



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

Case: S ECI 2023 01899

No. S ECI 2023 01899 Filed 2023 12:58 PM

BETWEEN

**RAEKEN PTY LTD ATF DOWRICK SUPERANNUATION FUND
(ACN 110 057 684)**

Plaintiff

and

JAMES HARDIE INDUSTRIES PLC (ARBN 097829895)

Defendant

DEFENCE

Date of document: 10 November 2023
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To the plaintiff's Statement of Claim dated 8 May 2023, the defendant (**James Hardie**) says as follows:

Note: Unless otherwise stated, or required by context, capitalised and abbreviated terms in this Defence have the same meaning as those in the Statement of Claim.

A. PRELIMINARY

1. To paragraph 1:

- (a) it does not admit the allegations in sub-paragraph 1(a);
- (b) it denies that the plaintiff and group members have suffered loss or damage, or are entitled to relief, by or resulting from its conduct as alleged in the Statement of Claim, and it therefore denies sub-paragraph 1(b);
- (c) it admits that the proceeding is not commenced on behalf of the persons in sub-paragraphs 1(c)(i) to (v) and therefore admits the allegations in sub-paragraph 1(c).

2. It admits the allegations in paragraph 2.
3. To paragraph 3:
 - (a) it admits that there were seven or more persons who acquired JHX Shares, or JHX ADRs, in the Relevant Period;
 - (b) it does not admit that JHX Equity Swaps were acquired in the Relevant Period;
 - (c) it refers to and repeats sub-paragraph 1(b) above, and otherwise denies the allegations in paragraph 3.
4. It admits the allegations in paragraph 4.
5. It admits the allegations in paragraph 5 and says further that its fiscal year commenced on 1 April and ended on 31 March of the following year, such that:
 - (a) the first quarter of any given fiscal year commenced 1 April and ended on 30 June of that year (**1Q**);
 - (b) the second quarter of any given fiscal year commenced 1 July and ended on 30 September of that year (**2Q**);
 - (c) the third quarter of any given fiscal year commenced 1 October and ended on 31 December of that year (**3Q**);
 - (d) the fourth quarter of any given fiscal year commenced 1 January and ended on 31 March of that year (**4Q**).
6. To paragraph 6:
 - (a) it admits the allegations in sub-paragraph 6(a);
 - (b) it admits that the relationship between the number of JHX Shares and JHX ADRs was that one JHX Share represented one JHX ADR, and otherwise denies the allegations in sub-paragraph 6(b).
7. It admits the allegations in paragraph 7.
8. It admits the allegations in paragraph 8.
9. It admits the allegations in paragraph 9.
10. It admits the allegations in paragraph 10.

11. It admits the allegations in paragraph 11, save that “Dean Savers” should be “Dean Seavers”.
12. To paragraph 12:
 - (a) it admits that, during the Relevant Period, the persons named in sub-paragraphs 12(a), (b) and (c) were “officers” of James Hardie within the meaning of s 9 of the Corporations Act and the ASX Listing Rules;
 - (b) it otherwise denies the allegations in paragraph 12.
13. It denies the allegations in paragraph 13.
14. [*This allegation has been withdrawn by the plaintiff.*]
15. To paragraph 15:
 - (a) it admits that an entity relevantly becomes “aware” of information, within the meaning of the ASX Listing Rules, if, and as soon as, an officer of the entity has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity, pursuant to the definition of “aware” in rule 19.12 of the ASX Listing Rules;
 - (b) it refers to and repeats paragraphs 7 to 13 above; and
 - (c) it otherwise denies the allegations in paragraph 15.
16. Save that it will rely at trial on the full terms and effect of Chapter 3 of the ASX Listing Rules and Chapter 6CA of the Corporations Act, it admits the allegations in paragraph 16.
17. Save that s 12DA of the ASIC Act requires engaging in conduct in trade or commerce in relation to financial services, it admits the allegations in paragraph 17.
18. It admits the allegations in paragraph 18.

B. JAMES HARDIE’S BUSINESS

19. To paragraph 19:
 - (a) it admits that from at least FY21 and during the Relevant Period, its principal business activities comprised manufacturing and selling fiber cement building materials, fiber gypsum and cement bonded boards, and it conducted business primarily in:

- (i) North America, comprising the United States of America and Canada (**North American Market**);
 - (ii) the Asia-Pacific, principally comprising Australia, New Zealand and the Philippines (**Asia-Pacific Market**); and
 - (iii) Europe, principally comprising Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Switzerland and the United Kingdom (**European Market**);
 - (b) it says further that from at least FY21 and during the Relevant Period, it had the following operating segments:
 - (i) **North America Fiber Cement**;
 - (ii) **Asia Pacific Fiber Cement**;
 - (iii) **Europe Building Products**, which included the business formerly operated by XI (DL) Holdings GmbH and its subsidiaries acquired by James Hardie on or around 3 April 2018 (**Fermacell Business**);
 - (c) it says it does not know what time frame is meant by the expression “all material times” prior to the Relevant Period and what is included in the expression “building materials” and it therefore otherwise does not admit the allegations in paragraph 19.
20. To paragraph 20:
- (a) it admits that, from FY22 and during the Relevant Period it operated 19 manufacturing facilities across North America, the Asia-Pacific and Europe;
 - (b) it says it does not know what time frame is meant by the expression “all material times” prior to the Relevant Period and it therefore otherwise does not admit the allegations in paragraph 20.
21. To paragraph 21:
- (a) it admits that from at least FY21 and during the Relevant Period, its principal product line was FC Products in the North American Market and the Asia-Pacific Market;
 - (b) it otherwise denies the allegations in paragraph 21.

22. To paragraph 22:
- (a) it admits that, as at 18 May 2022, it was the number one manufacturer and marketer of FC Products in the world;
 - (b) it otherwise does not admit the allegations in paragraph 22.
23. It admits the allegations in paragraph 23 insofar as the alleged “material times” relate to the period FY20 and FY21 (as alleged in the particulars to paragraph 23), and it otherwise does not admit the allegations therein.
24. It admits the allegations in paragraph 24 insofar as the alleged “material times” relate to the period from FY21 (as alleged in the particulars to paragraph 24), and it otherwise does not admit the allegations therein.
25. It admits the allegations in paragraph 25 insofar as the alleged “material times” relate to the period FY21 and FY22 (as alleged in the particulars to paragraph 25), and it otherwise does not admit the allegations therein.
26. To paragraph 26:
- (a) it says that the expression “very substantial” is vague and embarrassing;
 - (b) under cover of that objection:
 - (i) it admits that from FY21 and during the Relevant Period, North America Fiber Cement was the largest producer of FC Products in the North American Market;
 - (ii) it otherwise does not admit the allegations in paragraph 26.
27. It admits the allegations in paragraph 27 from at least FY21 and during the Relevant Period, and it otherwise does not admit the allegations therein.

C. JAMES HARDIE’S FY23 GUIDANCE

28. To paragraph 28:
- (a) it admits the allegations in paragraph 28 and says that in the results tables:
 - (i) “NA” is a reference to North America Fiber Cement;
 - (ii) “APAC” is a reference to Asia Pacific Fiber Cement;
 - (iii) “EU” is a reference to Europe Building Products;

- (iv) “ANOP” is a reference to adjusted net operating profit (**ANOP**);
 - (v) the EBIT for Europe Building Products:
 - (A) in 1Q20, 2Q20 and 3Q20 was adjusted to exclude costs associated with James Hardie’s acquisition of the Fermacell Business;
 - (B) in 4Q20 was adjusted to exclude asset impairment charges and costs associated with the acquisition of the Fermacell Business;
 - (vi) the EBIT for Asia Pacific Fiber Cement in 4Q20 was adjusted to exclude asset impairment charges;
- (b) it says further that, in FY20, James Hardie also published quarterly results in US Dollars for Asia Pacific Fiber Cement (APAC) and Europe Building Products (EU), as set out in Table 1 of Annexure A to this Defence.
29. It admits the allegations in paragraph 29.
30. To paragraph 30:
- (a) it admits the allegations in paragraph 30 and it refers to and repeats subparagraphs 28(a)(i) to (iii) above;
 - (b) it says further that:
 - (i) the EBIT for each of North America Fiber Cement, Asia Pacific Fiber Cement and Europe Building Products in FY21 was adjusted to exclude any restructuring expenses;
 - (ii) in FY21, James Hardie also published quarterly results in US Dollars for Asia Pacific Fiber Cement and Europe Building Products, as set out in Table 2 of Annexure A to this Defence.
31. It admits the allegations in paragraph 31.
32. To paragraph 32:
- (a) it admits the allegations in paragraph 32 and it refers to and repeats subparagraphs 28(a)(i) to (iii) above;
 - (b) it says further:

- (i) the EBIT for each of North America Fiber Cement, Asia Pacific Fiber Cement and Europe Building Products in FY22 was adjusted to exclude any restructuring expenses;
 - (ii) in FY22, James Hardie also published quarterly results in US Dollars for Asia Pacific Fiber Cement and Europe Building Products, as set out in Table 3 of Annexure A to this Defence.
- 33. It admits the allegations in paragraph 33.
- 34. It admits the allegations in paragraph 34.
- 35. To paragraph 35:
 - (a) it admits that the 7 January Announcement contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 7 January Announcement;
 - (b) it says further that:
 - (i) earnings guidance involves:
 - (A) an estimate of the future financial performance and results of a company;
 - (B) the use of historical and current information and data to predict future events and the financial performance and results of a company;
 - (ii) the preparation of earnings guidance is a forward-looking exercise based on a range of assumptions about, among other things, macro-economic and market-specific conditions, including the interaction of those conditions on consumer demand;
 - (iii) there is uncertainty and risk regarding whether earnings guidance will be achieved due to, among other things, unexpected events or circumstances arising during the period of the guidance, or anticipated events or circumstances not arising, and upon which reasonable assumptions have been made;

- (iv) earnings guidance involves greater risk and uncertainty, and is generally less reliable, the further into the future the period of the guidance relates to;
- (v) by reason of the matters in (i) to (iv) the preparation of earnings guidance involves an exercise of judgement;
- (vi) earnings guidance prepared by James Hardie in FY21 and FY22 was attended by additional risk and uncertainty as a result of the COVID-19 pandemic;
- (vii) at the time it provided its earnings guidance, James Hardie also warned that:
 - (A) its forward-looking statements and information were subject to risks, uncertainties and assumptions;
 - (B) risks and uncertainties arose from changes in, among other things, interest rates, inflation rates, exchange rates and the level of construction generally; and
 - (C) if one or more of the identified risks or uncertainties materialised, or should underlying assumptions prove incorrect, its actual results may vary materially from those described,
(Guidance Warning);
- (viii) when providing earnings guidance, James Hardie did not represent or promise that it would achieve the financial performance and results within the parameters of its guidance;
- (ix) the plaintiff and group members knew or ought to have known of the matters in sub-paragraphs (i) to (viii) above, by reason of:
 - (A) statements made by James Hardie, such as the Guidance Warning;
 - (B) the plaintiff and group members, being persons who are alleged to have acquired JHX Shares, JHX ADRs, JHX Equity Swaps, had an awareness and understanding of risks and uncertainties

inherent in forward-looking estimates of a company's financial performance and results (as reflected in earnings guidance).

Particulars

As to sub-paragraphs (vii) and (ix), pages 2 and 3 of the 7 January Announcement.

As to sub-paragraph (vii), see also the particulars to sub-paragraphs 39(c), 64(b)(i), 94(d)(ii) and 106(b)(ii) below.

36. Save that it will rely on the full terms and effect of the January Special Call at trial, it admits the allegations in paragraph 36.
37. It admits the allegations in paragraph 37.
38. It admits the allegations in paragraph 38.
39. To paragraph 39:
 - (a) it admits that the 7 February Announcement contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 7 February Announcement;
 - (b) it says further that, in this Defence:
 - (i) its revised guidance range for the James Hardie Group ANI in FY22 of US\$620 million to US\$630 million, made as part of the 7 February Announcement, will be referred to as the **Revised FY22 ANI Guidance**;
 - (ii) its guidance range for the James Hardie Group ANI in FY23 of US\$740 million to US\$820 million will be referred to as the **FY23 ANI Guidance**;
 - (iii) its guidance range for North America Fiber Cement in FY23 of Net Sales Growth of between 16% and 20% and EBIT Margin of between 30% and 33% will be referred to as the **FY23 North America Guidance**;
 - (c) it says further that it provided its Guidance Warning as part of the 7 February Announcement which applied to, among other things, the FY23 ANI Guidance and FY23 North America Guidance.

Particulars

Pages 4 and 6 of the Media Release titled “James Hardie Industries Announces Third Quarter Fiscal Year 2022 Results” dated 7 February 2022 in the 3Q22 Results Pack.

Page 18 of the document titled “Management’s Analysis of Results: James Hardie – 3rd Quarter Fiscal Year 2022” in the 3Q22 Results Pack.

Pages 2, 22 and 23 of the document titled “Q3 FY22 Management Presentation” dated 7 February 2022 in the 3Q22 Results Pack.

40. To paragraph 40:
- (a) save that it will rely on the full terms and effect of the February Earnings Call at trial, it admits:
 - (i) that it held the February Earnings Call on 7 February 2022 (AEDT);
 - (ii) the allegations in sub-paragraphs 40(a)(i) and (iv), (b) and (d);
 - (b) it denies the allegations in sub-paragraph 40(a)(ii), and says that, in the February Earnings Call, Gadd stated that James Hardie believed the remodel segment had more resilience to interest rates changes than other segments and, specifically for homeowners taking out a home equity loan of US\$50,000, a 100 basis point change in rates would only change their monthly payment by approximately US\$25;
 - (c) it denies the allegations in sub-paragraph 40(a)(iii), and says that, in the February Earnings Call, Gadd stated that James Hardie did not believe that the potential for interest rates changes in the remodel segment would be a deterrent to homeowners deciding to remodel their home, especially considering the record amount of home equity currently held in the United States;
 - (d) it denies the allegations in sub-paragraph 40(c), and says that, in the February Earnings Call, Gadd stated that James Hardie believed the North American Market was going to be fairly favourable, sort of low single-digits; they suspected that North America Fiber Cement’s volume was going to be somewhere between 9% and 13%; and, as a result, they thought they were going to be taking market share;

- (e) it says further that its Guidance Warning applied to the statements alleged in sub-paragraph 40(a)(iv) of the Statement of Claim, and sub-paragraphs 40(b) to (d) above.

41. It denies the allegations in paragraph 41 and refers to and repeats paragraphs 39 and 40 above.

42. It denies the allegations in paragraph 42 and refers to and repeats paragraphs 39 to 41 above.

D. THE POSITION AS AT 7 FEBRUARY 2022

43. It does not admit the allegations in paragraph 43.

44. To paragraph 44:

- (a) it admits that:

- (i) the price of lumber between 1 February 2017 and 1 June 2020 was approximately US\$400 per 1,000 board feet;

- (ii) between 1 June 2020 and 7 February 2022, the price of lumber fluctuated;

- (iii) as compared with the period between 1 February 2017 and 1 June 2020, the price of lumber per 1,000 board feet had a closing price of US\$1,686.00 on 7 May 2021 and US\$1,278.70 on 18 January 2022;

- (b) it says that the price of lumber per 1,000 board feet fluctuated in 2021 and was US\$474.40 on 16 August 2022; and

- (c) it otherwise denies the allegations in paragraph 44.

45. To paragraph 45:

- (a) it refers to and repeats paragraphs 43 and 44 above; and

- (b) it otherwise denies the allegations in paragraph 45.

46. To paragraph 46:

- (a) insofar as “new construction” means housing starts in the US New Construction Sector, it admits that there was broadly an increase in the volume of new construction in the US residential housing construction market (both in total,

and for single unit residential construction) between November and December 2021 as compared with the period April to October 2021;

- (b) it otherwise denies the allegations in paragraph 46;
- (c) it says further that:
 - (i) the increase in total and single unit housing starts between February and March 2021 exceeded the increase in total and single unit housing starts between October and November 2021;
 - (ii) the volume of total new starts in March 2021 was higher than in November 2021;
 - (iii) housing starts is only one metric for measuring the volume of construction in the New Construction Sector in the United States;

Particulars

The rate of housing permits and housing completions in the New Construction Sector is also relevant to measuring demand for James Hardie's FC Products in the United States.

- (iv) housing starts in the New Construction Sector has no, or only limited, relevance to the R&R Sector;
- (v) approximately 65% of the total volume of James Hardie's sales in the North American Market at the time were in the R&R Sector;
- (vi) the data on housing starts in the United States for January 2022 was not published until 17 February 2022; and
- (vii) there had been a month-on-month increase in total housing starts between September 2021 and December 2021.

47. To the allegations in paragraph 47:

- (a) it denies the allegations therein;
- (b) it refers to and repeats paragraphs 43 to 46 above and paragraphs 135(d) and (e) below;
- (c) it says further that:

- (i) by the time of the 7 February Announcement, the price of lumber had been rising steadily from US\$540.10 on 8 November 2021 to US\$1,216.00 on 7 February 2022; and
- (ii) the demand for James Hardie's FC Products in the North American Market could be influenced by various factors.

Particulars

Demand for James Hardie's products could be impacted by, among other things, the availability of financing; regulatory changes; mortgage and other interest rates; inflation; household income and wage growth; unemployment levels; the inventory of unsold homes; the level of foreclosures; home resale rates; housing affordability; demographic trends; gross domestic product growth; consumer confidence in each of the countries and regions in which it operates; household equity and debt levels; the aging stock of homes; the backlog of homes to be completed; whether mortgages have fixed or variable rates; real estate prices; design trends and consumer preferences; new capacity; customer integration; marketing directly to homeowners; new innovations; and whether there had been any events or factors suppressing demand in prior periods.

Demand for James Hardie's products also varied depending on whether the products were to be used in the New Construction Sector or the R&R Sector, and whether the products were to be used for single family units or multi-family units.

48. To paragraph 48:

- (a) it admits that the Consumer Price Index (CPI) in the United States increased between March 2021 and January 2022 (including in the period October 2021 to January 2022);
- (b) it says that, notwithstanding the increase in CPI between March 2021 and January 2022, there was ongoing demand for James Hardie's FC Products in the North American Market over that period;

Particulars

See Annexure B to this Defence.

- (c) it otherwise denies the allegations in paragraph 48.

49. To paragraph 49:

- (a) it admits that:

- (i) on or around 26 January 2022 (EST), the US Federal Reserve published and released a press release (**26 January Press Release**);
 - (ii) the 26 January Press Release contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 26 January Press Release;
- (b) it says further that:
- (i) at its 25 – 26 January 2022 meeting, the Federal Open Market Committee (**Fed Committee**) decided to keep the target range for the Federal funds rate at 0 – 0.25%;
 - (ii) on 26 January 2022, Chair Powell of the US Federal Reserve stated at a press conference in connection with the 26 January Press Release that:
 - (A) the economic outlook remained highly uncertain;
 - (B) it was not possible to predict with much confidence exactly what path for the US Federal Reserve’s policy rate was going to prove appropriate; and
 - (C) it was not possible to say with any confidence what the precise path would be;
- (c) it otherwise denies the allegations in paragraph 49.

50. To paragraph 50:

- (a) it admits that the CPI in the United States was 7.9% in February 2022, which was well above 2%;
- (b) it refers to and repeats paragraph 49 above;
- (c) it says that, as at 7 February 2022, US Federal Reserve Board members and US Federal Reserve Bank presidents projected that the personal consumption expenditure price index (a measure of inflation) would decrease in 2022 in comparison to 2021 and that there would be a further decrease in the personal consumption expenditure price index in 2023 in comparison to 2022;

Particulars

US Federal Reserve, *Summary of Economic Projections* dated 15 December 2021, Table 1, p 2.

- (d) it otherwise does not admit the allegations in paragraph 50.
51. It does not admit the allegations in paragraph 51.
52. It denies the allegations in paragraph 52 and says further that:
- (a) the material fact alleged in paragraph 52 does not follow from the premise alleged in paragraph 51 (which is not admitted);
 - (b) it refers to and repeats paragraphs 47 and 48 above; and
 - (c) it did not follow that, from a sustained period of high inflation in the US, consumer spending in the US residential housing market would likely slow and/or demand for James Hardie's products would likely decrease.

Particulars

James Hardie refers to and repeats paragraphs 47 and 48 above and the particulars subjoined thereto. Further, as at 7 February 2022:

- (i) US homeowners had a record average amount of equity in their home;
 - (ii) median US existing house prices had been rising, year over year, since March 2012 and were continuing to rise; and
 - (iii) the backlog of homes under construction in the United States, being the difference between the total number of new privately owned housing units completed and the total number of new privately owned housing unit started, was at the highest level since 1984.
53. To paragraph 53:
- (a) it admits that, as at 7 February 2022, an increase in North America Fiber Cement's cost of building and construction materials was likely to cause it to incur additional input costs;
 - (b) it refers to and repeats paragraphs 51 and 52 above;
 - (c) it otherwise denies the allegations in paragraph 53;
 - (d) it says further that James Hardie had pricing and other strategies to recoup additional input and freight costs caused by inflation.

Particulars

James Hardie had the option of imposing out of cycle increases in the price of its products.

James Hardie typically imposed price increases on 1 January each year. Out of cycle price increases are additional increases in price imposed on other dates during the year.

Further, James Hardie's ability to pass on increased input costs to consumers in the form of higher prices was enhanced by strategies James Hardie could employ as at or from 7 February 2022, including:

- (i) marketing its products directly to homeowners;
- (ii) adjusting its product mix to focus on the manufacture and supply of higher value products;
- (iii) innovating and releasing new, high-value products;
- (iv) entering into long-term contracts with suppliers of raw materials which fixed the price of those input costs.

54. It denies the allegations in paragraph 54 and says further that:

- (a) it refers to and repeats paragraphs 47, 48, 52 and 53 above;
- (b) as at 7 February 2022:
 - (i) CPI in the United States had been above 2%, and was rising, since April 2021 and during that period James Hardie had announced upgrades to its FY22 earnings guidance;

Particulars

Announcement date	ANI Guidance range (USD)
18 May 2021	\$520m - \$570m
10 August 2021 (revised)	\$550m - \$590m
9 November 2021 (revised)	\$580m - \$600m
7 January 2022 (revised)	\$605m – \$625m
7 February 2022 (revised, i.e. the 'Revised FY22 ANI Guidance')	\$620m – \$630m
<i>Actual result (FY22 ANI):</i>	<i>\$620.7m</i>

- (ii) James Hardie had pricing and other strategies to offset and/or mitigate the effect that an increase in input costs had on the ANI growth and EBIT

Margin achieved by North America Fiber Cement and the James Hardie Group.

Particulars

James Hardie refers to and repeats the particulars subjoined to paragraph 53(d) above.

Further, James Hardie:

- (i) was executing its “LEAN” manufacturing strategy, which aimed to reduce variation, increase efficiency and improve quality of its manufacturing processes, and which assisted James Hardie to absorb input cost pressures in 2021 and January 2022; and
- (ii) could reduce costs, such as corporate costs that did not impact revenue generation, including by reducing headcount or freezing new hires, reducing spending on travel and events, and temporarily limiting spending in areas such as information technology, marketing, human resources and administration.

55. It denies the allegations in paragraph 55 and refers to and repeats paragraphs 48 to 54 above.
56. It admits the allegations in paragraph 56 and says further that, as at 7 February 2022, the median projections of US Federal Reserve Board members and US Federal Reserve Bank presidents were that the Federal funds rate would increase to:
- (a) 0.9% in 2022, with a projected range of 0.4% to 1.1%;
 - (b) 1.6% in 2023, with a projected range of 1.1% to 2.1%; and
 - (c) 2.1% in 2024, with a projected range of 1.9% to 3.1%.

Particulars

US Federal Reserve, *Summary of Economic Projections* dated 15 December 2021, Table 1, p 2.

57. It denies the allegations in paragraph 57, refers to and repeats paragraphs 47 to 54 above, and says further that the R&R Sector was more resilient to interest rate increases than the New Construction Sector.

Particulars

The decision to repair or remodel a house was and remained less affected by increases in interest rates than the decision to build a new house.

Demand for James Hardie's FC Products in the R&R Sector was and remained a function of, among other things:

- (i) the amount of equity that a homeowner had in their house;
- (ii) the value of the house;
- (iii) the age of the house;
- (iv) consumer preferences, such as the demand for repairs or remodelling by homeowners working from home; and
- (v) the level of a homeowner's disposable income or funds available for repair and remodelling.

It otherwise refers to and repeats the particulars to paragraph 47 above.

- 58. It denies the allegations in paragraph 58 and refers to and repeats paragraphs 50 to 57 above.
- 59. It denies the allegations in paragraph 59 and refers to and repeats paragraphs 43 to 58 above and paragraph 135 below.
- 60. It denies the allegations in paragraph 60 and refers to and repeats paragraphs 26 and 50 to 59 above.

E. ALLEGED MAINTENANCE AND REAFFIRMATION OF REPRESENTATIONS BETWEEN 7 FEBRUARY 2022 AND 16 AUGUST 2022

- 61. To paragraph 61:
 - (a) it refers to and repeats paragraph 41 above, and therefore denies the allegations in paragraph 61;
 - (b) it says further that, in the May Earnings Call, Miele stated that James Hardie's expectation of cost of goods sold (COGS) inflation in FY23 had shifted significantly since February; where previously James Hardie was expecting global COGS inflation to be between \$40 million to \$60 million, James Hardie was now expecting it to be between \$90 million to \$130 million.
- 62. It refers to and repeats paragraphs 41 and 61 above, and therefore denies the allegations in paragraph 62.
- 63. It admits the allegations in paragraph 63.

64. To paragraph 64:

- (a) it admits that the 17 May Announcement contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 17 May Announcement;
- (b) as to the allegations in sub-paragraph 64(c), it says further that:
 - (i) the 17 May Announcement contained Guidance Warnings;

Particulars

Pages 4 and 7 of the Media Release titled “James Hardie Industries Announces Fourth Quarter and Fiscal Year 2022 Results” dated 17 May 2022 in the 4Q22 Results Pack.

Page 19 of the document titled “Management’s Analysis of Results: James Hardie – Full Year Ended 31 March 2022” in the 4Q22 Results Pack.

Pages 2 and 20 of the document titled “Q4 FY22 Management Presentation” dated 17 May 2022 in the 4Q22 Results Pack.

- (ii) the Guidance Warnings applied to the statements alleged therein.

65. To paragraph 65:

- (a) it admits that, in the 17 May Announcement, it repeated the FY23 ANI Guidance;
- (b) it otherwise denies the allegations in paragraph 65;
- (c) it refers to and repeats sub-paragraph 64(b)(i) above and says further that:
 - (i) the Guidance Warnings referred to in sub-paragraph 64(b)(i) above applied to the FY23 ANI Guidance;
 - (ii) it will rely on the full terms and effect of the 17 May Announcement at trial.

66. To paragraph 66:

- (a) it admits that it held the May Earnings Call on 17 May 2022 (AEST), and that it made the statement alleged in sub-paragraph 66(d);
- (b) it denies the allegations in sub-paragraph 66(a), and says that in the May Earnings Call:

- (i) Miele stated that North America Fiber Cement was at a point now where 65% of its business was repair and remodel;
 - (ii) Gadd stated that the R&R Sector looked pretty robust for North America Fiber Cement;
- (c) it denies the allegations in sub-paragraph 66(b), and says that, in the May Earnings Call, Gadd stated that:
- (i) James Hardie had not seen any drop off in the conversion rate and did not plan to; he thought the backlog was relatively large in the R&R Sector; when James Hardie had spoken to its contractors and customers, their backlogs were more than double what they traditionally were, which would tell you that they are not getting cancellations; James Hardie did not believe that interest rates for reside were really that big an impact; people seemed to have a fair amount of cash and James Hardie had not seen that drop off; and James Hardie thought they would continue to see growth;

Particulars

Gadd's reference to the "conversion rate" was a reference to the conversion of a contractor or builder from one James Hardie product to another. His reference to "reside" was a reference to full siding replacements.

- (ii) in the R&R Sector, contractors were talking about a sort of 8- to 12-week backlog with typically 4 to 6 weeks; James Hardie continued to work with its customers, dealers and distributors and had relatively strong visibility of their orders and of their contracts with homeowners which made James Hardie feel fairly confident with its numbers;
- (d) it denies the allegations in sub-paragraph 66(c), and refers to and repeats sub-paragraph 66(c)(i) above;
- (e) it says further that:
- (i) it refers to and repeats sub-paragraph 61(b) above;
 - (ii) in the May Earnings Call:

- (A) Gadd announced a second price increase in 2022 of around 4% for North American FC products that would become effective on or around 20 June 2022;

Particulars

The first price increase in 2022 of 5% was implemented on 1 January 2022.

- (B) Gadd stated that the second price increase was to help improve North America Fiber Cement's overall top line result while offsetting cost pressures;
- (C) Gadd stated that James Hardie would then implement its standard annual price increase on 1 January 2023;

(iii) it will rely on the full terms and effect of the May Earnings Call at trial.

67. It denies the allegations in paragraph 67 and refers to and repeats paragraphs 63 to 66 above.
68. It denies the allegations in paragraph 68 and refers to and repeats paragraphs 41 and 67 above.
69. It denies the allegations in paragraph 69 and refers to and repeats paragraphs 63 to 68 above.
70. It denies the allegations in paragraph 70 and refers to and repeats paragraphs 40 and 66 above.
71. It denies the allegations in paragraph 71 and refers to and repeats paragraph 67 above.
72. It denies the allegations in paragraph 72 and refers to and repeats paragraphs 67 and 71 above.

F. THE POSITION BETWEEN 7 FEBRUARY 2022 AND 16 AUGUST 2022

73. To the allegations in paragraph 73:
- (a) it refers to and repeats paragraph 44 above;
- (b) it says that:

- (i) between 7 February 2022 and 3 March 2022, the price of lumber increased from a closing price of US\$1,114.90 to a closing price of US\$1,464.40 per 1,000 board feet;
 - (ii) between 4 March 2022 and 30 June 2022, the price of lumber continued to fluctuate and reached a closing price of US\$663.30 per 1,000 board feet;
 - (iii) between 1 July 2022 to 7 November 2022, the price of lumber fluctuated above and below US\$600 per 1,000 board feet and reached a closing price of US\$455.00 per 1,000 board feet;
 - (iv) across the period 7 February and June 2022, the average price of lumber materially exceeded the average price of lumber over the period 1 February 2017 and 1 June 2020;
 - (c) it otherwise denies the allegations in paragraph 73.
74. It does not admit the allegations in paragraph 74.
75. To paragraph 75:
- (a) it says that the allegations in paragraph 75 are vague and embarrassing and are liable to be struck out;
 - (b) under cover of that objection, it denies the allegations in paragraph 75.
76. It denies the allegations in paragraph 76, and refers to and repeats paragraphs 47, 52, 73 to 75 above.
77. To the allegations in paragraph 77:
- (a) it admits that the volume of new starts in August 2022 was lower than in February 2022;
 - (b) it says that:
 - (i) the total volume of housing starts increased between March 2022 and April 2022;
 - (ii) the total volume of housing starts in the months of May and June 2022 were commensurate with levels between July and October 2021 (before further increases in November and December 2021);

- (c) it refers to and repeats paragraph 46(c)(ii) to (iv) above; and
 - (d) it otherwise denies the allegations in paragraph 77.
78. It denies the allegations in paragraph 78 and refers to and repeats paragraphs 43 to 58 above and 79 to 83 and 90 below.
79. To paragraph 79:
- (a) it admits that, between 7 February 2022 and 16 August 2022, the CPI in the United States continued to remain at elevated levels as compared to a CPI of 2%;
 - (b) it otherwise does not admit the allegations in paragraph 79.
80. To paragraph 80:
- (a) it admits that:
 - (i) on or around 16 March 2022 (EDT), the US Federal Reserve published and released a press release (**16 March Press Release**);
 - (ii) the 16 March Press Release contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 16 March Press Release;
 - (b) it says further that, as at 16 March 2022, the median projections of US Federal Reserve Board members and US Federal Reserve Bank presidents were that the Federal funds rate would increase to:
 - (i) 1.9% in 2022, with a projected range of 1.4% to 3.1%;
 - (ii) 2.8% in 2023, with a projected range of 2.1% to 3.6%; and
 - (iii) 2.8% in 2024, with a projected range of 2.1% to 3.6%.

Particulars

US Federal Reserve, *Summary of Economic Projections* dated 16 March 2022, Table 1, p 2.

- (c) it otherwise denies the allegations in paragraph 80.

81. To paragraph 81:

- (a) it admits that:
 - (i) on or around 4 May 2022 (EDT), the US Federal Reserve published and released a press release (**4 May Press Release**);
 - (ii) the 4 May Press Release contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 4 May Press Release;
- (b) it says further that, as at 4 May 2022, the median projections of US Federal Reserve Board members and US Federal Reserve Bank presidents for the US Federal funds rate were as set out at sub-paragraph 80(b) above;
- (c) it otherwise denies the allegations in paragraph 81.

82. To paragraph 82:

- (a) it admits that:
 - (i) on or around 15 June 2022 (EDT), the US Federal Reserve published and released a press release (**15 June Press Release**);
 - (ii) the 15 June Press Release contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 15 June Press Release;
- (b) it says further that, as at 15 June 2022, the median projections of US Federal Reserve Board members and US Federal Reserve Bank presidents were that the Federal funds rate would:
 - (i) increase to 3.4% in 2022, with a projected range of 3.1% to 3.9%;
 - (ii) increase to 3.8% in 2023, with a projected range of 2.9% to 4.4%; and
 - (iii) decrease to 3.4% in 2024, with a projected range of 2.1% to 4.1%.

Particulars

US Federal Reserve, *Summary of Economic Projections* dated 15 June 2022, Table 1, p 2.

- (c) it otherwise denies the allegations in paragraph 82.
- 83. To paragraph 83:
 - (a) it admits that:
 - (i) on or around 27 July 2022 (EDT), the US Federal Reserve published and released a press release (**27 July Press Release**);
 - (ii) the 27 July Press Release contained the statements made in it, including statements substantially to the effect alleged, and says that it will refer at trial to the full terms and effect of the 27 July Press Release;
 - (b) it says further that, as at 27 July 2022, the median projections of US Federal Reserve Board members and US Federal Reserve Bank presidents for the US Federal funds rate were as set out at sub-paragraph 82(b) above;
 - (c) it otherwise denies the allegations in paragraph 83.
- 84. Paragraph 84 does not contain an allegation of material fact and it therefore denies the allegations therein, and it otherwise refers to and repeats paragraphs 50 to 58 above.
- 85. It denies the allegations in paragraph 85 and refers to and repeats paragraphs 50 to 58 and 73 to 78 above.
- 86. It denies the allegations in paragraph 86 and refers to and repeats paragraphs 52 to 54 and 85 above.
- 87. It admits the allegations in paragraph 87 and says further that:
 - (a) it refers to and repeats paragraphs 49(b), 50(c), 52(c), 53(d), 56, 57 and 80(b) above and 110 below;
 - (b) as at 17 May 2022, the median projections of US Federal Reserve Board members and US Federal Reserve Bank presidents for the US Federal funds rate were as set out at sub-paragraph 80(b) above.
- 88. It denies the allegations in paragraph 88 and refers to and repeats paragraphs 47(c)(ii), 52 to 57 and 87 above.
- 89. It denies the allegations in paragraph 89 and refers to and repeats paragraphs 52 to 57 and 84 to 88 above.

90. To paragraph 90:
- (a) it says that the allegations are vague and embarrassing and liable to be struck out;
 - (b) under cover of that objection, it denies the allegations in paragraph 90;
 - (c) it says further that:
 - (i) between 2021 and 17 May 2022:
 - (A) the demand for James Hardie's FC Products in the North American Market exceeded its capacity to supply those products;
 - (B) North America Fiber Cement sold all, or almost all, the FC Products that it made;
 - (ii) James Hardie calculated its backlog of unfilled customer orders in the United States as the number of products that had been ordered by James Hardie's customers but not shipped by the requested delivery date (**James Hardie Backlog**);
 - (iii) the James Hardie Backlog was one factor taken into account in forecasting total sales.
91. It denies paragraph 91 and refers to and repeats paragraphs 47, 50 to 59 and 73 to 90 above and paragraph 146 below.
92. It denies the allegations in paragraph 92 and refers to and repeats paragraphs 26, 47, 50 to 59 and 73 to 91 above and paragraph 146 below.

G. JAMES HARDIE'S REVISED FY23 GUIDANCE

93. It admits the allegations in paragraph 93.
94. To paragraph 94:
- (a) it admits that the August Announcements contained the statements made in them, including statements substantially to the effect alleged in sub-paragraphs 94(a), (b) and (c), and says that it will refer at trial to the full terms and effect of the August Announcements;
 - (b) it denies the allegations in sub-paragraph 94(d) and says that, by the August Announcements, James Hardie stated that, after a strong first quarter of 28%

growth by North America Fiber Cement, management saw several scenarios where it could deliver Net Sales Growth above the prior top end of 22% so it no longer believed the top end cap was relevant; however, it also acknowledged the uncertainty in the housing market and the potential for underlying demand to decrease at the tail end of the fiscal year so it held the floor at 18%;

- (c) it denies the allegations in sub-paragraph 94(e) and says that, by the August Announcements, James Hardie stated that, based on the conversations it was having with contractors, the backlog that still existed in the R&R Sector was still there and management thought it would probably hold the industry through to January FY23 on average, then in February and March FY23 there would probably be a slight dip;
- (d) it says further that:
 - (i) in this Defence, its revised guidance range for the James Hardie Group ANI in FY23 of US\$730 million to US\$780 million will be referred to as the **August Revised FY23 ANI Guidance**;
 - (ii) the August Announcements contained Guidance Warnings;

Particulars

Pages 4 and 6 of the Media Release titled “James Hardie Industries Announces First Quarter Fiscal Year 2023 Results” dated 16 August 2022 in the 1Q23 Results Pack.

Page 15 of the document titled “Management’s Analysis of Results: James Hardie – 1st Quarter Fiscal Year 2023” in the 1Q23 Results Pack.

Pages 2 and 23 of the document titled “Q1 FY23 Management Presentation” dated 16 August 2022 in the 1Q23 Results Pack.

In the August Earnings Call, Miele stated that page 2 of the presentation accompanying the August Earnings Call contained James Hardie’s standard cautionary note on forward-looking statements and that the presentation contained forward-looking statements.

- (iii) the Guidance Warnings applied to the statements in the August Announcements alleged in sub-paragraphs 94(a) to (c) of the Statement

of Claim (including the August Revised FY23 ANI Guidance) and set out in sub-paragraphs 94(b) and 94(c) above.

95. To paragraph 95:

- (a) save that the reference to “16 August announcement” should be to “August Announcements”, it admits the allegations in paragraph 95; and
- (b) it says further that, in the August Earnings Call, Gadd stated with respect to the EBIT Margin component of the FY23 North America Guidance, James Hardie had lowered its full year FY23 EBIT Margin guidance range from 30% to 33% to a range of 28% to 32%, as continued inflationary pressures had created an environment where James Hardie did not see a path to 33% EBIT Margin for the full year.

96. To paragraph 96:

- (a) as to sub-paragraph 96(a):
 - (i) it admits that on 16 August 2022, James Hardie represented that the reasons for having to make the August Revised FY23 ANI Guidance were:
 - (A) continued inflationary pressures globally;
 - (B) lowered expectations regarding Europe segment EBIT;
 - (C) the impact of a strengthening US dollar on the APAC and Europe earnings; and
 - (D) housing market uncertainty;
 - (ii) it refers to and repeats paragraph 94 above and therefore otherwise denies the allegations in sub-paragraph 96(a);
- (b) it denies the allegations in sub-paragraph 96(b)(i), and it says that, by the August Announcements, James Hardie stated that the full year FY23 ANI guidance had decreased to US\$730 million to US\$780 million (previously US\$740 million to US\$820 million), being the August Revised FY23 ANI Guidance;
- (c) it denies the allegations in sub-paragraph 96(b)(ii), and it says that, by the August Announcements, James Hardie stated that the August Revised FY23 ANI Guidance was a 22% increase at the mid-point relative to FY22;

- (d) it denies the allegations in sub-paragraph 96(b)(iii), and it says that James Hardie gave revised guidance for North America Fiber Cement of:
 - (i) Net Sales Growth of 18%+ (an increase from the bottom end of the guidance of Net Sales Growth of 16% to 20% comprising part of the FY23 North America Guidance);
 - (ii) an EBIT Margin of 28% to 32%,
(together, **Revised FY23 North America Guidance**);
- (e) it denies the allegations in sub-paragraph 96(b)(iv) and refers to and repeats sub-paragraph 94(b) above;
- (f) it denies the allegations in sub-paragraph 96(b)(v) and refers to and repeats sub-paragraph 94(c) above;
- (g) it otherwise denies the allegations in paragraph 96;
- (h) it says further that the Guidance Warnings referred to in sub-paragraph 94(d)(ii) above applied to the August Revised FY23 ANI Guidance and the Revised FY23 North America Guidance.

97. To paragraph 97:

- (a) it refers to and repeats paragraphs 94 to 96 above; and
- (b) it otherwise denies the allegations in paragraph 97.

H. THE POSITION AS AT 16 AUGUST 2022

98. To paragraph 98:

- (a) save that it understands the reference to paragraphs 79 to 83 to be to paragraphs 80 to 83, it admits the allegations in sub-paragraph 98(a);
- (b) as to the allegations in sub-paragraph 98(b):
 - (i) it admits that the overall volume of housing starts in the United States decreased between February 2022 and July 2022;
 - (ii) it says further that the US housing construction market is broader than single unit new construction and also includes multi-family new construction and the R&R Sector;

- (iii) it refers to and repeats paragraph 46(c)(iii) to (iv) above;
 - (iv) it otherwise denies the allegations in sub-paragraph 98(b);
 - (c) it denies the allegations in sub-paragraphs 98(c) to (e);
 - (d) it denies the allegations in sub-paragraph 98(f) and refers to and repeats paragraph 90 above;
 - (e) it denies the allegations in sub-paragraph 98(g) and refers to and repeats paragraphs 50 to 60 and 84 to 92 above and paragraphs 135, 146 and 157 below.
99. It denies the allegations in paragraph 99 and refers to and repeats paragraphs 47, 50 to 54 and 73 to 98 above and paragraph 157 below.
100. It denies the allegations in paragraph 100 and refers to and repeats paragraphs 47, 50 to 54 and 73 to 99 above and paragraph 157 below.

I. PERIOD BETWEEN 16 AUGUST 2022 AND 8 NOVEMBER 2022

101. It denies the allegations in paragraph 101 and refers to and repeats paragraphs 70 and 94 to 96 above.
102. It denies the allegations in paragraph 102 and refers to and repeats paragraphs 97 and 101 above.
103. It admits the allegations in paragraph 103.
104. To paragraph 104:
- (a) as to the allegations in sub-paragraph 104(a):
 - (i) save that the expression “August FY23 Guidance” is not defined and is therefore understood as the August Revised FY23 ANI Guidance defined above, it admits the allegations in sub-paragraph 104(a);
 - (ii) it says further that:
 - (A) the presentations released to the market on Investor Day 1 and on 13 September 2022 (**Investor Day 2**) each contained Guidance Warnings;

Particulars

Page 2 of the Investor Day 1 presentation.

Page 2 of the Investor Day 2 presentation.

- (B) the Guidance Warnings referred to in the preceding sub-paragraph and in sub-paragraph 94(d)(ii) above applied to the August Revised FY23 ANI Guidance and the Revised FY23 North America Guidance;
- (b) as to the allegations in sub-paragraph 104(b):
 - (i) save that it understands the word “including” to be “and”, and the word “New” to be “Net”, it admits the allegations in sub-paragraph 104(b);
 - (ii) it says further that the Guidance Warnings referred to in sub-paragraph 104(a)(ii)(A) above applied to the statements that it was expected that there would be a 10-year volume CAGR of 9%, 10-year Net Sales CAGR of 12% and a 10-Year Adjusted EBIT CAGR of 16%;
- (c) save that the word “stated” is missing from the start of sub-paragraph 104(c), it admits the allegations in sub-paragraph 104(c);
- (d) it otherwise denies the allegations in paragraph 104.

J. NOVEMBER 2022

105. It admits the allegations in paragraph 105.

106. To paragraph 106:

- (a) it admits that the November Announcements contained the statements made in it, including statements substantially to the effect alleged (save that the expression “Adjusted FY2023 ANI Guidance Range” in sub-paragraph 106(a) is not defined and is therefore understood as the August Revised FY23 ANI Guidance defined above), and that it will refer at trial to the full terms and effect of the November Announcements;
- (b) it says further that:

- (i) in this Defence, its further revised guidance range for the James Hardie Group ANI in FY23 of US\$650 million to US\$710 million will be referred to as the **November Revised FY23 ANI Guidance**;
- (ii) the November Announcements contained Guidance Warnings;

Particulars

Pages 4 and 6 of the Media Release titled “James Hardie Industries Announces Second Quarter Fiscal Year 2023 Results” dated 8 November 2022 in the 2Q23 Results Pack.

Page 16 of the document titled “Management’s Analysis of Results: James Hardie – 2nd Quarter Fiscal Year 2023” in the 2Q23 Results Pack.

Pages 2 and 18 of the presentation titled “Q2 FY23 Management Presentation” dated 8 November 2022 in the 2Q23 Results Pack.

In the November Earnings Call, James Brennan-Chong stated that page 2 of the presentation accompanying the November Earnings Call contained James Hardie’s standard cautionary note on forward-looking statements and that the presentation contained forward-looking statements.

- (iii) the Guidance Warnings applied to the November Revised FY23 ANI Guidance.

107. To paragraph 107:

- (a) save that it understands “Updated 2023 ANI” to be the November Revised FY23 ANI Guidance, it admits the allegations in sub-paragraphs 107(a), (b), (f) and (g);
- (b) as to sub-paragraph 107(c):
 - (i) it admits that James Hardie stated that for North America Fiber Cement, the guidance for Net Sales Growth in FY23 was revised down to 13%+ (from 18%+) growth and the expected EBIT margin was revised down to 28% to 30% (previously 28% to 32%);
 - (ii) it says that the Guidance Warnings referred to in sub-paragraph 106(b)(ii) above applied to the statement set out in the previous sub-paragraph;

- (c) it denies the allegations in sub-paragraph 107(d), and it says further that, in the November Earnings Call, Erter stated that the primary reason for the reduction in North America Fiber Cement's outlook for volumes in the second half of FY23 was new construction in that, first, single-family housing starts were down 17% versus the same 2-month period last year; and, second, for the first time this year, housing completions were now outpacing housing starts over the 2-month period when housing completions were 11% higher than housing starts, which reduced the new construction backlog;
- (d) it denies the allegations in sub-paragraph 107(e), and it says further that, in the November Earnings Call, Erter stated that:
 - (i) the (new construction) backlogs were less than James Hardie thought, which really involved the fundamental change in building practices in North America where products were going up in a different order than they usually did, which reduced the addressable backlog for North America Fiber Cement;
 - (ii) in full transparency, this was probably the piece James Hardie should have identified sooner, but it was a change to a well-rooted practice that had existed since James Hardie started doing business in the United States over 30 years ago;
- (e) it says further that, by the November Announcements, James Hardie stated that further reasons for the November Revised FY23 ANI Guidance were that:
 - (i) over the 45 days prior to 8 November 2022, James Hardie had seen a significant change to the outlook of housing market activity for the second half of FY23 in most of the geographies in which it participated;
 - (ii) volume expectations had reduced significantly in the 45 days prior to 8 November 2022;
 - (iii) in North America:
 - (A) single family new construction starts had slowed significantly and market expectations for the remainder of its fiscal year had declined sharply;

(B) the R&R Sector was seeing moderation due to a number of factors including, but not limited to, falling home prices and declining consumer confidence due to the uncertain economic outlook;

(iv) on 20 September 2022 and 19 October 2022, the US census data was released for new construction for August and September activity, which showed that completions were now outpacing housing starts; and

(v) recent big builder quarterly announcements stated that their cancellation rates had increased substantially, which also reduced the new construction backlogs.

108. To paragraph 108:

(a) it admits that the price of JHX Shares and JHX ADRs fell between the close of trade on 7 November 2022 and the close of trade on 10 November 2022;

(b) it otherwise does not admit the allegations in paragraph 108.

K. JAMES HARDIE'S ALLEGED KNOWLEDGE

109. It denies the allegations in paragraph 109 and refers to and repeats paragraphs 43 to 50, 52, 57 and 90 above and sub-paragraphs 135(d) and (e) below.

110. Save that it denies that the likely increase in interest rates through FY23 was to address increasing inflation (because, *inter alia*, as at 7 February 2022, inflation was not forecast to increase through FY23), it admits the allegations in paragraph 110 and refers to and repeats paragraphs 49(b), 50(c), 52(c), 53(d), 56, 57, 80(b), and 87 above.

111. It denies the allegations in paragraph 111 and refers to and repeats paragraphs 43 to 50, 52, 54(b), 57, 110 and 90 above and sub-paragraphs 135(d) and (e) below.

112. It denies the allegations in paragraph 112 and refers to and repeats paragraphs 43 to 50, 52 to 54, 57 and 90 above and paragraph 135 below.

113. It denies the allegations in paragraph 113 and refers to and repeats paragraphs 50 to 60 above.

114. It denies the allegations in paragraph 114 and refers to and repeats paragraphs 43 to 50, 52 to 54, 57 and 90 above and paragraph 135 below.

115. Save that it says the word “rises” is missing after “interest rates”, it admits the allegations in paragraph 115 and refers to and repeats paragraphs 47(c)(ii), 49(b), 50(c), 52(c), 54(b), 53(d), 56, 57, 80(b), 87 and 110 above.
116. It denies the allegations in paragraph 116 and refers to and repeats paragraphs 43 to 50, 52 to 54, 57 and 90 above and paragraph 146 below.
117. It denies the allegations in paragraph 117 and refers to and repeats paragraphs 35(b), and 84 to 89 above.
118. It denies the allegations in paragraph 118 and refers to and repeats paragraph 117 above.
119. It denies the allegations in paragraph 119 and refers to and repeats paragraphs 43 to 50, 52 to 54, 57 and 89 to 90 above and paragraph 146 below.
120. It denies the allegations in paragraph 120 and refers to and repeats paragraphs 70 and 90 above.
121. It denies the allegations in paragraph 121 and refers to and repeats paragraphs 43 to 50, 52 to 54, 57 and 90 to 92 above and paragraph 146 below.
122. It denies the allegations in paragraph 122.
123. On the premise that the word “increases” should appear between “interest rates” and “were likely”, it denies the allegations in paragraph 123.
124. It denies the allegations in paragraph 124.
125. It denies the allegations in paragraph 125 and refers to and repeats paragraphs 73 to 92, 98 to 100 above and paragraph 157 below.
126. It denies the allegations in paragraph 126 and refers to and repeats paragraphs 70 and 90 above.

L. ALLEGED CONTINUOUS DISCLOSURE CONTRAVENTIONS

127. It denies the allegations in paragraph 127 and refers to and repeats paragraphs 109 to 126 above.
128. It denies the allegations in paragraph 128 and says further that if any of the alleged “Material Information” existed (which is denied), it was generally available within the meaning of s 676 of the Corporations Act.
129. It denies the allegations in paragraph 129 and refers to and repeats paragraph 127 above.

130. It denies the allegations in paragraph 130 and refers to and repeats paragraph 127 above.
131. It denies the allegations in paragraph 131, refers to and repeats paragraphs 127 to 130 above, and says further or alternatively that:
- (a) if the alleged “Material Information” existed and it was aware of it (which is denied), it was information that:
 - (i) a reasonable person would not expect to be disclosed for the reasons set out in sub-paragraph (iii) below;
 - (ii) was confidential, and the ASX had not formed the view that the information had ceased to be confidential; and
 - (iii) comprised matters of supposition, further or alternatively, was insufficiently definite to warrant disclosure;within the meaning of ASX Listing Rules 3.1A.1 to 3.1A.3; and
 - (b) by reason of the matters in sub-paragraph (a) above:
 - (i) was not information to which ASX Listing Rule 3.1 applied; and
 - (ii) was not information which s 674(2) of the Corporations Act required disclosure at any time before 8 November 2022.
132. It denies the allegations in paragraph 132 and refers to and repeats paragraph 127 above.
133. It denies the allegations in paragraph 133.

M. ALLEGED MISLEADING OR DECEPTIVE CONDUCT CONTRAVENTIONS

134. It refers to and repeats paragraphs 41 and 42 above, and therefore denies the allegations in paragraph 134.
135. It denies the allegations in paragraph 135 and says further that if and to the extent that it made the FY23 Guidance Representations as alleged (which is denied), then it had reasonable grounds for making the said representations at the time they were made because:
- (a) of the matters set out in paragraphs 43 to 60, 90 and 109 to 113 above;
 - (b) any such representations were made knowing James Hardie’s actual performance over the first nine months of FY22;

Particulars

The results for the first three quarters of FY22 relevantly included:

- (i) for the James Hardie Group, an increase in Net Sales of 26%, as against the first three quarters of FY21;
- (ii) for North America Fiber Cement, an increase in Net Sales of 25% as against the first three quarters of FY21;
- (iii) for North America Fiber Cement, an adjusted EBIT Margin of 29.3% for the first three quarters of FY22.

The James Hardie Group ANI for the first three quarters of FY22 was \$443.2 million, representing a 33% increase as against the first three quarters of FY21.

- (c) any such representations were based on its forecast for FY23, which was prepared as part of James Hardie's usual business planning processes (**FY23 Forecast**);

Particulars

The preparation of James Hardie's three-year integrated strategic plan (**Strategic Plan**) commenced in around October 2021. The Strategic Plan provided a starting point for the preparation of the annual forecast.

The preparation of the FY23 Forecast commenced in November and December 2021 with each of James Hardie's three operating segments — North America Fiber Cement, Asia Pacific Fiber Cement and Europe Building Products — participating in its preparation and submitting a forecast for that region.

In around late December 2021, the regional forecasts were consolidated into an initial James Hardie Group forecast.

Following the preparation of this initial group forecast, Jason Miele, Group CFO, devised and oversaw a review process of the consolidated forecast.

In around late January 2022, a revised consolidated FY23 forecast was prepared (the **FY23 Forecast**).

- (d) in preparing the FY23 Forecast, James Hardie had regard to publicly available information and information from third-party market intelligence sources as to forecast market conditions for the residential housing construction market in FY23, which incorporated the potential impact of inflation and interest rates rises on those markets;

Particulars

Publicly available information included the following:

- (i) competitors' financial performance;

- (ii) interest rates, mortgage rates and announcements by the US Federal Reserve;
- (iii) CPI (inflation);
- (iv) housing indicators, including rates of housing starts, housing permits and housing completions;
- (v) supply and demand trends in the housing market (including number of houses on the market);
- (vi) statistics relevant to the R&R Sector, including statistics on house pricing, construction spending and levels of home owner equity;
- (vii) macro indicators such as consumer sentiment and Google search trends;
- (viii) changes in input and freight costs; and
- (ix) measures taken in response to the COVID-19 pandemic, including lockdown measures, in the countries in which James Hardie operated.

Third-party market intelligence sources included John Burns, Dodge Construction Network, Zonda, Zelman & Associates and the National Association of Home Builders.

- (e) the information referred to in (d) did not indicate that demand for James Hardie's FC Products in the North American Market would, or would be likely to, slow in FY23;
- (f) in respect of Net Sales by North America Fiber Cement, the FY23 Forecast assumed, relevantly, that:
 - (i) demand for James Hardie's products in the North American Market would continue to exceed its capacity to supply those products;
 - (ii) James Hardie would increase its supply capacity in FY23 through new manufacturing lines and efficiency improvements;
 - (iii) James Hardie would continue to transition its product mix towards a higher value product mix; and
- (g) the FY23 Forecast involved an exercise of judgement based on the information available, and was a fair and reasonable estimate of James Hardie's future financial performance for FY23.

136. It refers to and repeats paragraphs 41, 43 to 60, 109 to 114 and 135 above and therefore denies the allegations in paragraph 136.

137. It denies the allegations in paragraph 137 and says further that if and to the extent that it made the February Implied Representations as alleged (which is denied), then it had reasonable grounds for making the said representations at the time they were made and it refers to and repeats paragraph 135 above.
138. It refers to and repeats paragraphs 42 to 60, 109 to 114, 128 to 133 and 136 to 137 above and therefore denies the allegations in paragraph 138.
139. It refers to and repeats paragraphs 136 and 138 above and therefore denies the allegations in paragraph 139.
140. It denies the allegations in paragraph 140 and refers to and repeats paragraphs 41, 43 to 60, 109 to 114 and 136 above.
141. It denies the allegations in paragraph 141 and refers to and repeats paragraphs 42 to 60, 109 to 114 and 138 above.
142. It denies the allegations in paragraph 142.
143. It denies the allegations in paragraph 143 and refers to and repeats paragraphs 41 to 60, 109 to 114 and 127 to 133 above.
144. It denies the allegations in paragraph 144.
145. It refers to and repeats paragraphs 67 and 69 above and therefore denies the allegations in paragraph 145.
146. It denies the allegations in paragraph 146 and says further that if and to the extent that it made the Reaffirmed FY23 Guidance Representations as alleged (which is denied), then it had reasonable grounds for making the said representations at the time they were made because:
- (a) of the matters pleaded at paragraphs 43 to 60, 90, 114 to 121 and 135 above;
 - (b) any such representations were made knowing the full year results for FY22;

Particulars

The full year results for FY22 relevantly included:

- (i) for the James Hardie Group, a full year increase in Net Sales of 24%, with volume growth of 14% and price/mix growth of 10%;
- (ii) for North America Fiber Cement, a full year increase in Net Sales of 25% with volume growth of 15% and price/mix growth of 10%;

- (iii) for North America Fiber Cement, a full year adjusted EBIT Margin of 29.1%, delivered through continued LEAN manufacturing improvements combined with high-value product mix helping to offset cost inflation.

The James Hardie Group ANI for FY22 was \$620.7 million, which was within the Revised FY22 ANI Guidance (which itself was the fourth upgrade to the original FY22 guidance): see the particulars to sub-paragraph 54(b)(i) above.

- (c) any such representations were made following James Hardie's monthly reforecast process, which formed part of James Hardie's usual business planning processes;

Particulars

James Hardie's reforecasting processes included assessing year-to-date performance against the annual forecast and taking into account the most recent information relevant to the forecast for the remainder of the financial year.

Each of James Hardie's three operating segments—North America Fiber Cement, Asia Pacific Fiber Cement and Europe Building Products—were also involved in that process, as was Miele.

- (d) as part of its monthly reforecasting process for May 2022, James Hardie had regard to:
 - (i) publicly available information and information from third-party market intelligence sources as to forecast market conditions for the residential housing construction market in FY23;

Particulars

James Hardie refers to and repeats the particulars to paragraph 135(d) above.

- (ii) its rising input and freight costs, driven (at least in part) by inflation caused by Russia's invasion of Ukraine on 24 February 2022;
- (e) as at 17 May 2022, for FY23:
 - (i) its global Net Sales were forecast to be US\$4,240 million;
 - (ii) its global ANI was forecast to be US\$779 million;
 - (iii) Net Sales for North America Fiber Cement were forecast to be US\$3,056 million (being 20% growth as compared with FY22); and

- (iv) Adjusted EBIT Margin for North America Fiber Cement was forecast to be 30.4%;
- (f) the information referred to in (d)(i) did not, as at 17 May 2022, indicate that demand for James Hardie's FC Products in the North American Market would, or would be likely to, slow in FY23;
- (g) the information referred to in (d)(ii) did not, as at 17 May 2022, indicate that a revision to the FY23 ANI Guidance and/or the FY23 North America Guidance in relation to EBIT Margin was necessary; and
- (h) James Hardie had taken and was taking measures to maintain its EBIT Margin.

Particulars

The measures taken by James Hardie included the following:

- (i) it had increased prices by 5% effective from 1 January 2022 which had contributed to price/mix growth of 14% in Q422 without a corresponding decrease in demand for James Hardie's FC Products in the North American Market;
 - (ii) it had decided to introduce the second price increase of around 4% in the North American Market on or around 20 June 2022 which was expected to improve its EBIT Margin over the balance of the financial year.
147. It refers to and repeats paragraphs 69, 73 to 83, 115 to 121, 134 to 136 and 146 above and therefore denies the allegations in paragraph 147.
148. To paragraph 148:
- (a) it says that the expressions "Reaffirmed Guidance Reliability Representation" and "Revised No Material Risk Representation" are not defined and are therefore understood as comprising the matters alleged in sub-paragraphs 69(b) of the Statement of Claim;
 - (b) it denies the allegations in paragraph 148 and says further that if and to the extent that it made the May Implied Representations as alleged (which is denied), then it had reasonable grounds for making the said representations at the time they were made and it refers to and repeats paragraphs 135 and 146 above.
149. It refers to and repeats paragraphs 69, 73 to 83, 115 to 121, 134 to 136 and 146 to 148 above and therefore denies the allegations in paragraph 149.

150. It refers to and repeats paragraphs 147 and 149 and therefore denies the allegations in paragraph 150.
151. It refers to and repeats paragraphs 69, 73 to 92, 115 to 121, 134 to 136, 146 to 147 above and therefore denies the allegations in paragraph 151.
152. It refers to and repeats paragraphs 69, 73 to 92, 115 to 121, 134 to 136 and 148 to 149 and therefore denies the allegations in paragraph 152.
153. It denies the allegations in paragraph 153.
154. It refers to and repeats paragraphs 69, 73 to 92, 115 to 121, 134 to 136, 146 to 149 and therefore denies the allegations in paragraph 154.
155. It refers to and repeats paragraphs 151 to 154 and therefore denies the allegations in paragraph 155.
156. It refers to and repeats paragraphs 96 and 97 above and therefore denies the allegations in paragraph 156.
157. It denies the allegations in paragraph 157 and says further that if and to the extent that it made the Revised FY23 Guidance Representations as alleged (which is denied), then it had reasonable grounds for making the said representations at the time they were made because:
 - (a) of the matters pleaded in paragraphs 43 to 60, 90, 122 to 126, 135 and 146 above;
 - (b) any such representations were made knowing the actual results for the financial year to date;
 - (c) any such representations were made following James Hardie's monthly reforecast process, which formed part of James Hardie's usual business planning processes;

Particulars

James Hardie refers to and repeats the particulars to paragraph 146(c) above.

- (d) as part of its monthly reforecasting process for August 2022, James Hardie had regard to:

- (i) publicly available information and information from third-party market intelligence sources as to forecast market conditions for the residential housing construction market in FY23;

Particulars

James Hardie refers to and repeats the particulars to paragraph 135(d) above.

- (ii) the continued upward pressure of inflation on its input and freight costs;
- (e) as at 16 August 2022, Net Sales for North America Fiber Cement were forecast to meet the FY23 Forecast;
- (f) the information referred to in (d)(i) as at 16 August 2022 did not indicate that demand for James Hardie's FC Products in the North American Market would, or would be likely to, slow in FY23;
- (g) the information referred to in (d)(ii) indicated that James Hardie's costs would increase, which would adversely affect its EBIT Margin;
- (h) in response to the matter pleaded in (g), James Hardie:
 - (i) identified measures to improve its EBIT Margin;

Particulars

Measures included:

- (i) implementing the second price increase of around 4% in the North American Market on or around 20 June 2022;
- (ii) reducing its selling, general and administrative (**SG&A**) expenses;
- (iii) engaging in business optimisation and alignment to address the economic uncertainty (**Operation BOA**), including by: selective price increases; optimisation of production schedules; updating repairs and maintenance; streamlining SG&A spending; delaying hiring and promotions; and limiting travel and events; and
- (iv) in relation to North America Fiber Cement: increasing sales; reducing controllable spend; obtaining a commitment from James Hardie's supply chain to reduce freight expenses; and reducing investment in marketing spend.

- (ii) revised down the guidance range for James Hardie Group ANI to the August Revised FY23 ANI Guidance; and
 - (iii) revised down the guidance range for North America Fiber Cement's EBIT Margin as part of the Revised FY23 North America Guidance.
- 158. It refers to and repeats paragraphs 96, 98 to 100, 122 to 126, 134 to 136, 145 to 148 and 157 above and therefore denies the allegations in paragraph 158.
- 159. It denies the allegations in paragraph 159 and says further that if and to the extent that it made the August Implied Representations as alleged (which is denied), then it had reasonable grounds for making the said representations at the time they were made and it refers to and repeats paragraphs 135, 146 and 157 above.
- 160. It refers to and repeats paragraphs 97, 98 to 100, 122 to 136, 145 to 148 and 157 to 158 above and therefore denies the allegations in paragraph 160.
- 161. It refers to and repeats paragraphs 158 and 160 above and therefore denies the allegations in paragraph 161.
- 162. It refers to and repeats paragraphs 96, 98 to 100, 122 to 126, 134 to 136, 145 to 148, 157 to 159 above and therefore denies the allegations in paragraph 162.
- 163. It refers to and repeats paragraphs 97, 98 to 100, 122 to 126, 134 to 136, 145 to 148, 157 to 159 above and therefore denies the allegations in paragraph 163.
- 164. It denies the allegations in paragraph 164.
- 165. It refers to and repeats paragraphs 96 to 100, 122 to 136, 145 to 148, 155 to 161 above and therefore denies the allegations in paragraph 165.
- 166. It refers to and repeats paragraphs 162 to 165 above and therefore denies the allegations in paragraph 166.

N. ALLEGED CAUSATION AND LOSS

- 167. To paragraph 167:
 - (a) it admits that, during the Relevant Period, the Plaintiff acquired an interest in JHX Shares;
 - (b) it otherwise does not admit the allegations in paragraph 167.

168. To paragraph 168:
- (a) it admits that, during the Relevant Period:
 - (i) the market for JHX Shares was operated by the ASX and was regulated by, *inter alia*, the ASX Listing Rules and ss 674(2) and 674A(2) of the Corporations Act;
 - (ii) it had the obligations set out in paragraphs 16 to 18 of the Statement of Claim, save for the matters pleaded in paragraphs 16 to 18 above;
 - (b) it says that:
 - (i) it will refer to the full terms and effect of ASX Listing Rules 3.1, 3.1A and 19.12 and Chapter 6CA of the Corporations Act;
 - (ii) the price of JHX Shares would reasonably be expected to have been informed or affected by material information disclosed to the ASX and by other publicly available information, amongst other factors affecting the price at which those shares were traded;
 - (c) it otherwise denies the allegations in paragraph 168.
169. It does not admit the allegations in paragraph 169.
170. It does not admit the allegations in paragraph 170.
171. To paragraph 171:
- (a) it denies the allegations in sub-paragraph 171(a);
 - (b) it does not admit the allegations in sub-paragraphs 171(b) and (c);
 - (c) it says further that for the reasons set out in this Defence, the market for JHX Equity Swaps had been informed of all information about which James Hardie was obligated to inform the market.
172. It denies the allegations in paragraph 172 and says further that, for the reasons set out in this Defence, the market for JHX Shares had been informed of all information about which James Hardie was obligated to inform the market.
173. It denies the allegations in paragraph 173.
174. It denies the allegations in paragraph 174.
175. It denies the allegations in paragraph 175.

176. It denies the allegations in paragraph 176.

Date: 10 November 2023

MICHAEL D RUSH

KANE A LOXLEY

STEPHANIE C B BRENKER

Herbert Smith Freehills

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Herbert Smith Freehills

Solicitors for the Defendant

ANNEXURE A

TABLE 1 – JAMES HARDIE FY20 QUARTERLY RESULTS IN USD

Net sales (US\$ m)	1Q20	2Q20	3Q20	4Q20
Group	656.8	660.1	616.7	673.2
North America Fiber Cement	452.3	459.6	430.0	474.5
Asia Pacific Fiber Cement	108.0	112.6	102.0	95.8
Europe Building Products	95.9	87.9	84.7	102.9
EBIT (US\$ m)	1Q20	2Q20	3Q20	4Q20
Group (adjusted)	124.4	134.2	107.2	121.0
North America Fiber Cement	113.5	124.7	112.3	120.0
Asia Pacific Fiber Cement	24.8	27.0	23.4	19.6 (adj)
Europe Building Products (adjusted)	10.3	8.7	6.7	4.7
ANOP (US\$ m)	1Q20	2Q20	3Q20	4Q20
Group (adjusted)	90.2	98.6	77.4	86.6

TABLE 2 – JAMES HARDIE FY21 QUARTERLY RESULTS IN USD

Net sales (US\$ m)	1Q21	2Q21	3Q21	4Q21
Group	626.3	736.8	738.6	807.0
North America Fiber Cement	451.8	515.0	518.1	555.3
Asia Pacific Fiber Cement	91.3	122.1	119.7	125.7
Europe Building Products	83.2	99.7	101.4	126
EBIT (US\$ m)	1Q21	2Q21	3Q21	4Q21
Group (adjusted)	124.9	163.1	167.9	173.1
North America Fiber Cement (adjusted)	130.9	148.6	155.6	152.9
Asia Pacific Fiber Cement (adjusted)	22.3	38.7	33.5	33.7
Europe Building Products (adjusted)	2.4	9.4	10.3	18.9
ANOP (US\$ m)	1Q21	2Q21	3Q21	4Q21*
Group (adjusted)	89.3	120.5	123.3	124.9

**Adjusted Net Income (ANI), which refers to the same metric as ANOP. Excludes asbestos related expenses and adjustments, tax adjustments and restructuring expenses.*

TABLE 3 – JAMES HARDIE FY22 QUARTERLY RESULTS IN USD

Net sales (US\$ m)	1Q22	2Q22	3Q22	4Q22
Group	843.3	903.2	900.0	968.2
North America Fiber Cement	577.1	635.3	644.9	694.0
Asia Pacific Fiber Cement	141.8	144.4	143.3	145.4
Europe Building Products	124.4	123.5	111.8	128.8
EBIT (US\$ m)	1Q22	2Q22	3Q22	4Q22
Group (adjusted)	180.5	205.7	204.1	225.3
North America Fiber Cement (adjusted)	169.3	182.5	183.3	206.1
Asia Pacific Fiber Cement (adjusted)	38.8	44.5	39.1	38.4
Europe Building Products (adjusted)	16.3	16.7	11.9	18.0
ANI (US\$ m)	1Q22	2Q22	3Q22	4Q22
Group (adjusted)	134.2	154.9	154.1	177.5

ANNEXURE B

Table of North America Fiber Cement Monthly Order Volumes, March 2021 to January 2022.
In this table, “Mmstf” stands for million standard feet.

Month	Orders Volume (mmstf)	Orders (Daily rate)
March 2021	317	13.79
April 2021	277	12.61
May 2021	263	13.13
June 2021	271	12.31
July 2021	242	11.55
August 2021	261	11.88
September 2021	257	12.24
October 2021	252	12.02
November 2021	255	12.73
December 2021	285	13.59
January 2022	249	11.85