which had been repealed, as pleaded in paragraph 56 above;
 - b. the Quarantine Act and the Biosecurity Act (being the Act that replaced the Quarantine Act) differed in material respects, as pleaded in paragraph 57 above; and
 - c. the Quarantinable Diseases Exclusion referred to “diseases declared to be quarantinable diseases” in circumstances where no disease could be declared to be a “quarantinable disease” on or after 16 June 2016, given that no provision was or is made under the Biosecurity Act for the declaration of a disease as a “quarantinable disease”, as pleaded in paragraph 57 above.
63. By reason of the matters pleaded in paragraph 62 above, IAG could not be confident that the Unamended BI Policies excluded claims arising out of business interruption caused by an outbreak of a disease classified as a “listed human disease” under the Biosecurity Act.
64. IAG knew or ought to have known of the matters pleaded in paragraphs 59 to 63 above at all times following the repeal of the Quarantine Act on 16 June 2016.

D. THE COVID-19 PANDEMIC

I. Key events related to the COVID-19 pandemic

65. On 31 December 2019, the WHO’s Country Office in China identified a media statement by the Wuhan Municipal Health Commission concerning cases of “viral pneumonia” in Wuhan, China, and notified the International Health Regulations focal point in the WHO Western Pacific Regional Office about the media statement.

Particulars

The Plaintiff refers to the “Listings of WHO’s response to COVID-19” dated 29 June 2020 and published by the WHO (last updated 29 January 2021).

66. Also on 31 December 2019, the WHO’s Epidemic Intelligence from Open Sources platform picked up a media report on ProMED (a programme of the International Society for Infectious Diseases) about a cluster of cases of “pneumonia of unknown cause” in Wuhan, China.

Particulars

The particulars to paragraph 65 are repeated.

67. On 3 January 2020, Chinese officials provided information to the WHO on the cluster of cases of “viral pneumonia of unknown cause” identified in Wuhan.

Particulars

The particulars to paragraph 65 are repeated.

68. On 9 January 2020, the WHO reported that Chinese authorities had made a preliminary determination of a novel (or new) coronavirus, identified in a hospitalized person with pneumonia in Wuhan.

Particulars

The Plaintiff refers to WHO’s statement entitled “WHO Statement regarding cluster of pneumonia cases in Wuhan, China” dated 9 January 2020.

69. On 21 January 2020, the WHO announced that it was now clear that there was at least some human-to-human transmission of novel coronavirus.

Particulars

The particulars to paragraph 65 are repeated.

70. On 21 January 2020:
- a. the “human coronavirus with pandemic potential” was declared to be a “listed human disease” by the Director of Human Biosecurity under s 42(1) of the Biosecurity Act; and

Particulars

The Plaintiff refers to the Biosecurity (Listed Human Diseases) Amendment Determination 2020.

- b. enhanced screening measures for passengers arriving at Sydney Airport on direct flights from Wuhan began.

Particulars

The Plaintiff refers to “COVID-19: a chronology of Australian Government announcements (up until 30 June 2020)” dated 23 June 2021 and issued by the Department of Parliamentary Services (**COVID-19 Chronology**), p 3, and to the primary sources there referred to.

71. On 24 January 2020, the Department of Foreign Affairs and Trade (**DFAT**) raised the level of travel advice for Wuhan and Hubei Province to “Level 4: Do not travel”.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 4, and to the primary sources there referred to.

72. On 25 January 2020, the Australian Government:
- a. confirmed the first case of novel coronavirus in Australia, being a man from Wuhan who had travelled from Guangdong to Melbourne on 19 January 2020; and
 - b. confirmed three further cases of the novel coronavirus in Sydney, being men who flew to Australia on separate flights from China between 6 January 2020 and 20 January 2020.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 4, and to the primary sources there referred to.

73. On 28 January 2020, DFAT raised the level of travel advice for China overall to “Level 3: Reconsider your need to travel”.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 5, and to the primary source there referred to.

74. On 30 January 2020, the WHO Director-General declared the outbreak of the novel coronavirus to be a “public health emergency of international concern”.

Particulars

The Plaintiff refers to the “WHO Director-General’s statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)” dated 30 January 2020.

75. On 1 February 2020, DFAT raised the level of travel advice for China to “Level 4: Do not travel”.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 7, and to the primary source there referred to.

76. On 1 February 2020, the Australian Government announced updated travel advice, including:
- a. a ban on foreign nationals (excluding permanent residents) who had been in mainland China from 1 February 2020 from entering Australia for 14 days from the time they left or transited through mainland China; and
 - b. a requirement that Australian citizens, permanent residents and their families who had been in mainland China self-isolate for 14 days from the time they left mainland China.

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 6-7, and to the primary source there referred to.

77. On 11 February 2020, the WHO announced that the disease caused by the novel coronavirus would be named COVID-19.

Particulars

The Plaintiff refers to “WHO Director-General’s remarks at the media briefing on 2019-nCoV” dated 11 February 2020.

78. On 23 February 2020, DFAT raised the level of travel advice for Japan and South Korea to “Level 2: Exercise a high degree of caution”.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 10, and to the primary sources there referred to.

79. On 25 February 2020, the Australian Government activated the “Emergency Response Plan for Communicable Disease Incidents of National Significance: National Arrangements”, being a plan developed and endorsed by all Australian jurisdictions in 2018, outlining how non-health sectors (such as police, childcare, schools, transport and essential utilities) would support the health sector response.

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 10-11, and to the primary sources there referred to.

80. On 26 February 2020, DFAT raised the level of travel advice for northern Italy to “Level 2: Exercise a high degree of caution”.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 11, and to the primary source there referred to.

81. On 27 February 2020, the Prime Minister announced that the Australian Government had agreed to implement the “Australian health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)”, being a plan designed to guide the Australian health sector response to COVID-19.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 11, and to the primary sources there referred to.

82. On 29 February 2020, the Australian Government announced that, as of 1 March 2020, foreign nationals (excluding permanent residents of Australia) who were in Iran on or after 1 March 2020, would not be allowed to enter Australia for 14 days from the time they had left or transited through Iran, and that Australian citizens and permanent residents, as well as their immediate family members, who were in Iran on or after 1 March 2020 would be required to self-isolate at home upon arrival in Australia for 14 days from the day they left Iran.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 11, and to the primary sources there referred to.

83. On 1 March 2020, DFAT raised the level of travel advice for all of Italy to “Level 2: Exercise a high degree of caution”, to “Level 3: Reconsider your need to travel” for 11 small towns in northern Italy, and to “Level 4: Do not travel” for Iran.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 12, and to the primary sources there referred to.

84. On 2 March 2020, the Australian Government reported the first local case of community transmission of COVID-19.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 12, and to the primary sources there referred to.

85. On 4 March 2020, the Australian Government announced that self-isolation requirements for people travelling from Iran would extend to any person who arrived from 19 February 2020 onwards.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 13, and to the primary source there referred to.

86. On 5 March 2020:

- a. the Australian Government announced that foreign nationals (excluding permanent residents of Australia) who are in the Republic of Korea on or after 5 March will not be allowed to enter Australia for 14 days from the time they have left or transited through the Republic of Korea; and
- b. DFAT raised the level of travel advice to “Level 3: Reconsider your need to travel” for the Republic of Korea, and to “Level 4: Do not travel” for Daegu.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 13, and to the primary source there referred to.

87. On 10 March 2020, DFAT raised the level of travel advice for Italy overall to “Level 3: Reconsider your need to travel” and to “Level 4: Do not travel” for the region of Lombardy and certain Italian provinces.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 14, and to the primary source there referred to.

88. On 11 March 2020:

- a. the WHO declared COVID-19 a global pandemic;

Particulars

The Plaintiff refers to the “WHO Director-General’s opening remarks at the media briefing on COVID-19” dated 11 March 2020.

- b. the Prime Minister announced that a travel ban would be extended to Italy as of 6pm; and

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 15, and to the primary source there referred to.

- c. the Australian Government announced a \$2.4 billion health plan to address COVID-19.

Particulars

The particulars to paragraph 88(b) are repeated.

89. On 12 March 2020, the Australian Government announced a \$17.6 billion economic support package, which comprised:

- a. support for business investment, including increasing the instant asset write-off and introducing a 15-month investment scheme;

- b. cash flow assistance for small and medium businesses through a cash flow boost payment and wage subsidies for apprentices and trainees;
- c. stimulus payments to households through a one-off \$750 payment to pensioners, veterans and other income support recipients; and
- d. assistance of \$1 billion to support industries in severely affected regions.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 16, and to the primary sources there referred to.

90. On 13 March 2020, the Prime Minister announced:

- a. the Commonwealth, State and Territory governments had agreed to provide public advice against holding non-essential, organized public gatherings of more than 500 people from Monday 16 March 2020;
- b. the formation of the National Cabinet, made up of the Prime Minister, Premiers and Chief Ministers, which would meet weekly to address Australia's response to COVID-19;
- c. the raising of travel advice for all Australians travelling overseas to "Level 3: Reconsider your need for travel".

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 16-17, and to the primary sources there referred to.

91. On 15 March 2020:

- a. the Prime Minister announced that a universal precautionary self-isolation requirement on all international arrivals to Australia would come into effect at midnight, and that all persons coming into Australia after midnight would be required to self-isolate for 14 days;
- b. the National Cabinet endorsed advice from the Australian Health Protection Principal Committee (**AHPPC**) to further introduce social distancing measures, including a ban of non-essential, organised public gatherings of more than 500 people (not including schools, universities, workplaces or public transport – although social distancing would still apply in these settings);

- c. effective as at 11:59pm, the Australian Government banned cruise ships from entering Australia from foreign ports (including international cruises originating in Australia) for an initial 30 days;
- d. the Australian Government established a business liaison unit in Treasury to engage with peak business groups on issues relating to COVID-19.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 17, and to the primary sources there referred to.

92. On 16 March 2020:

- a. the Reserve Bank of Australia announced that it would expand its purchases of Australian Government bonds in the secondary market and expand its repo operations to provide liquidity to Australian financial markets; and
- b. on advice from the Communicable Disease Network of Australia, the Minister for Aged Care and Senior Australians announced that residential aged care providers were encouraged to limit visitors under national guidelines aimed at the prevention and control of COVID-19.

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 17-18, and to the primary sources there referred to.

93. On 18 March 2020:

- a. the Prime Minister announced that the National Cabinet had accepted AHPPC advice that “non-essential indoor gatherings of greater than 100 people (including staff) should no longer be permitted from Wednesday 18 March 2020”;
- b. the National Cabinet agreed that all Australians should only travel when essential and, if unwell, people must stay home unless seeking medical care, that Anzac Day ceremonies and events should be cancelled, and that certain individuals should be banned from entry into aged care facilities;
- c. the Prime Minister announced that travel advice was raised to “Level 4: Do not travel” for all overseas destinations, and Australians overseas who wished to return were advised to do so as soon as possible if options were available;

- d. the Minister for Aged Care and Senior Australians announced additional restrictions for aged care facilities; and
- e. the Australian Government announced new COVID-19 community sport guidelines developed by the AHPPC.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 18-20, and to the primary sources there referred to.

94. On 19 March 2020:

- a. the RBA announced a cut in the official cash rate to 0.25 per cent and the establishment of a term funding facility to offer three-year funding to Australian financial institutions;
- b. the Deputy Chief Medical Officer announced that pharmacists would be required to limit dispensing of certain prescription products and limit sales of certain medicines;
- c. the Australian Government announced that Australia would close its borders to all non-citizens and non-residents, taking effect on Friday 20 March 2020, such that only Australian citizens, residents and immediate family members could travel to Australia, subject to certain exemptions.

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 20-21, and to the primary sources there referred to.

95. On 20 March 2020, the National Cabinet announced a range of risk mitigation measures for non-essential indoor gatherings of fewer than 100 people, outdoor gatherings of fewer than 500 attendees, and early learning and childcare, which would be mandated from 20 March 2020 through State and Territory regulatory arrangements, including, in respect of non-essential indoor gatherings of fewer than 100 people and outdoor gatherings of fewer than 500 attendees:

- a. a density-limit of one person per four square metres of floor space;
- b. a requirement to provide hand hygiene products and suitable waste receptacles, with frequent cleaning and waste disposal taking place; and
- c. a requirement to promote the Department of Health's recommendation that unwell individuals isolate at home.

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 21-22, and to the primary sources there referred to.

96. On 22 March 2020:
- a. the Australian Government announced a second economic support package, providing for additional support of around \$66 billion;
 - b. the Australian Government announced that the National Cabinet agreed to implement new Stage 1 restrictions on social gatherings, which would come into effect on 23 March 2020 through State and Territory legislative processes, and which were expected to be in place for at least six months, including restrictions on the following facilities from opening:
 - i. pubs, registered and licensed clubs (excluding bottle shops attached to these venues), hotels (excluding accommodation);
 - ii. gyms and indoor sporting venues;
 - iii. cinemas, entertainment venues, casinos and night clubs;
 - iv. restaurants and cafes, which would be restricted to takeaway and/or home delivery;
 - v. religious gatherings, places of worship or funerals (in enclosed spaces and other than very small groups where the one person per four square metre rule was to apply);
 - c. the National Cabinet further noted that, while other facilities were not impacted by the new restrictions, such facilities might be considered under stage 2 restrictions, if necessary;
 - d. the Prime Minister announced that non-essential travel in Australia should be avoided.

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 22-23, and to the primary sources there referred to.

97. From 23 March 2020, Australian States and Territories imposed a range of restrictions on the operation of businesses, and the movement of individuals, for varying periods of time, in response to the COVID-19 pandemic, including the Stage 1 restrictions announced as pleaded in paragraph 96(b) above.

98. On 24 March 2020:

- a. the Prime Minister announced that a ban would be imposed on Australians travelling overseas, commencing at 12pm on 25 March 2020, subject to certain exemptions;
- b. the Prime Minister announced that National Cabinet agreed to new and enhanced social distancing measures that would apply from 11:59pm (local time) on 25 March 2020, which measures included “additional prohibited activities and venues”, including in relation to weddings, funerals, fitness classes, beauty salons, arcades, and play centres, amongst other activities and venues.

Particulars

The Plaintiff refers to the COVID-19 Chronology, pp 24-25, and to the primary sources there referred to.

The activities and venues the subject of additional restrictions are set out in the Media Statement of the Prime Minister, The Hon Scott Morrison MP, dated 24 March 2020, entitled “Update on Coronavirus Measures”.

99. On 27 March 2020, the Prime Minister announced that all travellers arriving in Australia would be required to undertake their mandatory 14-day self-isolation at designated facilities, such as hotels.

Particulars

The Plaintiff refers to refers to the COVID-19 Chronology, p 26, and to the primary source there referred to.

100. On 29 March 2020, the Prime Minister announced that the National Cabinet had agreed to updated COVID-19 restrictions, including indoor and outdoor gatherings being limited to two persons only.

Particulars

The Plaintiff refers to refers to the COVID-19 Chronology, pp 26-27, and to the primary source there referred to.

101. On 30 March 2020, the Australian Government advised all Australians to stay home unless shopping for essentials, receiving medical care, exercising or travelling to work or education, and in addition advised people aged over 70, aged over 60 with pre-existing conditions, and Indigenous people aged over 50 to stay home wherever possible for their own protection.

Particulars

The Plaintiff refers to the COVID-19 Chronology, p 27, and to the primary source there referred to.

II. Business interruption by reason of the COVID-19 pandemic

102. By reason of the matters pleaded in paragraphs 59(b), 60 and 61 above, following the repeal of the Quarantine Act and the Biosecurity Act coming into force on 16 June 2016, IAG was exposed to the risk that those holding Unamended BI Policies would suffer losses that, unless the Quarantinable Diseases Exclusion applied, would be covered by the Unamended BI Policies unless another exclusion in a particular Unamended BI Policy applied.
103. By reason of the matters pleaded in paragraph 102 above, together with the matters pleaded in paragraphs 70(a) and 88, alternatively paragraphs 70(a) and 97, from 11 March 2020, alternatively 23 March 2020, IAG was exposed to the risk that it and its subsidiaries would be required to pay out claims made under the Unamended BI Policies arising out of business interruption caused by the COVID-19 pandemic (the **BI Exposure**).

III. The Test Case

104. By summons filed in the Commercial List of the Equity Division of the Supreme Court of New South Wales on 13 August 2020, two insurers, HDI Global Specialty SE and The Hollard Insurance Company Pty Ltd, commenced proceedings seeking declarations that, on the proper construction of “disease benefit” clauses in BI Policies offered by those insurers, the words “declared to be a quarantinable disease under the *Quarantine Act 1908* (Cth) and subsequent amendments” (the **Contested Exclusion**) are to be read as or as including “determined to be listed human diseases under the *Biosecurity Act 2015* (Cth)” (the **Test Case**).
105. The Contested Exclusion is in the same terms as the Quarantinable Disease Exclusion contained in the Unamended BI Policies.
106. On 4 September 2020, the Test Case was removed into the Court of Appeal under rule 1.21(1)(b) of the Uniform Civil Procedure Rules 2005.
107. On 2 October 2020, the Test Case was heard by the Court of Appeal, constituted by Bathurst CJ, Bell P, Meagher JA, Hammerschlag J and Ball J.
108. On 18 November 2020, the Court of Appeal delivered judgment in the Test Case, unanimously dismissing the summons, and holding that COVID-19 is not a disease “declared to be a quarantinable disease under the *Quarantine Act 1908* (Cth) and subsequent amendments”, and accordingly is not excluded from the “disease benefit” clauses.
109. On or around 8 December 2020, the plaintiff insurers in the Test Case filed an application for special leave to appeal to the High Court from the Court of Appeal’s decision in the Test Case.

110. On 25 June 2021, following an oral hearing on the special leave application, the High Court refused to grant the plaintiff insurers special leave to appeal from the Court of Appeal’s decision in the Test Case.

E RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES BY IAG

I. 2020 Half Year Report

111. On 12 February 2020, IAG released its Half Year Report for the period ended 31 December 2019 to the ASX (**2020 Half Year Report**).

Particulars

The 2020 Half Year Report is entitled “Insurance Australia Group Limited: Half Year Report for the Period Ended 31 December 2019: Appendix 4D (ASX Listing Rule 4.2A)”.

112. The Half Year Report stated that the report should be read in conjunction with the Annual Report of IAG for the year ended 30 June 2019 and any public announcements made by IAG during the reporting period in accordance with the continuous disclosure requirements of the Corporations Act and the ASX Listing Rules.

Particulars

The Plaintiff refers to pages 1 and 19 of the 2020 Half Year Report.

II. 30 March 2020

113. On 30 March 2020, IAG released a “News Release” to the ASX entitled “IAG provides business update” (**30 March 2020 Announcement**).

114. The 30 March 2020 Announcement included a section entitled “Coronavirus (COVID-19) response”, in which IAG provided an update on IAG’s response to the COVID-19 pandemic, which IAG stated to be “well-advanced”.

III. 24 July 2020

115. On 24 July 2020, IAG released a “News Release” to the ASX entitled “IAG outlines FY20 results” together with a presentation entitled “IAG outlines FY20 results” (together, the **24 July 2020 Announcement**).

116. The 24 July 2020 Announcement included a section in the “News Release” entitled “COVID-19 impacts on FY20 financial performance”, in which IAG stated that:

- a. the COVID-19 pandemic was estimated to have had a broadly neutral impact on its reported insurance margin;
- b. the estimated broadly neutral COVID-19 effect on IAG's FY20 reported insurance margin contains two elements, being a net benefit of around \$100 million, and a provision of approximately \$100 million;
- c. the provision of approximately \$100 million was made for potential COVID-19 claim cost impacts and spans potential business interruption, landlords' and other insurance class impacts, including the estimated impact an economic downturn will have on the settlement of long tail claims.

117. The 24 July 2020 Announcement included a slide in the "Presentation" entitled "COVID-19 impacts", in which IAG stated, by its officers, Mr Harmer and Mr Hawkins:

- a. COVID-19 impacts were anticipated to have a broadly neutral insurance margin impact;
- b. COVID-19 was expected to have a "net benefit" impact on "claims expense" in FY20, made up of lower motor frequency partially offset by claims in other classes (e.g., landlords' insurance, travel insurance), and prudent provision of greater than \$100 million for potential COVID-19-related claims, including business interruption; and
- c. COVID-19 was expected to have a "broadly neutral insurance profit impact" in FY20.

IV. 7 August 2020

a. Annual Report

118. On 7 August 2020, IAG released its Annual Report for FY20 on the ASX (**FY20 Annual Report**).

119. In its FY20 Annual Report, IAG stated:

- a. in the second half of the year, IAG's underwriting profit has borne three largely offsetting COVID-19 effects (on a post-quota share basis): an estimated benefit of \$150 million from reduced claim costs, a provision of approximately \$100 million for potential COVID-19 claim cost impacts, and increased costs of approximately \$50 million flowing from COVID-19 related measures or responses;
- b. the provision of approximately \$100 million for potential COVID-19 claim costs spans business interruption, landlords' and other insurance class impacts, including the estimated impact an economic downturn will have on the settlement of long-tail claims;

- c. the provision for potential COVID-19 claim cost impacts, which has been estimated on a probability-weighted basis, includes an allowance for possible business interruption claim exposure in Australia;
- d. IAG's full year underlying insurance margin included a broadly neutral effect from COVID-19 influences in the second half of the year;
- e. IAG Australia reported an insurance profit of \$420 million, reflecting the net effect of a number of matters, including a modest net negative effect from other COVID-19 influences, embracing a moderately positive overall claims impact and higher operating expenses;
- f. IAG Australia's underlying margin suffered from a small net negative on underwriting profit from COVID-19 effects;
- g. IAG's total assets increased by \$408 million net in FY20, which movement included a \$122 million increase in deferred tax assets attributable to the increase in provisions and potential COVID-19 claim liabilities recognised during the year;
- h. IAG's total liabilities as at 30 June 2020 increased by \$764 million as compared with 30 June 2019, which increase included a \$288 million increase in the outstanding claims liability representing the impact of higher reserves for natural perils, COVID-19 allowances, strengthening across Australian long-tail reserves and yield curve impacts;
- i. IAG notes the recent developments in Victoria, including the declaration of a State of Disaster with effect from 2 August 2020, where the related business effects remain highly uncertain;
- j. COVID-19 had a broadly neutral overall impact on profitability of IAG in FY20;
- k. where COVID-19 claim impacts remain highly uncertain, IAG has recognised an additional net outstanding claims provision of \$106 million in relation to its Australian business, which provision has been estimated on a probability-weighted basis, and spans potential business interruption, landlords' and other insurance class effects, including the estimated impact of an economic downturn on the future cost of settling long tail claims;
- l. the net outstanding claims liability of \$106 million is a probability-weighted view across impacted classes of business. The majority of this provision relates to potential business interruption exposure, and includes the related risk margin;

- m. IAG applied a 20% risk margin to the net outstanding claims liability in its accounts, being an increase from the 19% risk margin applied in 2019. A key driver of the increased percentage in the risk margin was the inclusion of COVID-19 specific effects;
- n. in the current financial year, the Group has recognised insurance liabilities for potential COVID-19 claim impacts that remain highly uncertain. These liabilities have been recognised on a probability-weighted basis in accordance with the relevant accounting standards (AASB 1023). Given the extent of the related uncertainty, the range of potential financial outcomes is unusually wide;
- o. in establishing the COVID-19 specific element of the net outstanding claims liability, significant judgement has been exercised to derive an estimate of the probability-weighted view of potential future cash flows. Key areas of judgement relate to the exposure period, the estimation of potential economic loss, related key macroeconomic variables, reinsurance coverage and legal risk. Given the extent of uncertainty being faced, the range of potential financial outcomes in relation to those matters is unusually wide. As a result, a substantial part of the provision reflects a risk margin;
- p. judgement is required to assess the Group's estimation of the probability of claims arising from circumstances connected with the COVID-19 pandemic. This includes interpretation of policy wordings, estimation of potential losses on a probability-weighted basis and the probable timing of the emergence of such potential claims;
- q. the financial report appearing at pages 48 to 101 of the FY20 Annual Report complies with International Financial Reporting Standards (FRS) issued by the International Accounting Standards Board (IASB), the Corporations Act, Australian Accounting Standards (AASBs) adopted by the Australian Accounting Standards Board (AASB), and other authoritative pronouncements.

Particulars

The Plaintiff refers to pages 8, 9, 10, 11, 23, 32, 55, 56, 57, 62 and 98 of the FY20 Annual Report.

b. IAG FY20 Investor Report

120. On 7 August 2020, IAG released a report to the ASX entitled "Investor Report FY20" (the **FY20 Investor Report**).

121. In the FY20 Investor Report, IAG made the following statements:

- a. COVID-19 has had largely offsetting impacts on 2H20 underwriting profit, comprising:
 - i. an approximately \$150m claims benefit driven by favourable motor claims frequency, with offsets from other COVID-19 affected portfolios, including travel and landlords' insurance;
 - ii. an approximately \$100m provision in the claims line to reflect broader uncertainty over potential COVID-19 related claim costs, covering potential business interruption, landlords' and other insurance class impacts, including the estimated impact an economic downturn will have on the settlement of long tail claims; and
 - iii. increased operating costs of approximately \$50m flowing from COVID-19-related measures or responses;
- b. the approximately \$100m provision for potential COVID-19 claim cost impacts has been estimated on a probability-weighted basis and includes an allowance for possible business interruption claim exposure in Australia;
- c. in addition, an approximately \$160m COVID-19 underwriting exposure related to unexpired risk has been incorporated within the estimation of premium liabilities and, as a result, in the calculation of IAG's regulatory capital position. This is not reflected in IAG's balance sheet at 30 June 2020;
- d. the provision for potential COVID-19 claim impacts in respect of IAG Australia includes allowance for possible business interruption claim exposure;
- e. it remains IAG's view that the intent to exclude pandemics from business interruption cover is clear.

Particulars

The Plaintiff refers to pages 1, 3, 13, 16 and 32 of the FY20 Investor Report.

c. FY20 Results Announcement

122. On 7 August 2020, IAG released an announcement to the ASX entitled "IAG announces FY20 results" (**FY20 Results Announcement**).

123. In the FY20 Results Announcement, IAG stated, including through its executive officer Mr Harmer:

- a. positive and negative COVID-19 impacts on IAG's underwriting profit largely offset each other;
- b. IAG estimated an approximately \$100m provision for potential COVID-19 claim cost impacts, this estimate being highly uncertain and estimated on a probability-weighted basis, and spanning business interruption, landlords' and other insurance classes;
- c. IAG Australia suffered a small net negative impact on underwriting profit from COVID-19 side effects on underlying margin (14.9% as compared with 15.5% in FY19), which impact included a provision for potential COVID-19 claim impacts.

Particulars

The Plaintiff refers to pages 1, 2, 3 and 4 of the FY20 Results Announcement.

d. FY20 Financial Results Presentation

124. On 7 August 2020, IAG released a presentation to the ASX entitled "Financial results: Full year ended 30 June 2020" (the **FY20 Financial Results Presentation**).

125. In the FY20 Financial Results Presentation, through its officers Mr Harmer, Mr Hawkins and Ms McPherson, IAG made the following statements:

- a. IAG's softer 2H20 underlying margin of 15.1% was largely offset by COVID-19 impacts on underwriting profit;
- b. IAG estimated a small net negative impact on underwriting profit for IAG Australia from COVID-19 effects, which included a provision for potential COVID-19 claim impacts;
- c. positive and negative impacts on underwriting profit from COVID-19 in 2H20 are largely offset, including accounting for an approximately \$100 million provision for potential COVID-19 claim cost impacts, which spans business interruption, landlords' and other insurance classes and was highly uncertain and estimated on a probability-weighted basis.

Particulars

The Plaintiff refers to pages 2, 5 and 8 of the FY20 Financial Results Presentation.

e. FY20 IAG Earnings Presentation

126. At 9.30am on 7 August 2020 AEST (11.30pm on 6 August 2020 GMT) Mr Harmer (then IAG Managing Director, CEO and Executive Director), Ms McPherson (then Acting Group CFO) and Mr Hawkins (then Deputy CEO) participated in an Earnings Presentation with representatives from Morgan Stanley, Macquarie Research, Goldman Sachs Group Inc, Shaw and Partners Limited, BofA Merrill Lynch, Citigroup Inc and JPMorgan Chase & Co (the **FY20 IAG Earnings Presentation**).
127. A webcast of the FY20 IAG Earnings Presentation was published on IAG's website.
128. In the FY20 IAG Earnings Presentation, IAG stated (by its officer Ms McPherson) that, overall, IAG was very comfortable with its capital position.
129. In the FY20 IAG Earnings Presentation, IAG made statements to the effect that (by its officer Mr Hawkins):
- a. IAG's position is that its BI Policies exclude coverage in a pandemic scenario;
 - b. IAG expected the Test Case to be won by the plaintiff insurers;
 - c. there is an element of business interruption in IAG's \$100 million COVID-19 provision;
 - d. risks associated with the Test Case will have to be put "into the mix" when IAG considers its position at 31 December 2020.
130. In the FY20 IAG Earnings Presentation, IAG stated (by its officer Mr Harmer):
- a. a minority of IAG's BI Policies were Unamended BI Policies;
 - b. as Unamended BI Policies were renewed, the wording was being updated to replace the Quarantinable Diseases Exclusion with an exclusion referencing the Biosecurity Act.
131. In the FY20 IAG Earnings Presentation, following a question from Mr Siddharth Parameswaran of JPMorgan Chase & Co asking whether, if the Test Case is lost, there will be a "huge surge" in IAG's provision for business interruption claims, IAG (by its officer Mr Hawkins):
- a. stated that its view was that, under its business interruption policies, it excludes that coverage "in a pandemic scenario";
 - b. stated that it expected the Test Case to be won;

- c. stated that there was “an element of business interruption” in its \$100 million COVID-19 provision; and
- d. did not disclose the BI Exposure Information (as defined in paragraph 151 below).

V. 23 October 2020

a. 23 October 2020 Announcement

- 132. On 23 October 2020, IAG published a news release to the ASX entitled “IAG provides 1Q21 Trading Update” (**23 October 2020 Announcement**).
- 133. In the 23 October 2020 Announcement, IAG stated that, within IAG’s underlying insurance margin, COVID-19-related effects have been broadly neutral in aggregate during 1Q21, with some benefit from lower motor claims frequency offset by incremental expense and provisioning impacts.

b. 2020 Chairman’s Address

- 134. On 23 October 2020, IAG released a document to the ASX entitled “Chairman’s address to 2020 AGM” (**2020 Chairman’s Address**).
- 135. In the 2020 Chairman’s Address, IAG stated, through its officer Ms Bryan, that IAG is clear that its policies do not provide cover for business interruption resulting from a pandemic, and that IAG believes this is clearly reflected in its policy wording.

Particulars

The Plaintiff refers to page 4 of the 2020 Chairman’s Address.

c. 2020 AGM transcript

- 136. On 23 October 2020, IAG published a document to the ASX entitled “2020 AGM transcript” (the **2020 AGM Transcript**).
- 137. In the 2020 AGM Transcript, IAG stated:
 - a. insurance is not designed, structured, or capitalised to cover such systemic risks as a pandemic;
 - b. IAG is not able to step in and respond to all the issues businesses face as a result of the impact of COVID-19;

- c. IAG is clear that its policies do not provide cover for business interruption resulting from a pandemic, and IAG believes that this is clearly reflected in its policy wording;
- d. within IAG's underlying insurance margin, combined COVID-19 related effects have been broadly neutral during FY20, with some benefit from lower motor claims frequency offset by incremental expense and provisioning impacts;
- e. IAG continues to retain a strong capital position, well above its targeted benchmarks;
- f. IAG faces the future with the confidence that it has a resilient business which is in strong financial shape and which is well equipped to rise to the challenges presented by the current environment, including COVID-19.

Particulars

The Plaintiff refers to pages 5 and 11 of the 2020 AGM Transcript.

F. REPRESENTATIONS MADE BY IAG

I. Continuous Disclosure Representation

138. On 12 February 2020, IAG represented to the market of investors and potential investors in the Shares (**Affected Market**) that IAG complied with its continuous disclosure obligations under applicable laws (the **Continuous Disclosure Representation**).

Particulars

The Continuous Disclosure Representation was implied by IAG's statement in the 2020 Half Year Report pleaded at paragraph 112 above.

139. The Continuous Disclosure Representation was a continuing representation throughout the Relevant Period.

Particulars

At no time throughout the Relevant Period did IAG withdraw the Continuous Disclosure Representation.

II. COVID-19 Risk Representations

140. On 30 March 2020, IAG represented to the Affected Market that as at 30 March 2020 IAG had nothing material to disclose in relation to risks posed by the COVID-19 pandemic to IAG's financial position beyond the matters disclosed in the section entitled "Coronavirus (COVID-19) response" in the 30 March 2020 Announcement (the **30 March 2020 COVID-19 Risk Representation**).

Particulars

The 30 March 2020 COVID-19 Risk Representation was implied by IAG's inclusion of a section entitled "Coronavirus (COVID-19) response" in the 30 March 2020 Announcement, which section provided details of IAG's response to the COVID-19 pandemic, as pleaded at paragraph 114 above, in circumstances where the Continuous Disclosure Representation was continuing, as pleaded at paragraph 139 above.

141. On 24 July 2020, IAG represented to the Affected Market that as at 24 July 2020 IAG had nothing material to disclose in relation to risks posed by the COVID-19 pandemic to IAG's financial position beyond the matters disclosed in the 24 July 2020 Announcement (the **24 July 2020 COVID-19 Risk Representation**).

Particulars

The 24 July 2020 COVID-19 Risk Representation was implied by:

- (i) IAG's inclusion of a section entitled "COVID-19 impacts on FY20 financial performance" in the "news release" portion of the 24 July 2020 Announcement, which section provided details of the estimated impact of COVID-19 on IAG's FY20 financial performance, as pleaded at paragraph 116 above;
- (ii) IAG's inclusion of a section entitled "COVID-19 impacts" in the "presentation" portion of the 24 July 2020 Announcement, which section provided details of the operation impacts and initiatives related to COVID-19 and the FY20 financial impact of COVID-19, as pleaded at paragraph 117 above; and
- (iii) IAG's inclusion of a section entitled "Underlying insurance margin: Broadly neutral COVID-19 impact" in the "presentation" portion of the 24 July 2020 Announcement, which section set out the impact of COVID-19 on IAG's underlying insurance margin in FY20, as pleaded at paragraph 117 above;

in circumstances where the Continuous Disclosure Representation was continuing, as pleaded in paragraph 139 above, and IAG did not correct the 30 March 2020 COVID-19 Risk Representation.

142. On 7 August 2020, IAG represented to the Affected Market that as at 7 August 2020 IAG had nothing material to disclose in relation to risks posed by the COVID-19 pandemic to IAG's financial position beyond the matters disclosed in the FY20 Annual Report and the FY20 Investor Report (the **7 August 2020 COVID-19 Risk Representation**).

Particulars

The 7 August 2020 COVID-19 Risk Representation was implied by:

- (i) IAG's inclusion of a detailed discussion of COVID-19 impacts on the IAG business in the FY20 Annual Report, as pleaded in paragraph 119 above;
- (ii) IAG's inclusion of a detailed discussion of COVID-19 impacts on the IAG business in the FY20 Investor Report, as pleaded in paragraph 121 above; and
- (iii) IAG's statements in the FY20 Results Announcement, the FY20 Financial Results Presentation and the FY20 IAG Earnings Presentation as pleaded above at paragraphs 123, 125 and 128 to 130;

in circumstances where the Continuous Disclosure Representation was continuing, as pleaded at paragraph 139 above, and IAG did not correct the 30 March 2020 COVID-19 Risk Representation and the 24 July 2020 COVID-19 Risk Representation.

143. On 23 October 2020, IAG represented to the Affected Market that IAG as at 23 October 2020 had nothing material to disclose in relation to risks posed by the COVID-19 pandemic to IAG's financial position beyond the matters previously disclosed in the FY20 Annual Report and the FY20 Investor Report (the **23 October 2020 Announcement COVID-19 Risk Representation**).

Particulars

The 23 October 2020 COVID-19 Risk Representation was implied by the matters pleaded in paragraphs 133, 135 and 137 above, in circumstances where the Continuous Disclosure Representation was continuing, as pleaded at paragraph 139 above, and IAG did not correct the 30 March 2020 COVID-19 Risk Representation, the 24 July 2020 COVID-19 Risk Representation and the 7 August 2020 COVID-19 Risk Representation.

III. Accounting Standards Representation

144. On 7 August 2020, IAG represented to the Affected Market that the financial statements published in the FY20 Annual Report complied with the Australian Accounting Standards (**Accounting Standards Representation**).

Particulars

The Accounting Standards Representation was express, and it appears on page 55 of the FY20 Annual Report.

G. CORRECTIVE DISCLOSURE

145. On 19 November 2020, the ordinary securities and capital notes of IAG were placed in a trading halt by the ASX at the request of IAG.

I. Content of the Corrective Disclosure

146. On 20 November 2020, IAG published a news release to the ASX, entitled “IAG responds to business interruption test case judgment and announces capital raising of up to \$750 million to strengthen balance sheet” (the **Corrective Disclosure**).

147. In the Corrective Disclosure, IAG made statements to the following effect:

- a. in a unanimous decision, the Court of Appeal determined pandemic exclusions that refer to the Quarantine Act and subsequent amendments, rather than the Biosecurity Act, are not effective to exclude cover for losses associated with COVID-19;
- b. IAG’s view is that the intent of its business interruption policies is to not provide cover for any losses related to pandemics such as COVID-19;
- c. IAG is in discussions with the Insurance Council of Australia to consider whether the insurers that were party to the action will seek special leave to appeal the Court of Appeal’s decision to the High Court of Australia;
- d. given the Court of Appeal’s decision, IAG intends to recognise a post-tax provision of \$865 million;
- e. IAG is taking action to strengthen its balance sheet via a fully underwritten institutional placement of \$650 million and a non-underwritten share purchase plan to raise up to \$100 million;
- f. IAG has received a small number of business interruption-related claims to date;
- g. IAG estimates that a post-tax provision of approximately \$865 million is required to reflect the potential impact of the Court of Appeal’s judgment;
- h. the estimated \$865 million provision has been subject to independent peer review and includes a risk margin to derive a 90% confidence for the Group’s total outstanding claim liabilities, and covers:

- i. all policies with wording that include the Quarantine Act and without specific reference to the Biosecurity Act, which replaced the Quarantine Act; and
 - ii. all policies with prevention of access extensions used on certain broker platforms which reference the Biosecurity Act (which represents around \$150 million of the total post-tax provision indicated above);
- i. IAG's estimated combined business interruption and prevention of access exposure includes allowance for a period of recovery from the lockdowns, and does not explicitly allow for any future state or national lockdowns after 31 October 2020;
 - j. IAG's exposure to the Quarantine Act wording issue will progressively reduce as all new and renewing policies now reference the Biosecurity Act;
 - k. the provision is estimated to have a net post-tax impact on IAG's FY21 earnings of approximately \$805 million, which is after allowance for the business interruption portion of the \$106 million pre-tax COVID-19 provision included in IAG's FY20 results, which is approximately \$60 million post-tax;
 - l. IAG believes it is prudent to maintain its capital position above the upper end of its Common Equity Tier 1 target range, and to achieve this IAG is proposing to raise up to \$750 million of new equity capital from the combination of a fully underwritten institutional placement raising \$650 million at a fixed price of \$5.05 per new share; and a non-underwritten retail share purchase plan targeting up to \$100 million.
148. On 23 November 2020 IAG published a news release to the ASX, entitled "IAG successfully completes \$650 million institutional placement", in which IAG stated that:
- a. it had successfully completed a \$650 million fully underwritten institutional placement, under which IAG will issue approximately 128.7 million new fully paid ordinary shares at a price of \$5.05; and
 - b. IAG shares are expected to resume normal trading on the ASX from market open on 23 November 2020.

II. Effect of the Corrective Disclosure

149. On 23 November 2020, IAG shares resumed normal trading on the ASX.

150. Upon the resumption of normal trading on the ASX on 23 November 2020, and following the release of the Corrective Disclosure, the price of the Shares fell materially.

Particulars

On 18 November 2020, shares in IAG closed at \$5.46. IAG entered a trading halt on 19 November 2020. When trading resumed on 23 November 2020, IAG shares resumed trading at \$5.05, being 7% lower than their closing price on 18 November 2020. This was a loss in market capital of approximately \$800 million.

H. CONTINUOUS DISCLOSURE CONTRAVENTION

I. BI Exposure Information

151. At least from around 11 March 2020, alternatively 23 March 2020, alternatively 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively the first date upon which a claim for business interruption was made arising from the COVID-19 pandemic under an Unamended BI Policy, IAG calculated, or procured the calculation of, the estimated quantum of the BI Exposure on the assumption that the Quarantinable Disease Exclusion in the Unamended BI Policies did not exclude claims arising out of business interruption caused by the COVID-19 pandemic (the **BI Exposure Information**).

Particulars

That IAG calculated, or procured the calculation of, the BI Exposure Information at least from around one of the dates pleaded may be inferred from: (1) IAG’s knowledge, as pleaded in paragraph 64 above, of the matters pleaded in paragraphs 59 to 63, including that certain BI Policies issued by IAG and its subsidiaries continued to include during the Relevant Period the Quarantinable Disease Exclusion notwithstanding the fact that the Quarantine Act had been repealed on 16 June 2016, and did not in terms exclude claims arising out of business interruption caused by an outbreak of a disease classified as a “listed human disease” under the Biosecurity Act; (2) the nature of IAG’s business, as pleaded at paragraph 4 above; (3) the existence and functions of the Risk Committee, as pleaded in paragraphs 39 to 41 above; and (4) the events that occurred on those dates, namely, the declaration of COVID-19 as a pandemic, the implementation of Stage 1 restrictions, the making of the 30 March 2020 Announcement, the making of the 24 July 2020 Announcement, the publication of various reports, announcements and presentations on 7 August 2020, and the making of the first claim for business interruption arising from the COVID-19 pandemic under an Unamended BI Policy.

The Plaintiff does not presently know how many times IAG calculated, or procured the calculation of, the BI Exposure Information. However, because the BI Exposure Information would necessarily change over time as the COVID-19 pandemic went on and business interruptions continued or increased, it may be inferred that IAG calculated, or procured the calculation of, the BI Exposure Information more than once. Further particulars of the dates on which IAG calculated, or procured the

calculation of, the BI Exposure Information may be provided following discovery.

152. By around 11 March 2020, alternatively 23 March 2020, alternatively 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively the first date upon which a claim for business interruption was made arising from the COVID-19 pandemic under an Unamended BI Policy:
- a. one or more of the officers of IAG referred to in paragraph 32 above had come into possession of the BI Exposure Information;

Particulars

That one or more of the officers of IAG referred to in paragraph 32 had come into possession of the BI Exposure Information may be inferred from: (1) the fact that IAG had calculated, or procured the calculation of, the BI Exposure Information, as pleaded in paragraph 151 above; (2) the roles of those officers, as pleaded in paragraphs 9 to 19 and 21 to 30 above; (3) the aspects of IAG's continuous disclosure policy pleaded in paragraph 34(e), (f), (g) and (h) above; (4) the aspects of IAG's Board Charter pleaded in paragraph 38 above; (5) the aspects of IAG's Risk Committee Charter pleaded in paragraph 41 above; and (6) the aspects of IAG's Audit Committee Charter pleaded in paragraph 44 above.

Further particulars of the dates on which IAG officers came into possession of the BI Exposure Information may be provided following discovery.

- b. alternatively, any one of the officers of IAG referred to in paragraph 32 above ought reasonably to have come into possession of the BI Exposure Information.

Particulars

The Plaintiff refers to the same six matters referred to in the particulars to paragraph 152(a).

153. Further, or alternatively:

- a. one or more of the officers referred to in paragraph 32:
- i. knew, by around 11 March 2020, alternatively 23 March 2020:
1. that IAG was exposed to the risk that the Quarantinable Disease Exclusion in the Unamended BI Policies did not exclude claims arising out of business interruption caused by the COVID-19 pandemic; and

2. that IAG was therefore exposed to the risk that, unless another exclusion in a particular Unamended BI Policy applied, IAG and its subsidiaries would be required to pay out claims made under the Unamended BI Policies arising out of business interruption caused by the COVID-19 pandemic;

Particulars

The Plaintiff cannot presently identify which of the officers referred to in paragraph 32 knew the matters pleaded in paragraph 153(a). However, it may be inferred that one or more of those officers knew those matters in circumstances where: (1) the officers referred to in paragraph 31 include officers who occupied, as at 11 March 2020 and 23 March 2020, the roles of Managing Director and CEO, Chief Financial Officer, Chief Risk Officer, and include officers who were members of the Group Leadership Team at those times, as pleaded in paragraphs 18, 21, 22, 23, 24, 26, 27, 28 and 29, and the nature of those roles makes it probable that those officers knew the matters in paragraph 152(a); (2) the Quarantine Act had been repealed, and the Biosecurity Act had been in force, since 16 June 2016, as pleaded in paragraph 56 above, meaning the risk that the Quarantinable Disease Exclusion would not be effective to exclude claims arising out of business interruption caused by “listed human diseases” under the Biosecurity Act had existed since 16 January 2016, as pleaded in paragraph 102; (3) COVID-19 had been declared a “listed human disease” on 29 January 2020, as pleaded in paragraph 70(a); (4) the declaration on 11 March 2020 of COVID-19 as a pandemic, as pleaded in paragraph 88(a), and the implementation of Stage 1 restrictions on 23 March 2020, as pleaded in paragraph 97, were widely reported and of importance to IAG’s business; and (5) IAG had in place policies, charters, risk-management frameworks and internal controls directed, in part, to bringing risks to the attention of officers of IAG, including directors, as pleaded in paragraphs 33-34 and 37-44. Further particulars may be provided following discovery.

ii. knew:

1. by around 30 March 2020, that IAG had made statements to the Affected Market to the effect pleaded in paragraph 114;
2. by around 24 July 2020, that IAG had made statements to the Affected Market to the effect pleaded in paragraphs 116 and 117;

3. by around 7 August 2020, that IAG had made statements to the Affected Market to the effect pleaded in paragraphs 119(a) to (p), 121, 123, 125, 129, 130, and 131(a) to (c);
4. by around the date that the first such claim was made, that claims for business interruption arising from the COVID-19 pandemic were being made under Unamended BI Policies; and

Particulars

It may be inferred that one or more of the officers referred to in paragraph 31 knew that IAG had made the relevant statements to the market because, occupying the roles pleaded in paragraphs 9-19 and 21-30, it may be inferred that they at the very least monitored, if not were involved in the preparation of, announcements made by IAG to the market. Further, by reason of the roles occupied by those officers pleaded in the paragraphs to which reference has been made, and by reason of the existence of IAG's policies, charters, risk-management frameworks and internal controls directed, in part, to bringing risks to the attention of those officers, as pleaded in paragraphs 32-33 and 36-43, it may be inferred that one or more of the officers referred to in paragraph 32 knew that claims for business interruption arising from the COVID-19 pandemic were being made under Unamended BI Policies. Further particulars may be provided following discovery.

- b. by reason of the matters in paragraph 153(a)(i), alternatively by reason of the matters pleaded in paragraph 153(a)(i) together with the matters pleaded in paragraph 153(a)(ii), by around 11 March 2020, alternatively 23 March 2020, alternatively 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively the first date upon which a claim for business interruption was made arising from the COVID-19 pandemic under an Unamended BI Policy, one or more of the officers of IAG referred to in paragraph 32 above ought reasonably to have come into possession of the BI Exposure Information.
154. In the premises, by around 11 March 2020, alternatively 23 March 2020, alternatively 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively the first date upon which a claim for business interruption arising from the COVID-19 pandemic was made under an Unamended BI Insurance Policy, IAG was aware, within the meaning of listing rule 19.12, of the BI Exposure Information.

155. The BI Exposure Information was not generally available within the meaning of s 676 of the Corporations Act and was information:
- a. that a reasonable person would expect to have a material effect on the price or value of the Shares within the meaning of Listing Rule 3.1;
 - b. that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Shares within the meaning of s 674(2)(d) of the Corporations Act (including as informed by s 677 of the Corporations Act).

Particulars

The best particulars the Plaintiff can presently give are that the BI Exposure Information as at 20 November 2020 was in the order of \$715 million.

The BI Exposure Information between 11 March 2020 and 20 November 2020 is presently unknown to the Plaintiff, and will be particularised following discovery and evidence. However, it may be inferred from the fact that the BI Exposure Information was in the order of \$715 million as at 20 November 2020 that the BI Exposure Information was sufficiently substantial that a reasonable person would expect the BI Exposure Information to have a material effect on the price or value of the Shares throughout the Relevant Period, if the BI Exposure Information had been generally available.

156. IAG became obliged pursuant to Listing Rule 3.1 to tell the ASX the BI Exposure Information from around 11 March 2020, alternatively 23 March 2020, alternatively 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively the first date upon which a claim for business interruption arising from the COVID-19 pandemic was made under an Unamended BI Insurance Policy.
157. IAG did not tell the ASX the BI Exposure Information at any time prior to 20 November 2020.
158. The *Corporations (Coronavirus Economic Response) Determination (No. 2) 2020* commenced on 26 May 2020 (**Determination No. 2**).
159. Determination No. 2 was repealed and replaced by the *Corporations (Coronavirus Economic Response) Determination (No. 4) 2020* (**Determination No. 4**) on 24 September 2020.
160. In the period 26 May 2020 to the end of the Relevant Period, IAG;
- a. knew that the BI Exposure Information would, if it were generally available, have a material effect on the price or value of the Shares;

- b. alternatively, was aware of a substantial risk that that the BI Exposure Information would, if it were generally available, have a material effect on the price or value of the Shares, and unjustifiably took the risk that it would not;
 - c. alternatively, ought to have known that the BI Exposure Information would, if it were generally available, have a material effect on the price or value of the Shares.
161. In the premises, in the period 26 May 2020 to the end of the Relevant Period, IAG either knew, alternatively was reckless with respect to whether, alternatively was negligent with respect to whether, the BI Exposure Information would, if it were generally available, have a material effect on the price or value of the Shares, within the meaning of s 674(2) of the Corporations Act, as amended by Determination No. 2 and Determination No. 4 as in force from time to time.
162. In the premises, IAG contravened s 674(2) of the Corporations Act by not telling ASX the BI Exposure Information on or shortly after 23 March 2020, alternatively on 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively on or shortly after the first date upon which a claim for business interruption arising from the COVID-19 pandemic was made under an Unamended BI Insurance Policy (the **Continuous Disclosure Contravention**).
163. The Continuous Disclosure Contravention was a continuing contravention and continued until 20 November 2020.

I. MISLEADING OR DECEPTIVE CONDUCT

164. The making of and/or failure to correct or qualify each of:
- a. the Continuous Disclosure Representation;
 - b. the 30 March 2020 COVID-19 Risk Representation, the 24 July 2020 COVID-19 Risk Representation, the 7 August 2020 COVID-19 Risk Representation and the 23 October 2020 COVID-19 Risk Representation (together, the **COVID-19 Risk Representations**); and
 - c. the Accounting Standards Representation;

was conduct engaged in by IAG:

- d. in trade or commerce for the purposes of s 18 of the ACL;
- e. in relation to the Shares, being financial products for the purposes of s 1041H of the Corporations Act;

- f. in relation to a financial service for the purposes of s 12DA of the ASIC Act and/or s 1041H of the Corporations Act.

I. Misleading conduct contraventions in relation to the COVID-19 Risk Representations

165. The COVID-19 Risk Representations were false or misleading or deceptive because, from 30 March 2020 to 20 November 2020, IAG did have material information to disclose in relation to the risks posed by the COVID-19 pandemic to IAG's financial position, namely, the BI Exposure Information.
166. In the premises, from 30 March 2020 until 20 November 2020, by making and/or failing to correct or qualify the COVID-19 Risk Representations, IAG engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
167. By reason of the matters pleaded in paragraphs 164, 165 and 166 above, IAG contravened:
- a. s 1041H of the Corporations Act;
 - b. s 12DA of the ASIC Act; and/or
 - c. s 18 of the ACL;

(each being a **COVID-19 Risk Misleading Conduct Contravention**).

II. Misleading conduct contraventions in relation to the Accounting Standards Representation

168. The Accounting Standards Representation was false or misleading because the financial statements appearing within the FY20 Annual Report were not prepared in accordance with the Australian Accounting Standards.

Particulars

The financial statements appearing within the FY20 Annual Report failed to disclose information about the assumptions IAG made about the future, and other major sources of estimation uncertainty at the end of the reporting period, that had a significant risk of resulting in material adjustment to the carrying amounts of assets and liabilities within the next financial year, contrary to AASB 101 para 125 and 129(c), namely, the BI Exposure Information as at 7 August 2020.

169. In the premises, on 7 August 2020, by making the Accounting Standards Representation, IAG engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

170. By reason of the matters pleaded in paragraphs 164, 168 and 169 above, IAG contravened:

- a. s 1041H of the Corporations Act;
- b. s 12DA of the ASIC Act; and/or
- c. s 18 of the ACL;

(each being an **Accounting Standards Misleading Conduct Contravention**).

III. Misleading conduct contraventions in relation to the Continuous Disclosure Representation

171. The Continuous Disclosure Representation was false or misleading because, from around 11 March 2020, alternatively 23 March 2020, alternatively 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively the first date upon which a claim for business interruption arising from the COVID-19 pandemic was made under an Unamended BI Insurance Policy, IAG failed until 20 November 2020 to comply with its continuous disclosure obligations under the Corporations Act, as modified from time to time.

Particulars

Part H above is repeated.

172. In the premises, from around 11 March 2020, alternatively 23 March 2020, alternatively 30 March 2020, alternatively 24 July 2020, alternatively 7 August 2020, alternatively the first date upon which a claim for business interruption arising from the COVID-19 pandemic was made, by failing to correct or qualify the Continuous Disclosure Representation, IAG engaged in conduct which was misleading or deceptive or was likely to mislead or deceive until 20 November 2020.

173. By reason of the matters pleaded in paragraphs 164, 171 and 172 above, IAG contravened:

- a. s 1041H of the Corporations Act;
- b. s 12DA of the ASIC Act; and/or
- c. s 18 of the ACL;

(each being a **Continuous Disclosure Misleading Conduct Contravention**).

J. CAUSATION

I. Acquisition of Shares

174. During the Relevant Period, the Plaintiff and Group Members acquired or acquired interests in, or entered into contracts to acquire interests in, the Shares.

II. Market-based causation

175. The Plaintiff and Group Members acquired or acquired interests in the Shares, or entered into contracts to acquire an interest in the Shares, in a market of investors or potential investors in the Shares operated by the ASX in circumstances where:

- a. IAG had the obligations pleaded in paragraphs 6(d) to (e) and 8 above; and
- b. the price or value of the Shares was informed or affected by information disclosed (or not disclosed) in accordance with the ASX Listing Rules, ss 674(2) and 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL.

176. By reason of the:

- a. the COVID-19 Risk Misleading Conduct Contraventions, the Accounting Standards Misleading Conduct Contravention and the Continuous Disclosure Misleading Conduct Contravention (together the **Misleading Conduct Contraventions**) or some of them; and/or
- b. the Continuous Disclosure Contravention;

the information available to the market of investors and potential investors in the Shares was different from the information that would have been available had the relevant contraventions not occurred.

177. During the Relevant Period, the Misleading Conduct Contraventions or some of them and/or the Continuous Disclosure Contravention caused the market price for the Shares to be, or materially contributed to the market price of the Shares being, substantially greater than:

- a. the true value of the Shares; and/or
- b. the market price that would have prevailed but for the contraventions;

from the dates that each of the relevant contraventions commenced as pleaded above.

Particulars

Particulars concerning the extent to which the Misleading Conduct Contraventions or some of them and/or the Continuous Disclosure Contravention caused the market price for the Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided with the Plaintiff's expert evidence.

178. The decline in the price of the Shares pleaded in paragraph 150 above was caused or materially contributed to by:
- a. the market's reaction to the Corrective Disclosure; and
 - b. the Misleading Conduct Contraventions (or some of them) and/or the Continuous Disclosure Contravention that occurred prior to 20 November 2020.
179. Further, or alternatively, if IAG had:
- a. disclosed to the market the BI Exposure Information during the Relevant Period; and/or
 - b. not engaged in the conduct the subject of some or all of the Misleading or Deceptive Conduct Contraventions;

the price of the Shares would have fallen substantially.

III. Reliance

180. Further, or in the alternative:
- a. the Plaintiff and Group Members would not have acquired or acquired an interest in, or entered into a contract to acquire an interest in, the Shares, either at all or at the prices and in the volumes that they were acquired, had they known the BI Exposure Information; and/or
 - b. the Plaintiff and Group Members acquired the Shares, or acquired the Shares at the prices and in the volumes they were acquired, in reliance upon some or all of the following representations (and/or IAG not having corrected or qualified those representations):
 - i. the Continuous Disclosure Representation;
 - ii. the COVID-19 Risk Representations; and/or
 - iii. the Accounting Standards Representation.

Particulars

The identity of all those Group Members referred to in this paragraph are not currently within the Plaintiff's knowledge. Particulars will be provided following opt-out, the determination of the Plaintiff's claim and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

IV. Loss and damage

181. The Plaintiff and Group Members have suffered loss and damage resulting from the contraventions pleaded in this Statement of Claim.

Particulars

The loss suffered by the Plaintiff will be calculated by reference to:

- (1) the difference between the price at which the Shares were acquired by the Plaintiff during the Relevant Period and the true value of the Shares; or
- (2) alternatively, the difference between the price at which the Plaintiff acquired the Shares and the market price that would have prevailed had the Misleading or Deceptive Conduct Contraventions and/or the Continuous Disclosure Contravention not occurred; or
- (3) alternatively, the days after the Relevant Period when the traded price of the Shares fell as a result of the disclosure of the BI Exposure Information which had not previously been disclosed because of the Misleading or Deceptive Conduct Contraventions and/or the Continuous Disclosure Contraventions, and the quantum of that fall; or
- (4) alternatively, the difference between the price at which the Shares were acquired by the Plaintiff and the price in left in hand.

Particulars of the losses of Group Members are not currently within the Plaintiff's knowledge. Particulars will be provided following opt out, the determination of the Plaintiff's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

K. COMMON QUESTIONS**Questions of law or fact common to the claims of the Group Members**

182. The questions of law or fact common to the claims of Group Members are as follows:

- a. whether the facts relating to IAG are as pleaded in Part B of this Statement of Claim;
- b. whether the facts relating to business interruption insurance are as pleaded in Part C of this Statement of Claim;
- c. whether the facts relating to the COVID-19 pandemic are as pleaded in Part D of this Statement of Claim;
- d. whether the facts relating to IAG's publications, announcements and disclosures are as pleaded in Part E of this Statement of Claim;
- e. whether IAG made any of the Continuous Disclosure Representation, the COVID-19 Risk Representations and the Accounting Standards Representation;
- f. whether any making of and/or failure to correct or qualify any of those representations was conduct that was misleading or deceptive, or likely to mislead or deceive;
- g. whether any making of and/or failure to correct or qualify any of those representations caused loss to Group Members;
- h. whether, during the Relevant Period, IAG was aware (within the meaning of ASX Listing Rule 19.12) of the BI Exposure Information;
- i. whether the BI Exposure Information was:
 - i. not generally available within the meaning of s 676 of the Corporations Act;
 - ii. information that a reasonable person would expect to have a material effect on the price or value of the Shares within the meaning of Listing Rule 3.1;
 - iii. information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of the Shares within the meaning of s 674(2)(d) of the Corporations Act (including as informed by s 677 of the Corporations Act).
- j. whether, in the period 26 May 2020 to the end of the Relevant Period, IAG knew, or was reckless or negligent with respect to whether, the BI Exposure Information would, if it were generally available, have a material effect on the price or value of the Shares;

- k. whether IAG was thereby obliged to disclose the BI Exposure Information to the ASX but failed to do so prior to 20 November 2020;
- l. whether any such failure caused loss to Group Members;
- m. whether the facts relating to the Corrective Disclosure are as pleaded in Part G of this Statement of Claim.

AND THE PLAINTIFF CLAIMS ON ITS OWN BEHALF AND ON BEHALF OF GROUP MEMBERS:

1. Damages pursuant to s 1041I and/or s 1317HA of the Corporations Act, s 12GF of the ASIC Act and/or s 236 of the ACL.
2. Interest.
3. Costs.
4. Such other or further order as the Court thinks fit.

A. M. HOCHROTH

K. LINDEMAN

H. C. WHITWELL

A handwritten signature in black ink, appearing to read 'Quinn Emanuel Urquhart & Sullivan', written in a cursive style.

Quinn Emanuel Urquhart & Sullivan
Solicitors for the Plaintiff