



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

S ECI 2023 Case: S ECI 2023 03566

Filed on: 09/08/2023 03:14 PM

BETWEEN

MICHAEL GARY WARNER

Plaintiff

and

ANSELL LIMITED (ACN 004 085 330)

Defendant

WRIT

Date of document: 9 August 2023
Filed on behalf of the Plaintiff

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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" with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See www.supremecourt.vic.gov.au; 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.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED: 9 August 2023

Prothonotary

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

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GROUP PROCEEDINGS LIST**

S ECI 2023

BETWEEN

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Plaintiff

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ANSELL LIMITED (ACN 004 085 330)

Defendant

STATEMENT OF CLAIM

Date of document: 9 August 2023
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A THE PARTIES

A.1 The Plaintiff and Group Members

- 1 Michael Gary Warner (**Plaintiff**) commences this group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) on his own behalf and on behalf of all persons who:
 - (a) acquired an interest in fully paid ordinary shares in the defendant (**ANN Shares**) during the period between 24 August 2021 and 28 January 2022 (**Relevant Period**);
 - (b) suffered loss or damage by reason of the conduct of the defendant as referred to in this statement of claim;
 - (c) were not, during the Relevant Period, and are not, as at the date of this statement of claim:
 - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth)) (**Corporations Act**) of the defendant;
 - (ii) a related body corporate (as defined by s 50 of the Corporations Act) of the defendant;
 - (iii) an associated entity (as defined by s 50AAA of the Corporations Act) of the defendant;
 - (iv) an officer or a close associate (as defined by s 9 of the Corporations Act) of the defendant;
 - (v) a Chief Justice or a Justice of the High Court of Australia; or
 - (vi) the Chief Justice or a Judge of Appeal, Judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria,
- (**Group Members**).
- 2 As at the date of the commencement of this proceeding, there were more than seven Group Members.
- 3 The Plaintiff acquired an interest in ANN Shares during the Relevant Period.

Particulars

Date	Number of shares	Average price per share	Amount paid (incl brokerage and GST)
24 August 2021	500	\$38.50	\$19,271.18
20 September 2021	200	\$35.38	\$7,095.95
11 November 2021	300	\$31.50	\$9,469.95

A.2 Ansell

4 The defendant (**Ansell**) is and at all material times was:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
 - (b) included in the official list of the Australian Securities Exchange (**ASX**), a financial market operated by ASX Limited;
 - (c) a person within the meaning of:
 - (i) s 1041H of the Corporations Act;
 - (ii) s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (iii) s 18 of the Australian Consumer Law, set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**), as applicable pursuant to:
 - (A) s 131 of the CCA;
 - (B) s 28 of the *Fair Trading Act 1987* (NSW);
 - (C) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
 - (D) s 16 of the *Fair Trading Act 1989* (Qld);
 - (E) s 19 of the *Fair Trading Act 2010* (WA);
 - (F) s 14 of the *Fair Trading Act 1987* (SA);
 - (G) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
 - (H) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT);
- and/or

(I) s 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT).

5 At all material times, Ansell:

- (a) had on issue ANN Shares, which were:
 - (i) ED securities within the meaning of s 111AE of the Corporations Act;
 - (ii) quoted ED securities within the meaning of s 111AM of the Corporations Act;
 - (iii) a financial product within the meaning of:
 - (A) ss 763A(1)(a) and 764(1)(a) of the Corporations Act;
 - (B) ss 12BAA(1)(a) and 12BAA(7)(a) of the ASIC Act;
 - (iv) a financial service for the purposes of Division 2 of Part 1 of the ASIC Act by reason of s 12BAB(1AA) of the ASIC Act;
 - (v) able to be acquired and sold by investors and potential investors in ANN Shares (**Affected Market**) on the ASX;
 - (vi) likely to be affected, as to their traded price, by information available in respect of Ansell as a result of announcements and publications made by Ansell to the ASX.
- (b) as the issuer of ANN Shares, was:
 - (i) a listed disclosed entity within the meaning of s 111AL(1) of the Corporations Act;
 - (ii) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
 - (iii) subject to the requirements of s 674A of the Corporations Act;
 - (iv) taken to be aware of information if an officer of Ansell had, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer.

B ANSELL

B.1 Ansell's business

- 6 At all material times, Ansell, together with its subsidiaries, carried on business developing, manufacturing, sourcing, distributing and selling gloves and personal protective equipment (**PPE**), and operated in two main business segments:
- (a) the Healthcare Global Business Unit (**Healthcare GBU**), which manufactured and marketed products including surgical and examination gloves, healthcare safety devices and active infection prevention products for healthcare professionals and patients, and single use gloves; and
 - (b) the Industrial Global Business Unit (**Industrial GBU**), which manufactured and marketed products including multi-use hand and body protection solutions for industrial worker environments and speciality applications.
- 7 At all material times, there were five “Strategic Business Units” (**SBU**s) within the Ansell business, with:
- (a) three **SBU**s which formed part of the Healthcare GBU, known as:
 - (i) **Exam/Single Use**;
 - (ii) **Life Sciences**;
 - (iii) **Surgical**; and
 - (b) two **SBU**s which formed part of the Industrial GBU, known as **Chemical** and **Mechanical**.
- 8 At all material times, products sold:
- (a) by the Exam/Single Use **SBU** were a variety of single use and examination gloves (**Single Use Gloves**), used in acute clinical settings and in industries including manufacturing and food processing, and which gloves were manufactured by outsourced suppliers (**Outsourced Glove Products**) and in-house (**In-house Glove Products**);

- (b) by the Chemical SBU included “AlphaTec multi-risk chemical and virus protective clothing” and other protective clothing designed for industrial applications including hazardous chemical handling (collectively, **Chemical Protective Clothing**).

9 At all material times, the biggest components to Ansell’s cost of goods sold (**COGS**) were:

- (a) outsourced products (including the raw materials used in these products); and
- (b) raw materials used in the manufacture of products manufactured internally by Ansell.

Particulars

Ansell reported COGS components and mix as follows, in its documents entitled “F’19 Full Year Results – June 2019” published on the ASX on 12 August 2019 (**FY19 Full Year Results**) (p 25), “F’20 Full Year Results” published on the ASX on 25 August 2020 (**FY20 Full Year Results**) (p 21), “Ansell FY21 Full Year Results” published on the ASX on 24 August 2021 (**FY21 Full Year Results**) (p 20) and “Ansell FY22 Full Year Results” published on the ASX on 23 August 2022 (**FY22 Full Year Results**) (p 20):

Financial Year	Total COGS	Raw materials (in-house)	Outsourced products (raw materials)	Outsourced products (non-RM portion)
FY19	US\$915m	38%	22%	15%
FY20	US\$981m	33%	21%	22%
FY21	US\$1,217m	30%	24%	24%
FY22	US\$1,286m	29%	26%	23%

10 At all material times from at least 1 July 2019, over 75% of Ansell’s sales of Single Use Gloves were Outsourced Glove Products.

Particulars

The Ansell FY22 Full Year Results recorded that in-house products in the Exam/Single Use SBU were approximately 25% of sales that financial year, compared with 20% of sales over the previous three financial years (p 12).

B.2 Board and Board committees

11 At all material times, Ansell’s board of directors (**Board**):

- (a) was responsible for the oversight and review of the management, administration and overall governance of Ansell, including:
 - (i) protecting the interests of holders of ANN Shares;
 - (ii) authorising policies and overseeing the strategic direction of Ansell;
 - (iii) monitoring management, including establishing goals for management and monitoring the achievement of those goals;
 - (iv) engaging and reviewing the Chief Executive Officer (**CEO**) of Ansell;
 - (v) monitoring communications to shareholders and the ASX (including disclosures made under the ASX continuous disclosure requirements) to ensure that shareholders and the market was kept well informed of all major developments affecting the state of affairs of Ansell;
 - (vi) assessing the suitability of Ansell's overall strategies, business plans and resource allocation;
 - (vii) monitoring financial and business results of Ansell and its subsidiaries; and
 - (viii) reviewing Ansell's wider risk profile;
- (b) had authority to seek any information or advice, including independent professional advice, it considered necessary to fulfil its responsibilities;
- (c) had access to Ansell's management, to seek any information and explanations from them; and
- (d) had authority to reasonably require management or others of Ansell or its subsidiaries to attend Board meetings and provide any information or advice that the Board required.

Particulars

As to (a), this is recorded in the Ansell Board Charter adopted by the Board on 20 June 2019 (**Board Charter**), cl 1(a) and cl 4.

As to (b), this is recorded in the Board Charter, cl 9(a).

As to (c), this is recorded in the Board Charter, cl 9(b).

As to (d), this is recorded in the Board Charter, cl 9(d).

12 At all material times, Ansell had a Board committee called the Audit and Compliance Committee (**A&C Committee**) which:

- (a) reported to the Board;
- (b) oversaw all matters relating to the financial accounting, corporate reporting, internal control systems and financial and tax risk management practices of Ansell;
- (c) assisted the Board in fulfilling responsibilities including:
 - (i) ensuring that Ansell met all its financial and corporate governance obligations and requirements;
 - (ii) in conjunction with the S&R Committee (as defined below), providing oversight over Ansell's risk profile, policies and management, including the key strategic and financial risks identified during the annual material business risk review process;
 - (iii) reviewed, prior to release, each publicly issued corporate report and any other material public documents;
 - (iv) assessed adequacy of financial controls and the annual audit arrangements;
- (d) reviewed Ansell's significant financial risks and financial risk appetite; and
- (e) monitored the processes undertaken by management, and external and internal auditors.

Particulars

Ansell A&C Committee Charter, adopted by the Board on 20 June 2019 and last reviewed and updated by the Board on 17 June 2021, clauses 1(a), 9(a) and 9(d).

13 At all material times, Ansell had a Board committee called the Sustainability and Risk Committee (**S&R Committee**) which:

- (a) reported to the Board;
- (b) assisted the Board in fulfilling its responsibilities in relation to the oversight of Ansell's risk management framework, principles, processes and practices, and material risk

(including strategic, operational, reputational, ethical, social and environmental, legislative or regulatory and market-related risks);

- (c) monitored management's performance and the risk profile of Ansell against the agreed company risk appetite and risk management framework;
- (d) reviewed material risk exposures, internal audit review findings and the "lessons learnt" for, among other areas, risks relating to product safety and supply chain and suppliers;
- (e) monitored changes anticipated for the economic, regulatory and business environment, including consideration of emerging trends in order to assess and evaluate the potential impact on strategy and business objectives of Ansell; and
- (f) oversaw the design and implementation of the risk management framework and internal control systems, in conjunction with existing business processes and systems, to manage Ansell's material business risk exposures.

Particulars

Ansell S&R Committee Charter, adopted by the Board on 20 June 2019 and last reviewed and updated by the Board on 17 June 2021, clauses 1.3(a), 2.5(d), 2.5(e), 5.1(a)(iii), 5.1(a)(iv) and 7(a).

B.3 Directors and key management personnel

14 Neil Salmon (Salmon):

- (a) has been the Managing Director and CEO of Ansell since 1 September 2021;
- (b) was the President of the Industrial GBU from 30 April 2019 until 31 August 2021;
- (c) was the Chief Financial Officer (CFO) of Ansell from 15 July 2013 to 30 April 2019;
- (d) as CEO of Ansell, was and is responsible for:
 - (i) the day to day management of Ansell's operations;
 - (ii) providing the Board with accurate, timely and clear information on Ansell's operations;

- (e) as President of the Industrial GBU, was a key management executive of Ansell, with authority and responsibility for planning, directing and controlling the activities of Ansell and its subsidiaries;
- (f) attended nine of the 12 Board meetings held in the financial year ending 30 June 2022 (**FY22**).

Particulars

As to (d), this is recorded in the Board Charter at cl 5(a).
As to (e), this is recorded in the Ansell Annual Report 2021 dated 24 August 2021 (**FY21 Annual Report**) (p 54).

As to (f), this is recorded in the Ansell Annual Report 2022 dated 23 August 2022 (**FY22 Annual Report**).

15 Magnus Nicolin (**Nicolin**):

- (a) was the Managing Director and CEO of Ansell from March 2010 to 31 August 2021;
- (b) was Special Adviser to the Board and Management from 1 September 2021 to 31 December 2021;
- (c) as CEO of Ansell, was responsible for:
 - (i) the day to day management of Ansell's operations;
 - (ii) providing the Board with accurate, timely and clear information on Ansell's operations;
- (d) as Special Adviser to the Board and Management, advised the Board and Salmon on key matters including in relation to innovation and strategy;
- (e) attended:
 - (i) all Board meetings held in the financial year ending 30 June 2019 (**FY19**), the financial year ending 30 June 2020 (**FY20**) and the financial year ending 30 June 2021 (**FY21**);
 - (ii) all three Board meetings held between 1 July 2021 and 31 August 2021.

Particulars

As to (b), this is recorded in the Board Charter at cl 5(a).

As to (d), this is recorded in the FY22 Annual Report (p 61).

As to (e), this is recorded in the Ansell Annual Report 2019 (**FY19 Annual Report**) (p 30), the Ansell Annual Report 2020 dated 25 August 2020 (**FY20 Annual Report**) (p 34), the FY21 Annual Report (p 40) and the FY22 Annual Report (p 40).

16 Zubair Javeed (**Javeed**):

- (a) has been the CFO of Ansell since 29 April 2019;
- (b) as CFO:
 - (i) had and has access to the S&R Committee and the A&C Committee as and when required; and
 - (ii) was and is a key management executive of Ansell, with authority and responsibility for planning, directing and controlling the activities of Ansell and its subsidiaries.

Particulars

As to (b), this is recorded in the Audit Compliance Committee Charter at cl 8(c) and the S&R Committee Charter at cl 8(c).

As to (c), Javeed is described in the FY20 Annual Report (p 47), FY21 Annual Report (p 54) and FY22 Annual Report (p 54) as one of the “Executive KMPs of Ansell, being those executives who have authority and responsibility for planning, directing and controlling the activities of the Group”.

17 Darryl Nazareth (**Nazareth**)

- (a) has been the President of the Healthcare GBU of Ansell since 1 April 2019;
- (b) as President of the Healthcare GBU, was and is a key management executive of Ansell, with authority and responsibility for planning, directing and controlling the activities of Ansell and its subsidiaries.

Particulars

This is recorded in the FY21 Annual Report (p 54) and the FY22 Annual Report (p 54).

18 Rikard Froberg (**Froberg**):

- (a) has been the President of Ansell's Industrial Global Business Unit since 1 September 2021;
- (b) is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/rikard-froberg>.

19 Augusto M. Accorsi (**Accorsi**):

- (a) has been SBU Vice President & General Manager, HGBU Single Use and Exam Solutions at Ansell since on or around July 2017;
- (b) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/augusto-m-accorsi>.

20 Paul Bryce (**Bryce**):

- (a) was SBU Vice President & General Manager, IGBU Chemical Solutions at Ansell from on or around July 2017 to on or around September 2022;
- (b) was a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36).

21 Angie Phillips (**Phillips**):

- (a) has been SBU Vice President and General Manager, HGBU Surgical and Health Safety Solutions at Ansell from on or around August 2017;
- (b) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/angie-phillips>.

22 Sean P. Sweeney (**Sweeney**):

- (a) has been SBU Vice President and General Manager, IGBU Mechanical Solutions at Ansell since on or around July 2017;
- (b) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/sean-p-sweeney>.

23 Renae Leary (**Leary**):

- (a) has been Chief Commercial Officer – Americas at Ansell since on or around May 2019;
- (b) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/renae-leary>.

24 Francois le Jeune (**le Jeune**):

- (a) has been Chief Commercial Officer – EMEA & APAC since on or around January 2022;
- (b) from the commencement of the Relevant Period until on or around January 2022 was Senior Vice President – Business Development, Transformation and Corporate Marketing at Ansell;

- (c) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/francois-le-jeune>.

25 Mike Gilleece (**Gilleece**):

- (a) has been Senior Vice President, Corporate General Counsel at Ansell since on or around July 2017;
- (b) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/michael-gilleece>.

26 John Marsden (**Marsden**):

- (a) has been Senior Vice President – Global Operations and Global Supply Chain since 1 April 2019;
- (b) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at <https://www.ansell.com/au/en/about-us/our-people/executive-leadership/john-marsden>.

27 Deanna Johnston (**Johnston**):

- (a) has been Global Chief Information Officer since on or around May 2020;
- (b) was and is a member of Ansell's Executive Leadership Team.

Particulars

This is recorded in the FY21 Annual Report, (p 36) the FY22 Annual Report, (p 36) and the Ansell website at

28 John Bevan (**Bevan**):

- (a) has been a director of Ansell since 1 August 2012;
- (b) has been the Chair of the Board since on or around November 2019;
- (c) at all material times during the Relevant Period:
 - (i) was the official spokesperson for the Board;
 - (ii) represented the views of the Board to the public;
 - (iii) approved Board agendas and ensured that adequate time was available for discussion of all agenda items, including strategic issues;
- (d) attended all Board meetings held during FY19, FY20, FY21 and FY22.

Particulars

As to (c), this is recorded in the Board Charter at cl 3(b) and (c).

As to (d), this is recorded in the FY19 Annual Report, (p 30), FY20 Annual Report (p 34), FY21 Annual Report (p 40) and FY22 Annual Report (p 40).

29 Leslie Desjardins (**Desjardins**):

- (a) has been a director of Ansell since 30 November 2015;
- (b) has been Chair of the A&C Committee since 18 October 2018;
- (c) has been a member of the S&R Committee since 18 October 2018;
- (d) attended all Board meetings held during FY19, FY20 and FY21;
- (e) during the 2022 Financial Year, attended:
 - (i) 11 of the 12 Board meetings held;
 - (ii) all A&C Committee meetings (of which there were four);
 - (iii) all S&R Committee meetings (of which there were four).

Particulars

As to (b) and (c), this is recorded in the FY19 Annual Report (p 30).

As to (d), this is recorded in the FY19 Annual Report (p 30), FY20 Annual Report (p 34) and FY21 Annual Report (p 40).

As to (e), this is recorded in the FY22 Annual Report (p 40).

30 William Reilly (**Reilly**):

- (a) has been a director of Ansell since 20 October 2017;
- (b) has been a member of the S&R Committee since October 2017;
- (c) attended all Board meetings during FY19, FY20, FY21 and FY22; and
- (d) during the 2022 Financial Year, attended all S&R Committee meetings (of which there were four).

Particulars

As to (c), this is recorded in the FY19 Annual Report, (p 30), FY20 Annual Report (p 34), FY21 Annual Report (p 40) and FY22 Annual Report (p 40).

As to (d), this is recorded in the FY22 Annual Report (p 40).

31 Christina Stercken (**Stercken**):

- (a) has been a director of Ansell since 20 October 2017;
- (b) has been a member of the A&C Committee since October 2017;
- (c) has been a member of the S&R Committee since October 2017;
- (d) attended all Board meetings during FY19, FY20, FY21 and FY22; and
- (e) during FY22, attended:
 - (i) all A&C Committee meetings (of which there were four); and
 - (ii) all S&R Committee meetings (of which there were four).

Particulars

As to (d), this is recorded in the FY19 Annual Report (p 30), FY20 Annual Report (p 34), FY21 Annual Report (p 40) and FY22 Annual Report (p 40).

As to (e), this is recorded in the FY22 Annual Report (p 40).

32 Christine Yan (Yan):

- (a) has been a director of Ansell since 1 April 2019;
- (b) has been a member of the A&C Committee since 1 April 2019;
- (c) attended all Board meetings on and from 1 April 2019 in FY19, all Board meetings in FY20, 18 of 19 Board meetings in FY21, and all Board meetings in FY22;
- (d) during FY22, attended all A&C Committee meetings (of which there were four).

Particulars

As to (c), this is recorded in the FY19 Annual Report, (p 30), FY20 Annual Report (p 34), FY21 Annual Report (p 40) and FY22 Annual Report (p 40).

As to (d), this is recorded in the FY22 Annual Report (p 40).

33 William Peter Day (Day):

- (a) was a director of Ansell from 20 August 2007 until 11 November 2021;
- (b) from at least 1 July 2016 until 11 November 2021, was the Chair of the A&C Committee and a member of the S&R Committee;
- (c) attended all Board meetings during FY19, FY20 and FY21;
- (d) between 1 July 2021 and 11 November 2021, attended:
 - (i) all Board meetings (of which there were six);
 - (ii) all meetings of the A&C Committee (of which there was one);
 - (iii) all meetings of the S&R Committee (of which there was one).

Particulars

As to (b), Day is recorded in the Ansell annual report for the financial year ending 2017 (**FY17 Annual Report**) (p 47) as Chair of the A&C Committee and member of the S&R Committee.

As to (c), this is recorded in the FY19 Annual Report (p 30), FY20 Annual Report (p 34) and FY21 Annual Report (p 40).

As to (d), this is recorded in the FY22 Annual Report, (p 40).

34 Marissa Peterson (**Peterson**):

- (a) was a director of Ansell from 22 August 2006 until 11 November 2021;
- (b) was a member of the A&C Committee from at least 1 July 2019 until 11 November 2021;
- (c) attended all Board meetings during FY19, FY20 and FY21;
- (d) between 1 July 2021 and 11 November 2021, attended:
 - (i) all meetings of the A&C Committee (of which there was one);
 - (ii) all Board meetings (of which there were six).

Particulars

As to (b), Peterson is recorded in the FY19 Annual Report (p 24) as a member of the A&C Committee.

As to (c), this is recorded in the FY19 Annual Report (p 30), FY20 Annual Report (p 34) and FY21 Annual Report (p 40).

As to (d), this is recorded in the FY22 Annual Report, (p 40).

35 During the period in which they held their respective positions, each of:

- (a) Salmon, Nicolin, Javeed, Nazareth, Froberg, Accorsi, Bryce, Phillips, Sweeney, Leary, le Jeune, Gilleece, Marsden and Johnston (**Ansell Executives**); and

- (b) Bevan, Desjardins, Reilly, Stercken, Yan, Day and Peterson (**Non-Executive Directors**),

was an officer of Ansell within the meaning of s 9 of the Corporations Act and ASX Listing Rule 19.12 and any information of which he or she became aware, or which ought reasonably to have come into his or her possession in the course of the performance of his or her respective duties as an officer of Ansell, was information of which Ansell was aware within the meaning of “aware” in rule 19.12 of the ASX Listing Rules.

C COVID-19 RELATED SPIKES IN DEMAND, PRICING AND COSTS

C.1 Surge in demand for certain Ansell products

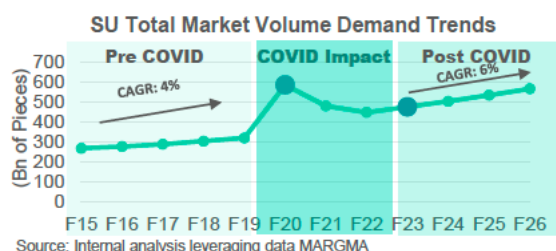
36 The onset of COVID-19 drove:

- (a) sales of Single Use Gloves;
- (b) sales of Outsourced Glove Products;
- (c) growth of the Exam/Single Use SBU, which experienced **organic growth** (being sales revenue growth compared with the prior corresponding period, restated at the current financial year’s average foreign exchange rates and excluding the effect of acquisitions) of 34.5% from 1 January 2020 to 30 June 2020;
- (d) growth of the Chemical SBU, which experienced organic growth of 12.6% from 1 January 2020 to 30 June 2020; and
- (e) sales of Chemical Protective Clothing, which experienced a 31.8% increase in demand from 1 January 2020 to 30 June 2020 due to strong demand from governments, non-government organisations and the private sector.

Particulars

As to (a):

- A. The FY20 Annual Report recorded that overall volumes of Single Use Gloves in the second half of the year were constrained by supply (p 24).
- B. The FY21 Half Year Results recorded “strong volume growth with sales capped by supply” and recorded the following (p 9):



As to (b):

- C. This can be inferred from A and B above, given the significant proportion of Single Use Glove sales which are Outsourced Glove Products (as referred to in paragraph 10). Further, in the edited transcript of the Full Year 2021 Earnings Call of 23 August 2021, it is recorded that Salmon stated that “what we are now seeing is lower pricing and lower demand on the less differentiated styles, which are also the styles most relevant to COVID-19 protection ” (p 8).

As to (c):

- D. This is recorded in the FY20 Full Year Results (p 10). In comparison, organic revenue growth of the Exam/Single Use SBU:
- in FY19 was only 3.4%, with a decline in revenue for gloves used in acute clinical settings: FY19 Full Year Results (p 13);
 - from 1 July 2019 to 31 December 2020 was only 1.4%: FY20 Full Year Results (p 10).

As to (d):

- E. This is recorded in the FY20 Full Year Results (p 10).
- F. In comparison, organic growth of the Chemical SBU:
- in FY19, was only 1%: FY19 Full Year Results (p 15);
 - from 1 July 2019 to 31 December 2020 was only 3%: FY20 Full Year Results (p 10).

As to (e):

- G. This is recorded in FY20 Full Year Results (p 10).
- H. As to the date range, Ansell’s COVID-19 associated increase in demand started in China in February 2020 and expanded world-wide in or around March 2020: FY20 Full Year Results (p 11).

37 Strong demand for Single Use Gloves, Outsourced Glove Products and Chemical Protective Clothing continued until at least 31 December 2020.

Particulars

The FY21 Full Year Results record that the Exam/Single Use SBU experienced organic growth of 47.5% from 1 July 2020 to 31 December 2020 (p 12).

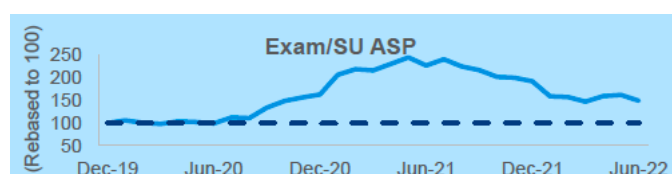
The FY21 Full Year Results record that the Chemical SBU experienced organic growth of 21.8% from 1 July 2020 to 31 December 2020 (p 12). The FY21 Full Year Results also record that “Chemical Protective Clothing demand... slowed in FY21 H2 as it cycled an *exceptionally high prior period comparison*” (*emphasis added*) (p 12).

C.2 Surge in pricing of Single Use Gloves

- 38 Between on or around May 2020 and June 2021, the average sale price of Single Use Gloves increased 250%.

Particulars

Ansell FY22 Full Year Results Investor Presentation, 23 August 2022 (p 10) recorded the following average sale price for Single Use Gloves (with \$100 the rebased sum):



Further particulars will be provided prior to trial.

C.3 Surge in outsourced supplier costs

- 39 Between at least 1 July 2020 and 30 June 2021, costs of Outsourced Glove Products increased significantly.

Particulars

- A. The particulars subjoined to paragraph 9, in relation to FY19, FY20 and FY21, are repeated.
- B. In the edited transcript of the Full Year 2020 Ansell Earnings Call of 24 August 2020, it is recorded that Javeed stated: “Some key points regarding the raw materials.... The nitrile benefit from H1, we saw that continue into H2, but unfortunately, it was, to a large extent, outdone by pricing from outsourced suppliers” (p 7).

- C. In the edited transcript of the Half Year 2021 Earnings Call of 15 February 2021, it is recorded that Javeed stated: “the pricing from our outsourced suppliers has really stepped up and really accelerated versus the first half” (p 7).
- D. In the edited transcript of the Full Year 2021 Earnings Call of 23 August 2021, it is recorded that Javeed stated: “we’ve navigated through and we’re navigating through an unprecedented period of upward pricing and cost management as it relates to the outsourced Exam/Single Use costs and the products there” and “over the last couple of months, though, I think we’ve seen supply and demand of exam product is finding perhaps some equilibrium. And again, this, in turn, is bringing back some competitiveness in terms of how costs are passed through to customers” (p 7) and “as the pandemic broke... [p]rices did go up as we had to pass through these exponential costs from outsourced suppliers...” and that “going forward as prices retreat” (p 12).

C.4 Softening of demand and decline in prices

40 In the second half of FY21 (viz. 1 January to 30 June 2021):

- (a) demand for Chemical Protective Clothing slowed;
- (b) there was a normalisation in demand for Single Use Gloves;
- (c) sale volumes of Single Use Gloves declined in comparison to the first half of FY21.

Particulars

The FY21 Full Year Results record that “Chemical Protective Clothing demand remained strong supported by recent capacity expansions, but slowed in FY21 H2 as it cycled an exceptionally high prior period comparison” and, with respect to Exam/Single Use, that “overall volumes in FY21 H2 declined due to supply constraints and a normalisation of demand”. Item D of the particulars subjoined to paragraph 39 are also repeated.

Further particulars will be provided, following discovery and the service of subpoenas.

41 From on or around June 2021, the average sale price of Single Use Gloves declined.

Particulars

The particulars subjoined to paragraph 38 are repeated.

Further particulars will be provided, following discovery and the service of subpoenas.

D ANSELL GROWTH AND OTHER EVENTS IN FY21

D.1 Drivers of FY21 growth

42 In FY21, the Exam/Single Use SBU:

- (a) experienced organic growth of 47.5% in the first half of FY21;
- (b) experienced organic growth of 45.2% year over year;
- (c) accounted for more than 80% of Ansell's revenue increase that year; and
- (d) reported sales of Single Use Gloves 38.2% higher compared to FY20.

Particulars

FY21 Full Year Results (pp 12, 15 and 18).

43 The primary drivers of growth of Ansell in the FY21 period were:

- (a) increased demand for Ansell products as a result of COVID-19;
- (b) higher sales prices for Single Use Gloves;
- (c) the pass through of manufacturing cost increases, predominantly outsourced supplier costs.

Particulars

- A. The FY21 Full Year Results recorded that Industrial GBU reported 7.1% organic growth in sales, with "strong growth from a number of products either due to increased demand from end users seeking additional protection or industry shifts as a result of COVID-19...".
- B. The FY21 Annual Report recorded "volume growth was positive outside of the Exam/Single Use business unit" and "EBIT on a reported basis was 56% higher than the prior year and margins improved 330bps to

- 16.7%. This was due to the favourable impact from stronger sales and higher production volumes ..." (p 21).
- C. The presentation titled "F'21 Half Year Results Six Months Ending 31 December 2020" dated 16 February 2021 (**FY21 H1 Results**) recorded "Strong volume growth with sales capped by supply. Even stronger price/mix growth mainly due to effective pass through of cost increases from outsourced suppliers but also pricing initiatives and favourable mix" (p 9) and "Price growth due to pricing initiatives and pass through of cost increases (predominantly outsourced suppliers) (p 18).
 - D. The FY21 Full Year Results recorded that Healthcare GBU "EBIT on a reported basis was 75.5% higher than the prior year and margins improved 420bps to 20.1%. This was due to favourable impact from stronger sales (predominantly pricing...)..."
 - E. The FY21 Annual Report recorded that "Exam/Single Use delivered organic growth of 45.2%. Growth was driven by higher market prices and effective execution of price increases to recover increased costs." (p 24).
 - F. Sub-paragraph D to the particulars to paragraph 39 is repeated.
 - G. In the edited transcript of the Half Year 2021 Earnings Call of 15 February 2021, it is recorded that:
 - a. Nicolin stated "*on the PPE industry, in the short term, clearly, some increased demand*" (p 2), "*CAGR development on sales, EBIT and EPS Obviously, a big kicker in the last 12 months, 2 6-month periods...*" (p 3), "some of the key observations on exam gloves is strong volume growth. And strong value growth as well because we're seeing a significant imbalance between supply and demand, and that has driven a significant price increase into the marketplace in multiple waves. We have responded to that to essentially protect our bottom line, not necessarily to protect our EBIT margin... we're quite careful and very deliberate about how we take price" and "so that's the exam story, quite impactful..." (at [3]).
 - b. Javeed stated "You've already heard from [Nicolin] the key sales drivers, so I'll not repeat those. But of course we're very pleased with the volume growth rate and being able to get product to the front line. And at the same time, we do know we're comparing against a pre-pandemic period...." (p 7).
 - H. In the edited transcript of the Full Year 2021 Earnings Call of 23 August 2021, it is recorded that Nicolin stated "very significant growth factors. Sales up 22%

in constant currency” (p 2). Javeed was present on this Earnings Call.

D.2 Negative impacts in FY21

44 The growth of Ansell in the FY21 was impacted by:

- (a) supply disruptions, including disruptions to operations due to COVID-19 related temporary enforced government shutdowns, including shutdowns of factories of suppliers and logistics delays;
- (b) increased costs for Outsourced Glove Products, labour and freight; and
- (c) greater provisioning for inventory.

Particulars

- A. The FY21 Annual Report (p 21) recorded that “... positive movements were partially offset by increased costs for labour and freight and greater inventory provisions”.
- B. The FY21 Annual Report (p 22) recorded that “Exam/Single Use products, which are predominantly outsourced, experienced significant cost increases throughout FY21. These increases in conjunction with increased freight costs and shipping delays incurred in the second half, resulted in a large increase in trade payables...”.
- C. The FY21 Annual Report (p 24) recorded that, with respect to the Exam/Single Use SBU, “overall volumes were constrained by supply disruptions, including COVID-19 driven factory shutdowns of outsourced suppliers and logistic delays ...”.
- D. The Consolidated Statement of Financial Position of Ansell and subsidiaries as at 30 June 2021 recorded, as a current liability, current asset provisions of US\$92.5m, compared to US\$66.4m as at 30 June 2020 (FY 21 Annual Report, p 77). The accompanying note describes those provisions as “principally inventory and accounts receivable. Provisions are established for obsolete or slow moving inventories and bad or doubtful receivables” (FY21 Annual Report, p 82). Inventories recognised as an expense as at 30 June 2021 were valued at US\$1,197.7m, compared with US\$941.9m as at 30 June 2020. Total finished goods inventories were valued at US\$515.3m as at 30 June 2021, compared with US\$268.4m as at 30 June 2020.
- E. The FY21 Full Year Results recorded “unprecedented increases in outsourced Exam/SU Costs” and

“Outsourced cost increased significantly throughout FY21” (p 19-20).

- F. In the edited transcript of the Half Year 2021 Earnings Call of 15 February 2021, it is recorded that Javeed stated: “pricing from outsourced suppliers... continues on this very aggressive upward trend” and “We’re seeing small clusters of COVID outbreaks potentially impacting manufacturing and supply chains ... both within our facilities as well as outsourced suppliers” (p 7); “the usual pass-through of savings by outsourced suppliers was not seen at the finished goods level. As long as supply remains unable to find an equilibrium with current demand, I’d expect nitrile costs, and in fact nitrile rubber pricing, to remain very elevated... Our spot price is trending much higher than where they’ve been. ... the outsourced costs as a percentage of overall costs of goods is higher than historical norms” (p 8).
- G. In the edited transcript of the Full Year 2021 Earnings Call of 23 August 2021, it is recorded that:
 - a. Nicolin stated “the only red on this chart is, of course, the cash flow. But part of it was planned, meaning we built up inventory and we prioritised customer service ahead of managing inventory” (p 3);
 - b. Javeed stated: “I told you in our first half earnings call, we should expect the second half growth would be somewhat dominated by our ability to pass through the exam on single-use cost increases, and clearly, I think we’ve managed very well on that front ... In the last few weeks, ... there has been some caution because we’ve been dealing with some operational disruption... at the same time, we’re seeing ocean freight capacity quite constrained. And when you combine all these factors, there’s inevitably impact on volumes.... Although our manufacturing sites were able to operate, as [Nicolin] said, with efficiencies and our pricing processes, remained, I’d say, nimble... we did also have to manage quite an uptick in labour and logistic costs... at the same time, we’ve taken quite a prudent and, I’d say, risk-averse approach in terms of providing for things like potential inventory write-downs... I do expect inflationary pressures to continue across the supply chain” (at p 6) and “we’ve navigated through and we’re navigating through an unprecedented period of upward pricing and cost management as it relates to the outsourced Exam/Single Use costs and the products there” (p 7).

- 45 In the FY21 period, the impact of inflation also increased a number of Ansell's costs inputs.

Particulars

Ansell Full Year Results FY21 (p 9).

- 46 The rate of organic growth of the Exam/Single Use SBU decreased by 4% in the second half of FY21 compared to the first half of FY21, due to overall volumes of Single Use Gloves declining as a result of supply constraints and normalisation of demand.

Particulars

Ansell Full Year Results FY21 (p 12). Organic Growth of the Exam/Single Use SBU in FY21H1 was 47.5%, compared to 43.5% in FY21H2.

- 47 The rate of organic growth of the Chemical SBU decreased by 16.2% in the second half of FY21 compared to the first half of FY21, due to a slowing in demand for Chemical Protective Clothing.

Particulars

Ansell Full Year Results FY21 (p 12). Organic Growth of the Chemical SBU in FY21H1 was 21.8%, compared to 5.6% in FY21H2.

D.3 Higher level of inventory carried by Ansell and Ansell customers

- 48 As at 30 June 2021, Ansell held finished goods valued at US\$515.3m, that value representing the lower, for each finished good, of:

- (a) the cost; and
- (b) the net realisable value, being the estimated selling price in the ordinary course of the business less estimated costs to sell.

Particulars

FY21 Annual Report (p 93). The make-up of the inventory held, the cost of that inventory, and the estimated selling price(s) used by Ansell in determining the net realisable value is currently unknown to the Plaintiff.

- 49 The value of finished goods held by Ansell as at 30 June 2021 was 92% higher than the value of finished goods that had been held by Ansell as at 30 June 2020.

Particulars

The FY21 Annual Report (p 93) recorded the value of finished goods as at 30 June 2020 as US\$268.4m. The proportion of the finished goods held by Ansell as at 30 June 2021 which were Outsourced Glove Products, and the estimated selling price(s) used by Ansell in determining the net realisable value of the finished goods, is currently unknown to the Plaintiff.

- 50 As at 30 June 2021, Ansell carried higher volumes of Outsourced Glove Products than it had held as at 30 June 2020.

Particulars

This can be inferred from the higher value of finished goods held, as referred to in paragraph 49 above. Further, the FY21 Full Year Results recorded “Working Capital increased to support strong business growth (both volume and price)” (p 23).

Further particulars may be provided, following discovery.

- 51 As a result of carrying high levels of inventory (including Outsourced Glove Products), Ansell’s product costs lagged behind the market by a number of months currently unknown to the Plaintiff.

Particulars

In the transcript of the Ansell Annual Shareholders Meeting of 10 November 2021, it is recorded that Salmon stated “our product costs lag behind market because of the months of inventory we carry. With rising prices, this is favourable. As we adjust pricing lower, this is unfavourable... because it will be some months before the benefit of lower input costs shows in cost of goods sold...” (p 8).

Further particulars may be provided, following discovery.

- 52 In FY21, Ansell had recommended to its customers (and in particular distributors and governments) that they carry higher levels of inventory (including of Ansell products), to deal with spikes in demand from unexpected events such as pandemics.

Particulars

This is recorded in the Ansell FY21 Annual Report (p 45).

- 53 By 30 June 2021, Ansell customers had rebuilt their inventory of Ansell products, which had otherwise been depleted earlier in the pandemic.

Particulars

This can be inferred from comments made by Salmon, as recorded in the FY21 Full Year Earnings Call transcript (dated 24 August 2021), that: “Demand’s going to come down temporarily because inventories have rebuilt globally, even there is some overshoot in inventory with some steps in the channel” (p 10).

Further particulars may be provided, following discovery.

E ANSELL’S FY22 GUIDANCE

- 54 On 24 August 2021, Ansell published to the ASX, *inter alia*:
- (a) the FY21 Full Year Results; and
 - (b) an announcement entitled “Ansell Limited Announces Full Year F’21 Results – Record Sales and Earnings Performance” (**August Announcement**),
- (together, the **August Publications**).
- 55 The FY21 Full Year Results stated, in terms of the FY22 outlook, that:
- (a) Ansell was focussed on leveraging investments in its SBUs, and in particular:
 - (i) there were favourable economic conditions for Surgical, Life Sciences and Mechanical SBUs;
 - (ii) investments in differentiation were showing strong returns for Surgical, Life Sciences and Mechanical SBUs;
 - (iii) Ansell was focussed on “[t]argeting continued outperformance” for Surgical, Life Sciences and Mechanical SBUs;

- (iv) with respect to the Exam/Single Use SBU and the Chemical SBU, increased in-house capacity enabling growth in differentiated styles would offset the lower pricing and demand on less differentiated COVID-19 related styles;
- (b) COVID-19 impacts were expected to persist;
- (c) Ansell had a diversified portfolio supplying a variety of end markets and geographies;
- (d) with respect to the FY22 EPS Guidance, from a demand perspective:
 - (i) Ansell expected to see continued demand for Mechanical, Surgical and Life Sciences products and its In-House Glove Products;
 - (ii) Ansell expected lower demand in areas which benefitted most from COVID-19 (i.e. Chemical Protective Clothing and Outsourced Glove Products);
 - (iii) pricing was expected to be a feature, positively and negatively;
- (e) with respect to the FY22 EPS Guidance, from a supply perspective:
 - (i) recent capacity investments should support sustained demand;
 - (ii) there had been increased COVID-19 cases in South East Asia in recent months, a number of Ansell factories and suppliers in the region had short term closures or reduced operations, and this would disrupt supply and may impact sales during the first half of FY22;
 - (iii) increased freight costs and shipping delays were also expected to persist throughout FY22;
- (f) in terms of other assumptions made with respect to the FY22 EPS Guidance:
 - (i) Ansell anticipated that net interest expense would be in the range of US\$20m to \$21m and effective tax rate would be in the range of 22 to 23%;
 - (ii) pursuant to a new computing accounting policy, increased software investments in FY22 would now be expensed rather than capitalised and amortised, resulting in 5 to 6 cents adverse EPS impact;
- (g) Ansell expected FY22 Earnings Per Share to be in the range of US\$1.75 to US\$1.95.

- (a) the COVID-19 pandemic continued to be the dominant influence on the global economy;
- (b) capital expenditure had been increased to US\$82.5m in FY21, a 36.5% increase on FY20, to meet higher demand for some Ansell products;
- (c) Ansell was planning on maintaining capital expenditure at elevated levels in FY22 and were confident that it could deliver the desired returns from the investment;
- (d) 12 new glove lines and several new body protection lines went live in FY21 which would support growth for FY22 and beyond;
- (e) Ansell had ensured in FY21 that the business was well positioned for the post COVID-19 environment by continuing to invest in, among other things, product innovation;
- (f) in terms of the FY22 outlook:
 - (i) from a demand perspective:
 - (A) lower demand was expected for Chemical Protective Clothing and “undifferentiated” Single Use Gloves, which had benefitted most during the onset of COVID-19;
 - (B) continued demand was expected for In-House Glove Products and Mechanical, Surgical and Life Sciences SBU products;
 - (C) Ansell had a diversified portfolio supplying a variety of end markets and geographies;
 - (D) pricing was expected to feature throughout FY22, positively and negatively;
 - (ii) from a supply perspective:
 - (A) Ansell’s FY22 investment in capacity should sustain demand for products;
 - (B) there were increased COVID-19 cases in South East Asia in recent months, which had the impact of closures or reduced operations to a number of Ansell’s factories and suppliers in South East Asia, which would disrupt supply and may impact sales during the first half of FY22;

- (C) increased freight costs and shipping delays were expected to persist through FY22;
- (iii) net interest expense was anticipated to be in the range of US\$20 to US\$21m and the effective tax rate in the range of 22 to 23%;
- (iv) there would be an adverse EPS impact in the range of 5 to 6 cents as a result of expensing (rather than capitalising and amortising) a portion of increased software investments in FY22;
- (v) FY22 earnings per share (**EPS**) was expected to be in the range of US\$1.75 to US\$1.95 (**Forecast Range**).

57 By the August Publications, Ansell represented that:

- (a) the Forecast Range had been set based on appropriate business-risk assumptions and accounting methodology, including:
 - (i) lower demand for products which had seen COVID-19 associated increases in sales, including Outsourced Single Use Gloves;
 - (ii) negative pricing and lower product margins in FY22;
 - (iii) increased COVID-19 cases in South East Asia which may disrupt manufacturing;
 - (iv) increased freight costs and shipping delays in FY22;
 - (v) uncertainties in the global economy and the PPE market due to the ongoing COVID-19 pandemic,
- (b) Ansell had appropriate internal systems that were capable of forecasting, with a reasonable degree of confidence:
 - (i) future customer demand for its products;
 - (ii) pricing trends in the market that it operated within;
- (c) there was a reasonable basis to consider that EPS for FY22 would be in the Forecast Range; and

- (d) there did not exist a material risk that the EPS for FY22 would be lower than the Forecast Range,

(each an **EPS Guidance Reliability Representation**).

Particulars

The representations are to be implied from the matters referred to in paragraphs 55 and 56 as a whole, and in particular from: (i) the statements concerning the business being positioned well post the COVID-19 environment and positioning the business post the COVID-19 environment; (ii) the nature of the assumptions made by Ansell and the descriptions of the outlook; (iii) the wide range given; and (iv) the absence of any factors qualifying the range.

58 On 11 November 2021, Ansell published to the ASX (**November Announcements**):

- (a) the addresses to be given by Bevan and Salmon (**Salmon's Address**); and
- (b) the slide presentation to be given by Salmon and Nicolin;

at the Annual General Meeting of Ansell to be held that day.

59 The November Announcements stated that:

- (a) the impact of COVID-19 remained a dominant influence, both positively and negatively, on Ansell's current situation;
- (b) Ansell expected more volatility than it had seen so far during the course of the pandemic;
- (c) Single-use pricing was likely to experience pressure following industry expansions;
- (d) Ansell had issued in August a wider guidance range than normal, reflecting the uncertainty from the unprecedented COVID-19 emergency which was in the process of evolving and with it, PPE markets were evolving too;
- (e) in setting the Forecast Range, in August 2021 Ansell had assumed:
 - (i) lower demand in areas which benefitted most from COVID-19, being "Chemical Body Protection and undifferentiated Exam/SU gloves";

- (ii) pricing as a feature with respect to demand, positively and negatively;
- (iii) from a supply perspective:
 - (A) Ansell's FY22 investment in capacity should sustain demand for products;
 - (B) there had been increased COVID-19 cases in South East Asia in recent preceding months, which had had the impact of closures or reduced operations to a number of Ansell's factories and suppliers in South East Asia, and which were to disrupt supply and may impact sales during the first half of FY22;
 - (C) increased freight costs and shipping delays were expected to persist through FY22;
- (f) By November 2021, Ansell had seen the following conditions:
 - (i) demand and pricing declines compared to the end of FY21 for much of the Outsourced Glove Products;
 - (ii) industrial demand strong in some markets and uneven in others;
 - (iii) from a supply perspective:
 - (A) manufacturing sites were closer to normal production levels in South East Asia at the end of October;
 - (B) significantly increased freight costs, shipping delays;
 - (C) price increases were coming into effect over coming months;
 - (iv) a costs base impacted by the inflationary environment;
- (g) external conditions were more challenging than had been anticipated in August 2021 for some aspects of Ansell's business, but Ansell's diverse portfolio meant it had opportunities; and
- (h) Ansell maintained the Forecast Range.

Particulars

As to (a) to (c), these statements were contained in the Chairman's Address.

As to (d) to (h), these statements were contained in the CEO Presentation including slide 5 of his presentation (p 18 of the November Publication).

- 60 By the publication of the November Announcements, Ansell repeated each of the EPS Guidance Reliability Representations.

Particulars

The representations are to be implied from the matters referred to in paragraph 59 as a whole, and in particular from (i) the statements concerning the wider guidance range than normal having been set by Ansell in August 2021; (ii) the listing of the assumptions made by Ansell in August 2021 and the nature of those assumptions; (iii) the comparison of the assumptions made by Ansell in August 2021 against what had been seen by November 2021; and (iv) the maintaining of the Forecast Range.

- 61 The EPS Guidance Reliability Representations were continuing representations that were maintained by Ansell from 24 August 2021 until the making of the Corrective Statement (as defined below) on 31 January 2022.

F THE TRUE POSITION

- 62 As at 24 August 2021, the assumptions which Ansell adopted in setting the Forecast Range in relation to:

- (a) demand for Ansell products;
- (b) pricing of Ansell products; and
- (c) profit margins on Ansell products,

were unreasonably optimistic.

Particulars

The EPS for FY19 (adjusted for a "Transformation Program" and other one-off costs) was \$1.12, for FY20

(restated on account of a change in accounting policy) was \$1.20, and for FY21 was \$1.92. The EPS for FY21 had represented an increase of 60% from FY20 (FY21 Annual Report, pp 13 and 21), and was described by Peterson in the FY21 Annual Report as “at maximum” for the purposes of Board remuneration metrics (p 50).

The Forecast Range implied that Ansell’s FY21 profit would be maintained, and it can therefore be inferred that assumptions made with respect to demand, pricing and gross profit on the sale of Ansell products reflected values similar to FY21, notwithstanding:

- A. FY21 profits were driven by the surge in demand and pricing of Single Use Gloves and Chemical Protective Clothing, as referred to in paragraphs 36 to 38 above;
- B. prior to the onset of the pandemic, there was very little growth in the Exam/Single Use SBU (as referred to in the particulars subjoined to paragraph 36);
- C. growth of Single Use Gloves and Chemical Protective Clothing had already slowed by the second half of FY21, as referred to in paragraphs 46 and 47;
- D. Single Use Gloves accounted for 80% of revenue increase in FY21, as referred to in paragraph 42 above;
- E. demand for Single Use Gloves had already softened in the second half of FY21, as referred to in paragraph 40 above;
- F. pricing of Single Use Gloves was softening by June 2021, as referred to in paragraph 38 above;
- G. over 75% of Single Use Gloves were Outsourced Glove Products, as referred to at paragraph 10 above;
- H. Ansell had high levels of Outsourced Glove Products in its inventory as at 30 June 2021, purchased at high cost, which was unfavourable in a market with falling prices, as referred to in paragraphs 50 to 51 above;
- I. supply costs were increasing due to inflation, as referred to at paragraph 45 above;
- J. Ansell customers were carrying higher levels of Ansell inventory than they had been at the beginning of FY21, following Ansell’s recommendation that they do so, as referred to in paragraph 52 above.

Further particulars will be provided, following discovery and the service of expert reports.

63 By reason of the matters referred to in paragraphs 10, 36 to 53 and 62 above, at the time of making the EPS Guidance Reliability Representations in August 2021:

- (a) there was no reasonable basis to consider that the EPS for FY22 would be in the Forecast Range; and

(b) there was a material risk that the EPS for FY22 would be lower than the Forecast Range.

64 As at 11 November 2021, the assumptions Ansell had adopted in setting the Forecast Range in relation to demand, pricing and gross profit margins on Ansell products were unreasonably optimistic.

Particulars

Paragraph 62 is repeated. Further, by 11 November 2021:

- A. Ansell had observed declines in demand and pricing for Outsourced Glove Products compared to the end of FY21 (as referred to in paragraph 59(f) above);
- B. Ansell had experienced significantly increased freight costs and shipping delays (as referred to in paragraph 59(f) above);
- C. Ansell expected further price increases (from a supply perspective) to come into effect over coming months and also expected the cost base to be impacted by the inflationary environment (as referred to in paragraph 59(f) above);
- D. Ansell had experienced unfavourable profit margins because of the months of inventory it carried in a market with falling prices (as recorded in the transcript of the Ansell Annual Shareholders Meeting of 10 November 2021 at p 8).

Further particulars will be provided, following discovery and the service of expert reports.

65 By reason of the matters referred to in paragraph 10, 36 to 53 and 64 above, at the time of repeating the EPS Guidance Reliability Representations in November 2021:

- (a) there was no reasonable basis to consider that the EPS for FY22 would be in the Forecast Range; and
- (b) there was a material risk that the EPS for FY22 would be lower than the Forecast Range.

G CORRECTIVE DISCLOSURE ON 31 JANUARY 2021

66 On 31 January 2022, Ansell published on the ASX an announcement entitled “Ansell Limited Provides FY22 Trading and Business Update” (**Corrective Statement**), in which it stated:

- (a) it expected to deliver sales in the first half of FY22 of US\$1,009m, EBIT of US\$111m and EPS of US\$0.61;

- (b) margins were lower in the first half of FY22 due to COVID-19 related operational challenges and softer demand for Single Use Gloves;
- (c) volumes of Outsourced Glove Products were lower, with a significant factor being a desire by distributors and end users to work down high levels of inventory before re-ordering;
- (d) recovery of lost output, following imposed shutdowns on manufacturing early in FY21, was slower than anticipated;
- (e) continued logistics disruption lengthened delivery times with the result that some orders were not fulfilled as expected in the first half of FY22;
- (f) demand for Single Use Gloves slowed faster than expected, making it more challenging for Ansell's supply chain to adjust and also leading to reduced inventory turns;
- (g) freight and labour costs were higher than expected;
- (h) manufacturing facilities were seeing increased incidences of COVID-19 and it was difficult to anticipate if increasing COVID-19 infections would lead to other factories having to shut down or operate at partial levels;
- (i) Ansell now anticipated FY22 EPS guidance to be in the range of US\$1.25-US\$1.45, given lower than anticipated performance in the first half of FY22, taking into account:
 - (i) supply disruption;
 - (ii) resetting of Single Use Gloves demand;
 - (iii) margin outlook;
 - (iv) expectations that operational challenges and supply chain disruptions would continue in in the second half of FY22; and
- (j) any impact of the Omicron variant of COVID-19 (beyond the impacts known to date) had not been factored into the updated EPS guidance.

67 Following the release of the Corrective Statement, the price of ANN Shares fell \$5.37.

Particulars

The price of ANN Shares fell from a closing price of \$31.24 on 28 January 2022 to \$25.87 on 3 February 2022.

Further particulars may be provided following service of expert evidence.

H ANSELL'S CONTINUOUS DISCLOSURE CONTRAVENTIONS

68 By reason of some or all of the matters referred to in paragraph 10 and Parts C, D and F above, during the Relevant Period:

- (a) there was no reasonable basis to consider that the EPS for FY22 would be in the Forecast Range; and
- (b) there was a material risk that the EPS for FY22 would be materially lower than the Forecast Range,

(Deficiencies in the Forecast Range).

69 By 24 August 2021:

- (a) the information referred to in paragraphs 9, 10, 36 to 50 and 53 above was in the possession of each of the Non-Executive Directors, or ought reasonably to have come into each of his or her possession in the course of the performance of his or her duties as a member of the Board; and
- (b) the information referred to in paragraphs 9, 10, 36 to 50, 52 and 53 above was in the possession of, or ought reasonably to have come into the possession of, in the course of the performance of their respective duties, each of the Ansell Executives.

Particulars

As to (a):

- A. The particulars subjoined to paragraphs 9, 10, 36 to 50 and 53 above, in so far as they relate to matters recorded in Annual Reports, Full Year Results and/or Half Year Results, are repeated.
- B. The Board was responsible for monitoring communications to shareholders and the ASX (including disclosures made under the ASX continuous disclosure requirements), as referred to in sub-paragraph 11(a)(v) above. Each of the Non-Executive Directors attended all Board meetings in

the period FY19 to 24 August 2021 (bar Yan, who attended all from her appointment bar one), as referred to in paragraphs 28 to 34 above. It can be inferred from the Board's responsibility, and the perfect (or near perfect, with respect to Yan) attendance at Board meetings, that the matters recorded in Ansell's Annual Reports, Full Year Results and/or Half Year Results disclosed on the ASX, came into the possession of each of the Non-Executive Directors, alternatively, ought to have come into their possession the course of their performance of their duties as members of the Board, prior to or at the date of disclosure to the ASX.

As to (b):

- C. The particulars subjoined to paragraphs 9, 10, 36 to 50, 52 and 53 above are repeated.
- D. Each of Nicolin and Javeed presented the Full Year Results and Half Year Results in FY19 to FY21 in the Half Year/Full Year Earnings calls. It can be inferred from their presentation of these results that the results came into their possession prior to the presentation.
- E. Nicolin signed the consolidated financial statement contained in the FY21 Annual Report in accordance with a resolution of directors (p 115), from which it can be inferred that the financial statement came into his possession prior to signing it.
- F. Through the course of performance of their duties as CEO and CFO respectively, each of Nicolin and Javeed ought to have reviewed the Annual Report prior to its disclosure on the ASX, and so the matters disclosed in the Annual Reports ought to have come into each of his possession.
- G. Each of Nicolin and Javeed were present during the FY21 Full Year Earnings Call, and so statements made on that call attributed in the transcript to one of them, or to Salmon, were also in the possession of each of Nicolin and Javeed.
- H. Each of the Ansell Executives held senior positions in Ansell's operations and ought to have come into possession of the information prior to release of the ASX announcements in the ordinary course of business.

Further particulars will be provided, following discovery.

- 70 By 10 November 2021, the information referred to in paragraph 51 above was in the possession of, or ought reasonably to have come into the possession of, in the course of performance of their respective duties, each of the Non-Executive Directors and the Ansell Executives.

Particulars

The particulars to paragraph 51 are repeated. The transcript records that each of Bevan, Day, Desjardins, Nicolin, Peterson, Reilly, Stercken, and Yan were present at the Annual Shareholders Meeting on 10 November 2021. Through his position as CFO, and role in presenting to investors at the Half Year Results and Full Year Results, Javeed ought to have come into possession of the information conveyed by Salmon at the Annual Shareholders Meeting through assisting his CEO with the information prior to the meeting or his attendance at the meeting.

Each of the Ansell Executives held senior positions in Ansell's operations and ought to have come into possession of the information prior to release of the ASX announcements in the ordinary course of business.

71 The Deficiencies in the Forecast Range was information which:

- (a) Nicolin had, or ought reasonably to have come into possession of, in the course of the performance of his duties as CEO until 31 August 2021 and Special Advisor to the Board and Management from 1 September 2021 to 31 December 2021;
- (b) Salmon had, or ought reasonably to have come into possession of, during the Relevant Period, in the course of the performance of his duties as President of Industrial GBU and/or CEO;
- (c) Javeed had, or ought reasonably to have come into possession of, during the Relevant Period, in the course of the performance of his duties as CFO;
- (d) Desjardins, Stercken and Day had, or ought reasonably to have come into possession of, during the Relevant Period, in the course of their respective performances of their duties as directors and members of the S&R Committee and the A&C Committee;
- (e) Reilly had, or ought reasonably to have come into possession of, during the Relevant Period, in the course of the performance of his duties as director and member of the S&R Committee;
- (f) Yan had, or ought reasonably to have come into possession of, during the Relevant Period, in the course of the performance of her duties as director and member of the S&R Committee;

- (g) Bevan had, or ought reasonably to have come into possession of, during the Relevant Period, in the course of the performance of his duties as Chair of the Board.

Particulars

Paragraphs 69 and 70 and the particulars thereto are repeated.

Further, in relation to Nicolin:

- A. From the information in Nicolin's possession, or which ought to have been in his possession, as referred to in paragraphs 69 and 70, the Deficiencies in the Forecast Range was in his possession or ought to have been in his possession.
- B. In his role as CEO and subsequent role as Special Advisor to the Board, reasonable information systems or management procedures ought to have brought (i) the Deficiencies in the Forecast Range, further and alternatively (ii) the information referred to in paragraph 10 and Parts C and D above and (iii) the modelling and assumptions underpinning the Forecast Range, to his attention. Nicolin ought reasonably to have discerned the significance of the information.

In relation to Salmon:

- C. It can be inferred that Salmon was aware of the information referred to in Part D from his presentation of the FY21 Full Year Results at the FY21 Full Year Results Webcast, and the information in paragraph 59(f) from his presentation. Further, Salmon is recorded in the FY21 Full Year Earnings Call transcript as stating that: (i) "within single use and chemical ... lower demand on the products that were most in demand last year for COVID-19 purposes"; (ii) "We do, today, see lower pricing on the products that experienced peak pricing last year, but in other areas, we expect to be able to raise prices to offset those inflationary pressures", and "we went into this period [first half of FY22] with higher levels of inventory..." and (iii) "you've got the fade out of the specific COVID-19 demand and pricing, pricing more as supply and demand normalises. Demand's going to come down temporarily because inventories have rebuilt globally, even there is some overshoot in inventory with some steps in the channel".
- D. Reasonable information systems or management procedures ought to have brought the Deficiencies in the Forecast Range to his attention during the transition of the role of CEO to Salmon, or alternatively from the date he became CEO (1 September 2021).
- E. Further or alternatively, reasonable information systems or management procedures ought to have

brought (i) the information referred to in paragraph 10 and Parts C and D above and (ii) the modelling and assumptions underpinning the Forecast Range, to Salmon's attention during the transition of the role of CEO to Salmon, or alternatively from the date he became CEO (1 September 2021). Salmon ought reasonably to have discerned the significance of the information.

In relation to Javeed:

- F. From those matters known to Javeed, or which Javeed ought to have come into possession of as CFO (referred to in the particulars to paragraphs 69 and 70 above), the Deficiencies in the Forecast Range was in Javeed's possession or ought to have been in his possession from 23 August 2021, alternatively 10 November 2021.
- G. Further or alternatively, reasonable information systems or management procedures ought to have brought (i) the information referred to in paragraph 10 and Parts C and D above and (ii) the modelling and assumptions underpinning the Forecast Range, to Javeed's attention, and Javeed ought reasonably to have discerned the significance of the information.

In relation to the Non-Executive Directors:

- H. From those matters known to each of them (referred to in the particulars to paragraphs 69 and 70 above), the Deficiencies in the Forecast Range was in his or her possession or ought to have been in his or her possession from 23 August 2021, alternatively 10 November 2021.
- I. Further or alternatively, the Non-Executive Directors, acting reasonably, ought to have discerned the significance of the information known to each of them (or which ought to have been known to each of them), as referred to in the particulars to paragraphs 69 and 70 above.
- J. Further or alternatively, the Non-Executive Directors ought to have known the information from their oversight and review of management and their monitoring of financial and business results of Ansell and monitoring of Ansell's risk profile, as referred to in paragraph 11 above.
- K. Further or alternatively, each of the Non-Executive Directors ought to have known the modelling and assumptions underpinning the Forecast Range from their responsibilities monitoring communications with shareholders/the ASX, assessing the suitability of Ansell's overall strategies and business plans, monitoring financial and business results and reviewing Ansell's wider risk profile, as referred to in paragraph 11 above. In reviewing the Forecast Range (and any modelling and assumptions underpinning it),

acting reasonably, each of the Non-Executive Directors ought to have discerned the significance of the information referred to in paragraph 10 and Parts C and D which he or she knew (or ought to have known).

- L. Further or alternatively, reasonable information systems or management procedures ought to have brought the Deficiencies in the Forecast Range to the attention of the Non-Executive Directors, including that each of (i) Nicolin (as CEO and Special Advisor); (ii) Salmon (as CEO or as key executive management during his transition to CEO); (iii) the A&C Committee; and (iv) the S&R Committee, ought to have reported the Deficiencies in the Forecast Range to Bevan and the Board (or other members of the Board, as the case may be).
- M. Further or alternatively, reasonable information systems or management procedures ought to have brought (i) the information referred to in paragraph 10 and Parts C and D and (ii) the modelling and assumptions underpinning the Forecast Range, to the attention of the Non-Executive Directors. Each of the Non-Executive Directors ought then have discerned the significance of the information.
- N. Further or alternatively, in relation to each of Day, Desjardins and Stercken:
 - a. each of them, as members of both the A&C Committee and S&R Committee, ought to have known (i) the information referred to in paragraph 10 and Parts C and D and (ii) the modelling and assumptions underpinning the Forecast Range, from those committee's responsibilities in overseeing all matters relating to financial accounting, corporate reporting, internal control systems, reviewing corporate reports and financial risks and monitoring management's performance and the risk profile of Ansell. Day, Desjardins and Stercken ought to have discerned the significance of this information.
 - b. Further or alternatively, Javeed ought to have reported the Deficiencies in the Forecast Range to the A&C Committee and the S&R Committee.
 - c. Further or alternatively, reasonable information systems or management procedures ought to have brought (i) the Deficiencies in the Forecast Range; further and alternatively (ii) the information referred to in paragraph 10 and Parts C and D and (iii) the modelling and assumptions underpinning the Forecast Range, to the attention of each of the A&C Committee and S&R Committee.

Further particulars will be provided, following discovery.

72 During the Relevant Period, the Deficiencies in the Forecast Range was information that Ansell:

- (a) was aware of, further or alternatively became aware of, within the meaning of ASX Listing Rule 19.12; and
- (b) had, for the purposes of s 674A(2)(b) of the Corporations Act.

Particulars

Paragraphs 35 and 69 to 71 and the particulars thereto are repeated.

Further particulars, including, where relevant, the manner in which Ansell was aware of the Deficiencies in the Forecast Range by virtue of Froberg, Accorsi, Bryce, Phillips, Sweeney, Leary, le Jeune, Gilleece, Marsden and Johnston having (or ought reasonably to have come into possession of) that information will be provided following discovery.

73 On and from 24 August 2021, further and alternatively 11 November 2021, the Deficiencies in the Forecast Range was information:

- (a) that, until 31 January 2022, was not generally available within the meaning of s 674A(2)(c) and s 676 of the Corporations Act;
- (b) which a reasonable person would expect to have a material effect on the price or value of ANN Shares, within the meaning of ASX Listing Rule 3.1 and 677(1) of the Corporations Act.

Particulars

As to (b):

- A. By reason of the publication of each of the FY21 Full Year Results, the August Announcement and the November Announcements on the ASX, the EPS Guidance Reliability Representations (and the matters stated in the FY21 Full Year Results, the August Announcement and the November Announcements as referred to in Part E above) were made in a manner likely to bring what was said to the attention of the Affected Market, and accordingly were objectively likely to influence investors in ANN Shares and

potential investors in ANN Shares considering whether to buy or sell ANN Shares.

- B. The true position as referred to in Part F was not known to the Affected Market. Had the true position been revealed to the Affected Market, this would have qualified or contradicted some or all of the EPS Guidance Reliability Representations and the matters stated in the FY21 Full Year Results, the August Announcement and the November Announcements (as referred to in Part E above).

74 Pursuant to ASX Listing Rule 3.1, Ansell became obliged to communicate the Deficiencies in the Forecast Range to ASX on and from:

- (a) 24 August 2021;
- (b) further and alternatively, 11 November 2021;
- (c) further and alternatively, a date earlier than 31 January 2022.

75 On and from 24 August 2021, further and alternatively from 11 November 2021, Ansell:

- (a) knew or ought reasonably to have known that the Deficiencies in the Forecast Range would or was likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of ANN Shares and/or would have a material effect on the price or value of ANN Shares;
- (b) further or alternatively, knew that there was a real risk that the Deficiencies in the Forecast Range would or was likely to influence those persons in deciding whether to acquire or dispose of ANN Shares and/or would have a material effect on the price or value of ANN Shares;
- (c) was negligent and/or reckless with respect to whether the Deficiencies in the Forecast Range would, if that information were generally available, have a material effect on the price or value of ANN Shares, within the meaning of s 674A(2)(d) and s 677(2)(b) of the Corporations Act.

Particulars

The particulars to paragraphs 69 to 71 above are repeated, from which it can be inferred that:

- A. Ansell: (i) knew that the Deficiencies in the Forecast Range would or was likely to influence persons who commonly invest in securities in deciding whether to

acquire or dispose of ANN Shares (and/or would have a material effect on the price or value of ANN Shares); (ii) further or alternatively, knew that there was a real risk that the Deficiencies in the Forecast Range would or was likely to influence those persons in deciding whether to acquire or dispose of ANN Shares (and/or would have a material effect on the price or value of ANN Shares); (iii) further or alternatively, was indifferent to whether the Deficiencies in the Forecast Range would or was likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of ANN Shares (and/or would have a material effect on the price or value of ANN Shares);

B. A reasonable person in the position of Ansell would see there was a real risk that the Deficiencies in the Forecast Range would, if generally available, have a material effect on the price or value of ANN Shares.

Further or alternatively, Ansell ought to have known that the Deficiencies in the Forecast Range would or was likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of ANN Shares and/or would have a material effect on the price or value of ANN Shares. Having regard to the nature of the EPS Guidance Reliability Representations, and the risk that the Deficiencies in the Forecast Range would, if generally available, have a material effect on the price or value of ANN Shares, in making the EPS Guidance Reliability Representations and omitting to correct or withdraw the EPS Guidance Reliability Representations, Ansell's conduct fell short of the standard of care which a reasonable person in Ansell's position, owing the statutory duties under ss 674, 674A and 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and s 18 of the Australian Consumer Law, would have exercised in the circumstances.

Further particulars will be provided, following discovery and/or disclosure of documents in accordance with s 26 of the Civil Procedure Act 2010 (Vic).

- 76 Ansell did not communicate the Deficiencies in the Forecast Range to the ASX before 31 January 2022.
- 77 In the premises, Ansell contravened s 674A(2) of the Corporations Act (**Continuous Disclosure Contravention**).

I ANSELL'S MISLEADING OR DECEPTIVE CONDUCT

78 By reason of the matters referred to in paragraphs 10, 36 to 53 and 62 to 64 above, the EPS Guidance Reliability Representations were misleading or deceptive or likely to mislead or deceive.

79 Further, to the extent the EPS Guidance Reliability Representations were representations as to future matters:

- (a) the Plaintiff relies on s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law; and
- (b) Ansell had no reasonable grounds for making the representations.

80 In the premises, in publishing to the ASX the FY21 Full Year Results, the August Announcement and the November Announcements, Ansell engaged in conduct:

- (a) in relation to the ANN Shares that was misleading or deceptive, or likely to mislead or deceive, contrary to s 1041H(1) of the Corporations Act;
- (b) in trade or commerce, in relation to the ANN Shares, that was misleading or deceptive, or likely to mislead or deceive, contrary to s 18 of the Australian Consumer Law and s 12DA(1) of the ASIC Act,

(Misleading or Deceptive Conduct).

J LOSS

81 During the Relevant Period, the Plaintiff and Group Members acquired interests in ANN Shares.

Particulars

Paragraph 3 is repeated. Particulars of acquisitions by Group Members will be provided, following the trial of the common questions.

82 During the Relevant Period, the Affected Market was a market of investors or potential investors in ANN Shares:

- (a) operated by the ASX;

- (b) regulated by, inter alia, the ASX Listing Rules and s 674A(2) of the Corporations Act;
- (c) in which the price or value of ANN Shares would reasonably be expected to have been informed or influenced by information disclosed in accordance with ASX Listing Rules and s 674A(2) of the Corporations Act or that otherwise becomes publicly available.

83 The Plaintiff and Group Members acquired interests in ANN Shares during the Relevant Period as a result of holding and acting upon the assumption, being an assumption generally made in the Affected Market and on which they were entitled to act, that the market price of ANN Shares represented the market price in a market:

- (a) that had been informed of all material information that was required to be disclosed by Ansell in accordance with the ASX Listing Rules and s 674A(2) of the Corporations Act; and
- (b) in which Ansell had not made any statements or representations that were misleading or deceptive or likely to mislead or deceive.

Particulars

Investors and potential investors in shares on the ASX, including ANN Shares, are generally aware that there is a complex and comprehensive regulatory regime including the ASX Listing Rules and ss 674A(2) and 1041H of the Corporations Act, one purpose of which is to ensure that the market is promptly informed of all information which is relevant to the price at which securities are traded and that representations made to the market are not misleading or deceptive.

Particulars of the Plaintiff's holding and reliance upon the alleged assumption will be provided prior to trial.

84 In the Relevant Period, Ansell's Misleading or Deceptive Conduct and/or Continuous Disclosure Contravention (and each of them) (**Market Contraventions**) caused the market price of ANN Shares to be, or materially contributed to the market price of ANN being, greater than:

- (a) their true value; and/or
 - (b) the market price that would have prevailed but for the Market Contraventions,
- from the respective dates that those Market Contraventions commenced.

Particulars

This can be inferred from the matters alleged in paragraph 67 above.

The extent to which the Market Contraventions caused the price for ANN Shares to be greater than their true value and/or the market price that would have otherwise prevailed will be provided, following the service of expert evidence.

- 85 If Ansell had not engaged in the Market Contraventions, or any one or any combination of the Market Contraventions, the Plaintiff and Group Members:
- (a) would have acquired ANN Shares at a lower price than that which prevailed; or
 - (b) would not have acquired ANN Shares at all.

Particulars

But for the EPS Guidance Reliability Representations, and the failure to correct the EPS Guidance Reliability Representations, the Plaintiff would not have acquired ANN Shares on 24 August 2021, 20 September 2021 and 11 November 2021, alternatively would have acquired them at a lower price.

- 86 The Plaintiff and the Group Members have suffered loss and damage resulting from the Market Contraventions.

Particulars

The loss suffered is:

- A. the difference between the price at which the Plaintiff's or Group Member's interest in ANN Shares was acquired and the true value of that interest;
- B. alternatively, the difference between the price at which they acquired their interest in the ANN Shares and whatever is 'left in hand' or has been realised upon sale;
- C. alternatively, the difference between the price at which they acquired their interest in ANN Shares and whatever is 'left in hand', or has been realised on sale modified to take into account any part of the movement in the market price which did not result from the Market Contraventions;
- D. alternatively, the difference between the price at which they acquired their interest in ANN Shares and

the price that would have prevailed but for the Market Contraventions.

Further particulars of the Plaintiff's loss will be provided following service of expert reports. Further particulars of Group Members' loss will be provided following the trial of the common questions.

K COMMON QUESTIONS OF FACT OR LAW

87 The questions of law or fact common to the claims of each of the Plaintiff and the Group Members are:

- (a) Whether Ansell made the EPS Guidance Reliability Representations;
- (b) Whether Ansell contravened s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the Australian Consumer Law by making, maintaining, and/or failing to qualify the EPS Guidance Reliability Representations;
- (c) Whether, during the Relevant Period, the Deficiencies in the Forecast Range was information that a reasonable person would expect to have a material value on the value of ANN Shares;
- (d) Whether, during the Relevant Period, Ansell was negligent and/or reckless with respect to whether the Deficiencies in the Forecast Range was information which would have a material effect on the value of ANN Shares;
- (e) Whether, during the Relevant Period, the Deficiencies in the Forecast Range was information that was not generally available;
- (f) Whether, during the Relevant Period, Ansell was obliged to disclose to the ASX the Deficiencies in the Forecast Range and contravened s 674A(2) of the Corporations Act by failing to do so;
- (g) Whether the Market Contraventions caused the price or value of ANN Shares to be higher during the Relevant Period than they would have been had the Market Contraventions not occurred and, if so, to what extent or by what amount.

AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of Group Members:

- A. A declaration that by making, maintaining or failing to qualify the EPS Guidance Reliability Representations, the Defendant engaged in conduct in contravention of s 1041H of the Corporations Act, s 12DA(1) of the ASIC Act and/or s 18 of the Australian Consumer Law.
- B. A declaration that the Defendant contravened s 674A(2) of the Corporations Act by failing to inform the ASX of some or all of the Deficiencies in the Forecast Range as soon as it became aware, for the purposes of ASX Listing Rules 3.1 and 19.12, of that information.
- C. Damages and/or statutory compensation pursuant to s 1317HA of the Corporations Act, s 1041(1) of the Corporations Act, s 12GF(1) of the ASIC Act and/or s 236 of the Australian Consumer Law.
- D. Interest pursuant to statute.
- E. Costs.
- F. Such further or other orders as the Court sees fit.

Date: 9 August 2023

J STOLJAR

G COLEMAN

Slater & Gordon
Solicitors for the Plaintiff

1. Place of trial—Melbourne
2. Mode of trial—Judge alone
3. This writ was filed—for the plaintiff by Slater & Gordon, solicitors, of 485 La Trobe Street, Melbourne, Victoria 3000.
4. The address of the plaintiff is—6/618 Forest Road, Penshurst, NSW 2222
5. The address for service of the plaintiff is—c/ Slater & Gordon, 485 La Trobe Street, Melbourne, Victoria 3000
6. The email address for service of the plaintiff is—Ben.Hardwick@slatertgordon.com.au
7. The address of the defendant is—678 Victoria St, Richmond VIC 3121