

NOTICE OF FILING

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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 17
Rule 8.05(1)(a)

Further Amended Statement of Claim

Amended on 16 April 2021 pursuant to orders made by the Honourable Justice Lee dated 9 April 2021 and further amended on 19 June 2023 pursuant to orders made by the Honourable Justice Lee dated 19 June 2023

No. NSD 602 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

ANDREW PARKIN

Applicant

BORAL LIMITED (ACN 008 421 7612)

Respondent

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Filed on behalf of	Andrew Parkin (Applicant in NSD 602/2020)		
Prepared by	Julian Schimmel		
Law firm	Maurice Blackburn Pty Ltd		
Tel	(02) 9261 1488	Fax	(02) 9261 3318
Email	jSchimmel@mauriceblackburn.com.au		
Address for service	c/- Maurice Blackburn Pty Ltd, Level 32, 201 Elizabeth Street, Sydney NSW 2000		

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A PRELIMINARY

A.1 The Applicant and the Group Members

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the Applicant on his own behalf and on behalf of persons (**Group Members**) who or which:

(a) acquired:

- (i) an interest in ordinary shares in the Respondent (**Boral Shares**); ~~and/or~~
- (ii) an interest in American Depositary Receipts that represent Boral Shares (**Boral ADRs**); and/or
- (iii) long exposure to Boral Shares by entering into equity swap confirmations in respect of Boral Shares (**Boral Equity Swaps**),

during the period between 21 November 2016 and 10 February 2020 (**Relevant Period**);

(b) suffered loss or damage by reason of the conduct of the Respondent (**Boral**) pleaded in this Further Amended Statement of Claim;

(c) were not during the Relevant Period, and are not as at the date of this Further Amended Statement of Claim, any of the following:

- (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Boral;
- (ii) a related body corporate (as defined in s 50 of the *Corporations Act*) of Boral;
- (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Boral;
- (iv) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of Boral;
- (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia.

2. The Applicant acquired an interest in Boral Shares during the Relevant Period.

PARTICULARS

<u>Transaction Date</u>	<u>Settlement Date</u>	<u>Transaction Type</u>	<u>Number of Shares</u>	<u>Price per Share</u>	<u>Cost</u>	<u>Available Balance</u>
<u>24 Jan 2019</u>	<u>29 Jan 2019</u>	<u>Acquisition</u>	<u>2,000</u>	<u>\$4.945</u>	<u>\$9,890</u>	<u>2,000</u>
<u>18 Feb 2019</u>	<u>20 Feb 2019</u>	<u>Acquisition</u>	<u>4,000</u>	<u>\$4.86</u>	<u>\$19,440</u>	<u>6,000</u>
<u>13 Jan 2020</u>	<u>15 Jan 2020</u>	<u>Disposal</u>	<u>3,000</u>	<u>\$4.89</u>	<u>\$14,670</u>	<u>3,000</u>
<u>14 Jan 2020</u>	<u>16 Jan 2020</u>	<u>Disposal</u>	<u>3,000</u>	<u>\$4.93</u>	<u>\$14,790</u>	<u>0</u>

3. Immediately prior to the commencement of this proceeding, the group, on whose behalf this proceeding is brought, comprised more than seven persons.

A.2 The Respondent

4. Boral is and at all material times was:
- (a) a company registered pursuant to the Corporations Act and capable of being sued;
 - (b) a person within the meaning of ss 1041E and 1041H of the Corporations Act;
 - (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (d) a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
 - (i) s 12 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic);
 - (ii) s 28 of the *Fair Trading Act 1987* (NSW);
 - (iii) s 16 of the *Fair Trading Act 1989* (Qld);
 - (iv) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
 - (v) s 19 of the *Fair Trading Act 2010* (WA);
 - (vi) s 14 of the *Fair Trading Act 1987* (SA);
 - (vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or

(viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT);

(individually, or together, **ACL**).

5. At all material times, Boral:

- (a) was included in the official list of the financial market operated by the Australian Securities Exchange (**ASX**);
- (b) was an entity, the securities of which are ED securities for the purposes of s 111AE of the Corporations Act;
- (c) was a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (d) was subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**); and
- (e) was obliged by ss 111AP(1) and/or 674(1) of the Corporations Act and/or ASX Listing Rule 3.1 to, once it is, or becomes, aware of any information concerning Boral that a reasonable person would expect to have a material effect on the price or value of Boral Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**); and
- (f) had an arrangement with The Bank of New York Mellon Corporation pursuant to which the latter institution issues Boral ADRs (at a ratio of one Boral ADR to four Boral Shares) which are traded on the over-the-counter market in the United States of America under the ticker “BOALY”.

6. At all material times, Boral was prohibited pursuant to:

- (a) section 1041H of the Corporations Act and s 12DA of the ASIC Act, from engaging in conduct in relation to Boral Shares and Boral ADRs (each being a financial product within the meaning of the Corporations Act and ASIC Act); and
- (b) section 18 of the Australian Consumer Law, from engaging in conduct in trade or commerce,

that was misleading or deceptive or likely to mislead or deceive.

B BORAL'S BUSINESS

B.1 Introduction

7. At all material times, Boral:
 - (a) carried on business in Australia, Asia and North America manufacturing and supplying building products and construction materials; and
 - (b) directly or indirectly held interests in entities which operated in Australia, Asia and North America manufacturing and supplying building products and construction materials (the **Boral Group**).
8. During the Relevant Period, the business operations and financial affairs of Boral Group were operated by reference to three divisions being:
 - (a) Boral Australia;
 - (b) USG Boral; and
 - (c) Boral North America.

B.2 Headwaters and Windows

9. On or about 21 November 2016, Boral entered into a binding agreement to acquire Headwaters Incorporated (**Headwaters**), a company which carried on business in the United States of America designing, manufacturing and distributing building products and construction materials.
10. On ~~or about~~ 8 May 2017, Boral completed its acquisition of Headwaters, making Headwaters a wholly owned subsidiary of Boral Industries Inc, and therefore an indirectly held a wholly owned subsidiary of Boral.
11. As at the date of Boral's acquisition of Headwaters, one of Headwaters' subsidiaries, Headwaters Windows LLC (later known as Boral Windows LLC) (**Windows**), carried on business designing and manufacturing windows and doors.
12. During the Relevant Period, from 8 May 2017, Headwaters, including Windows, formed part of the Boral North America division of Boral.

B.3 Relevant Boral personnel

13. At all material times, Boral had an executive committee (**Executive Committee**) which was responsible for:
- (a) implementing Boral's strategic objectives; and
 - (b) managing business performance, monitoring and reviewing financial and non-financial risks and overseeing and developing Boral's people.
14. Michael Kane (**Kane**) was:
- (a) from 1 October 2012 to 30 June 2020, ~~and is~~ the Chief Executive Officer and Managing Director of Boral and as such was responsible for, amongst other things:
 - (i) ensuring Boral's operations and business were within the parameters set by the board from time to time and that the board was kept informed of material developments in the organisation's affairs, operations and business;
 - (ii) identifying and managing operational and corporate risks for Boral and, where those risks could have a material impact on Boral, formulating strategies for managing and mitigating those risks, including for consideration and endorsement (as applicable) by the board; and
 - (iii) managing Boral's financial and other reporting mechanisms, and control and monitoring systems, to ensure that these mechanisms and systems captured all relevant material information on a timely basis, ~~a~~were functioning effectively and ~~a~~were founded on a sound basis of prudential risk management;
 - (b) from the formation of the Executive Committee in financial year 2013 until his retirement as Chief Executive Officer and Managing Director of Boral on 30 June 2020, ~~15 February 2010 and is~~ a member of Boral's ~~E~~xecutive ~~C~~ommittee;
 - (c) at all material times in the United States of America for approximately 50 per cent of the year to oversee Boral's integration of Headwaters;
 - (d) at all material times an officer of Boral within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

15. Yuen Ling “Rosaline” Ng (**Ng**) was:

- (a) from 15 September 2013 to 15 October 2020, ~~and is~~ the Chief Financial Officer of Boral and as such had responsibility for Boral’s finance function including risk, treasury, taxation and audit;
- (b) from 15 September 2013 to 15 October 2020, ~~and is~~ a member of Boral’s Executive Committee;
- (c) at all material times responsible for the project management of the Headwaters transaction;
- (d) at all material times an officer of Boral within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

16. Damien Sullivan (**Sullivan**) was:

- (a) from 1 July 2013 to 8 February 2021, ~~and is~~ the Group General Counsel of Boral and as such had responsibility for, amongst other things:
 - (i) ensuring Boral had adequate compliance programs in place;
 - (ii) identifying and managing Boral’s legal risks;
- (b) from 1 July 2013 to 8 February 2021, ~~and is~~ a member of Boral’s Executive Committee;
- (c) at all material times an officer of Boral within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

17. David Mariner (**Mariner**) was:

- (a) from 1 July 2016 to 31 May 2020, ~~and is~~ the President and Chief Executive Officer of Boral Industries Inc and as such had responsibility for, amongst other things, managing and overseeing the business and operations of Boral North America;
- (b) from 1 July 2016 to 31 May 2020, ~~and is~~ a member of Boral’s Executive Committee;
- (c) at all material times an officer of Boral within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

17A. Oren Post (**Post**) was:

(a) from 2013 to about March 2020, the Chief Financial Officer of Boral Industries Inc, being the most senior finance leadership role in the Boral North America division;

(b) at all material times an officer of Boral within the meaning of s 9 of the Corporations Act and r 19.12 of the ASX Listing Rules.

18. By reason of the matters pleaded in paragraphs 14 to 17A to above any information of which any or all of:

(a) Kane;

(b) Ng;

(c) Sullivan; ~~and~~

(d) Mariner; and

(e) Post;

became aware, or which reasonably ought to have come into his or her possession in the course of the performance of his or her respective duties as an officer of Boral, was information of which Boral was aware (as aware is defined within the meaning of r 19.12 of the ASX Listing Rules).

C RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES

19. At all material times, materials published by Boral to the ASX were available to the market of investors and potential investors in Boral Shares, Boral ADRs and Boral Equity Swaps (**Affected Market**).

C.1 21 November 2016

20. On 21 November 2016, Boral made an announcement to the ASX entitled “Boral to acquire Headwaters Incorporated – a strategically compelling portfolio of US businesses – supported by capital raising” (**21 November 2016 Announcement**).

21. In the 21 November 2016 Announcement, Boral made the following statements:
- (a) Boral has entered into a binding agreement to acquire Headwaters Incorporated for US\$24.25 per share in cash, representing an aggregate enterprise value of ~US\$2.6 billion (~A\$3.5 billion);
 - (b) the strategically compelling acquisition transforms Boral, better positioning the Group to deliver more sustainable growth and above cost of capital returns through market cycles;
 - (c) Headwaters has been rigorously assessed;
 - (d) a detailed due diligence has been completed, synergies identified, and integration planning is underway;
 - (e) the Headwaters acquisition was highly compelling; and
 - (f) the Headwaters acquisition would have a strong positive impact on Boral's shareholder value,
- (together and separately, **21 November 2016 Statements**).

PARTICULARS

- i. The 21 November 2016 Statements were express and were made in writing in the 21 November 2016 Announcement.*

C.2 5 May 2017

22. On 5 May 2017, Boral made an announcement to the ASX entitled "Boral completing its acquisition of Headwaters Incorporated in early May" (**5 May 2017 Announcement**).
23. In the 5 May 2017 Announcement, Boral made the following statements:
- (a) Boral expects that the [Headwaters] transaction will close in two business days, and the Headwaters financial results will be consolidated from this time;
 - (b) Headwaters had a strong strategic fit with Boral's existing US business, adding significant scale to Boral's US footprint through complementary businesses with improved geographic reach and ability to compete across North America;
 - (c) Boral USA and Headwaters combined will form a new division to be named Boral North America – a ~US\$1.8 billion revenue business, with an expanded product

offering, strong manufacturing and distribution footprint, significantly larger earnings and improved opportunities;

- (d) together with US\$30 million to US\$35 million of synergies expected to be delivered in year one, and in excess of US\$100 million per annum by year four, Boral North American will be a significant and growing contributor to Boral's Group earnings;
- (e) Boral's financial results for Boral North America will be reported under Construction Materials (Fly ash, Block and Denver construction materials) and Building Products (Stone, Roofing, Light Building Products and Windows) as well as the Meridian Brick joint venture, with commentary to be provided on each business unit within the reporting segments;
- (f) David Mariner, President and Chief Executive of Boral North America, will lead a team of experienced executives from both Boral and Headwaters, to integrate the two businesses and deliver the identified synergies;
- (g) a dedicated project management office has been established to support the integration and synergy realisation process, and a specialist M&A firm, Pritchett, has been engaged to assist with the process. In addition, Boral's CEO Mike Kane will spend approximately half of his time in the USA during the early years of integration and synergy delivery;
- (h) we have been eagerly awaiting the approval from US regulators to allow us to complete the acquisition and to deliver on our strategy. In the meantime, we have continued to develop our integration plans and we are confident in our ability to delivery on the synergy targets we established when the transaction was announced;
- (i) both organisations are highly aligned strategically and culturally so it's an existing time as we come together to deliver substantial value for our customers, shareholders and employees,

(together and separately, **5 May 2017 Statements**).

PARTICULARS

- i. The 5 May 2017 Statements were express and were made in writing in the 5 May 2017 Announcement.*

C.3 9 May 2017

24. On 9 May 2017, Boral made an announcement to the ASX entitled “Boral completes acquisition of Headwaters Incorporated” (**9 May 2017 Announcement**).
25. In the 9 May 2017 Announcement, Boral made the following statements:
- (a) Boral Limited announced today that it has completed its acquisition of Headwaters Incorporated a leading building products manufacturer and fly ash marketer in North America;
 - (b) with closing of the acquisition, effective Monday 8 May in the United States, Headwaters becomes a wholly owned subsidiary of Boral Limited and no longer a publicly traded company;
 - (c) to ensure that we seamlessly realise the benefits of this strategic acquisition for all our stakeholders, teams from Boral and Headwaters are coming together to implement integration plans that leverage the talents and expertise of both companies,
- (together and separately, **9 May 2017 Statements**).

PARTICULARS

- i. The 59 May 2017 Statements were express and were made in writing in the 59 May 2017 Announcement.*

C.4 30 August 2017

26. On 30 August 2017, Boral:
- (a) published and released to the ASX its Appendix 4E Preliminary Financial Report for FY17 (**FY17 Appendix 4E**); and
 - (b) made an announcement to the ASX entitled “Results for announcement to the market – full year ended 30 June 2017” (**30 August 2017 Announcement**); and
 - (c) published to the ASX a covering letter dated 30 August 2017 enclosing “Results for full year ended 30 June 2017 – Investor Presentation” (**FY17 Investor Presentation**).

27. In the 30 August 2017 Announcement, Boral made the following statements:
- (a) Boral had delivered a substantial increase in EBIT from Boral North America, underpinned by the completion of the Headwaters acquisition. Integration is tracking well and in line with our expectations, and we expect to deliver significant earnings growth in FY2018, with a full year contribution from Headwaters, and synergy delivery, as well as continued steady market growth;
 - (b) The early integration of Headwaters provides a strong start for synergy delivery in FY2018 and US\$100m per annum within 4 years;
 - (c) Confidence remained strong around delivery of FY2018 and longer-term synergy targets, as integration and mobilisation activities have successfully rolled out through the organisation in the first three months.

PARTICULARS

- i. The 30 August 2017 Statements were express and were made in writing in the 30 August 2017 Announcement.*

27A. In the FY17 Investor Presentation, Boral made the following statements:

- (a) integration and mobilisation activities successfully rolled out in first 3 months;
- (b) all businesses have developed detailed synergy plans - fast tracking execution, where possible;
- (c) performance in line with expectations; strong confidence around synergies;
- (d) post close review and early integration provide strong confidence around synergy delivery of US\$30-\$35m in year 1 and >US\$100m p.a. in year 4.

PARTICULARS

- i. The 30 August 2017 Statements were express and were made in writing in the FY17 Investor Presentation (BOR.601.034.0861).*

28. On 30 August 2017, Boral convened a call in a manner likely to bring things said during it to the attention of the Affected Market (**30 August 2017 Call**).

PARTICULARS

- i. The 30 August 2017 Call was transcribed and published by Thomson Reuters.*

ii. *The 30 August 2017 Call was attended by Boral's senior management and analysts who follow and report on Boral including:*

- *Kane;*
- *Ng;*
- *Mariner;*
- *Andrew Johnston (CLSA Limited) (**Johnston**);*
- *Andrew Peros (Credit Suisse AG) (**Peros**);*
- *Andrew Scott (Morgan Stanley) (**Scott**);*
- *Emily Smith (Deutsche Bank AG) (**Smith**);*
- *Peter Steyn (Macquarie Research) (**Steyn**);*
- *Simon Thackray (Citigroup Inc) (**Thackray**).*

29. During the 30 August 2017 Call, Boral made the following statements:

- (a) Kane said: "Headwaters is performing in line with our expectations with integration on track";
- (b) Kane said: "there is work being done to complete an IT roadmap and streamline support services, and where we can, we are fast tracking synergy execution";
- (c) Kane said: "anyone who thinks that we're not going to achieve the synergies we've announced for this deal is making the wrong bet. We -- now having several months under our belt and looking deeply inside the business, we're seeking opportunities and synergies beyond what we expected. So we expect to do well on synergies. I think I set the audience up when we announced the deal saying that it would be really challenged to see them in the first year. I underestimated the ability of our team. I don't think they'll be as challenged as we thought to be able to clearly deliver those synergies and possibly more in the first year. So I am more optimistic today than I was when we announced this deal about our abilities to achieve those synergies and exceed these synergies in the long run. So that's about all I want to say about synergy attainment without giving you a specific number, but our confidence is running high on synergies";
- (d) Kane said: "[we are] highly confident about how we've integrated these organisations. The team is set. We know where we're going. We're -- everyone

understands their mission. The second piece are the synergies. We were very concerned that our credibility's at stake, we have to do deliver these synergies, are we going to be able to do it? Well, early reports are highly confident in our ability to deliver these synergies now. If we were confident, we're now highly confident";

- (e) Kane said: "we have a full team of seasoned executives going after it, and we're confident in our ability to execute",

(together and separately, **30 August 2017 Statements**).

PARTICULARS

- i. The 30 August 2017 Statements were express and were made orally by Kane during the 30 August 2017 Call.*

C.5 13 February 2018

30. On 13 February 2018, Boral:

- (a) made announcements to the ASX entitled "Results Announcement for the half year ended 31 December 2017", and "Results for half year ended 31 December 2017 – Investor Presentation" (**13 February 2018 Announcements**); and
- (b) convened a call in a manner likely to bring the things said during it to the attention of the Affected Market (**13 February 2018 Call**).

PARTICULARS

- i. The 13 February 2018 Call was transcribed and published by Thomson Reuters.*
- ii. The 13 February 2018 Call was attended by Boral's senior management and analysts who follow and report on Boral including:*
- Kane;
 - Ng;
 - Mariner;
 - Johnston;
 - Brook Campbell-Crawford (JP Morgan) (**Campbell-Crawford**);
 - Keith Chau (Evans & Partners) (**Chau**);
 - Lee Power (Deutsche Bank) (**Power**);

- *Steyn;*
- *Peter Wilson (Credit Suisse) (**Wilson**);*
- *Thackray; and*
- *Sophie Spartalis (Bank of America Merrill Lynch) (**Spartalis**).*

31. In the 13 February 2018 Announcement and the 13 February 2018 Call, Boral made the following statements:

- (a) Kane said: “I must say that now that we have the keys that have been driving the Headwaters integration, we are more than confident that this acquisition will be every bit the transformative deal we anticipated it to be. The board and management are delighted with the incredible opportunity we will enjoy as we continue to build on the great foundation of Headwaters in combination with Boral’s North American asset base”;
- (b) Kane said: “I’m comfortable. I’m confident this is a fantastic business. We are so glad we acquired Headwaters”;
- (c) Kane said: “these strong results confirm that our transformation strategy is on track. The Headwaters acquisition has helped transform Boral into a construction and material and building products group with a greater geographic reach and improved prospects for growth”;
- (d) Kane said: “We are very pleased with our transformed North American division, which reported a significant increase in earnings as a result of a full period contribution from the Headwaters business”;
- (e) Kane said: “We are well on the way to exceed our targeted synergies for the full year, with US\$18 million of synergy benefits banked in the first half, and to exceed US\$100 million in four years”;
- (f) Boral North America delivered a substantial lift in EBITDA to A\$184 million (US\$144 million) from A\$41 million (US\$30 million) reported in the same period last year. The result includes a full period contribution from Headwaters with US\$18 million of synergy benefits for the half year against the FY2018 target of US\$30-\$35 million, which we now expect to exceed. On a proforma basis, EBITDA growth of 4% to US\$144 million was tempered by a series of significant weather events including two hurricanes, as well as temporary plant operation

issues, and lower earnings from Meridian Brick. The division reported EBITDA margin of 16.3% and is well placed to deliver above cost of capital returns over time through full realisation of synergies and market growth;

- (g) Kane said: "Magnolia Windows in Georgia was an acquisition that Headwaters did in the closing moments. As a matter of fact, they acquired this business in-between the time we announced the deal and we closed the deal. They did tell us that it was happening ... But we – not being in the Windows business, we weren't exactly sure what that all meant, but we found out rather quickly that Magnolia was having issues. I have Joel Charlton who heads up our innovation center and is a key part of the management team in North America and has had Windows reporting directly to him from the date of closure. And he has been working diligently on getting Magnolia fixed ...";
- (h) Boral North America's EBITDA growth had been affected to the amount of \$7 million by matters including plant commissioning costs, integration of businesses acquired by Headwaters (including Windows) and safety interventions, but Kane said this was "small-dollar impacts, identifiable issues, there's nothing on this chart we don't understand or understand how to fix";
- (i) Kane said: "Looking at the overall integration of Headwaters, we are pleased with the quality of our transformed North American business and the progress our team has made to date. There's been a number of areas which have exceeded our expectations as well as some challenges, some of which I've talked about and we've responded accordingly. Most pleasingly, we've seen greater opportunities for synergies than we first expected which has strengthened our confidence in achieving our targets. We've also seen a generally positive response from our employees and customers through the integration process";
- (j) Kane said: "Integrating Headwaters into Boral North America is a substantial undertaking, and there's also been some challenges. Foremost, we've spent more management time and capital improving safety performance than we had anticipated. The roofing business Headwaters acquired around the time of our acquisition have underperformed, and the integration of Magnolia Windows in the crest market [into Krestmark] has been challenging. Stone has had some larger than expected acquisition-related share loss, which we are clawing back currently. And Clubhouse Decking, Enviroshake in Canada and the energy

business were all small underperforming businesses, read losing money, which we've now divested”;

- (k) Kane said: “looking at acquisition synergies in more detail. We’re confident delivering the excess of USD 100 million per annum of synergy benefits in financial year 2021 ... To date we’ve reduced headcount by 170, which contributed USD 14 million to the first half synergies, made significant savings in procurement, integrated all key IT processes ... We now expect to deliver in excess of USD 35 million of synergies in financial year '18 and exit run rate exceeding USD 50 million to USD 55 million per annum by the end of financial year '18”;
- (l) Kane said: “Boral North America is expected to deliver a significantly higher EBITDA in FY2018 reflecting the Headwaters acquisition, over US\$35 million of year one synergy benefits and underlying growth. EBITDA is expected to be substantially skewed to 2H as a result of: further delivery of synergies; price growth; a return to normal weather conditions; progress in resolving operational issues; and normal season impacts, which typically result in higher volumes and activity in Q4”;
- (m) in answer to the question “what gives you the confidence or have you had the business long enough to have higher conviction that these are the end of the initial operational issues and integration issues that were actually outside the scope that Boral identified at the time of acquisition”, Kane said: “when you consider the size of the North American footprint, I’m sure there’ll be some surprises as we travel along the one thing I know about the US team because I’ve helped build this team since 2010 is they’re some of the best building products and construction materials professionals in the North American market. It’s a young team. It’s an aggressive team. They know their business, and I wouldn’t want to have any other than the one I’ve got right now”,

(together and separately, **13 February 2018 Statements**).

PARTICULARS

- i. As to (a) to (e), (g), (i) to (m) the statements were express and were made orally by Kane in the 13 February 2018 Call (speaking to the slideshow component of the 13 February 2018 Announcements).*
- ii. As to (f) the statements were express and were made in writing in the 13 February 2018 Announcement.*

C.6 24 April to 1 May 2018

32. On 24 April 2018 at 4:56PM, Boral made an announcement to the ASX entitled “Boral announces property earnings and trading update” (**24 April 2018 Announcement**).
33. In the 24 April 2018 Announcement, Boral made the following statements:
- (a) Boral had revised its divisional outlook for Boral North America;
 - (b) March quarter earnings for Boral North America were below expectations due to weather impacts;
 - (c) operational issues reported in the first half are being resolved, although consolidation of production lines in the Oceanside metal roofing business in California are still being addressed, commissioning costs associated with the Greencastle stone plant continued to impact until the end of March, and higher costs in the Fly Ash business due to the closure of three utilities in Texas were having a short-term impact;
 - (d) with historically more favourable weather in the June quarter, pent up demand, synergy delivery and improved operations performance, Boral North America is expected to deliver an earnings lift in the second half of around 10-25% compared to the first half, on an EBITDA and EBIT basis.
34. On 1 May 2018 at 9:00AM (AEST), Boral convened a call in a manner likely to bring the things said during it to the attention of the Affected Market (**1 May 2018 Call**).

PARTICULARS

- i. Notice of the 1 May 2018 Call was given in an announcement by Boral on 30 April 2018 to the ASX entitled “Conference call with analysts and investors”, which stated it was in regard to the 24 April 2018 Announcement.*
- ii. The 1 May 2018 Call was transcribed by Thomson Reuters.*
- iii. The 1 May 2018 Call was attended by Boral’s senior management and analysts who follow and report on Boral including:*
 - Kane;
 - Ng;
 - Mariner;
 - Scott;

- *Campbell-Crawford;*
- *Chau;*
- *Power;*
- *Steyn;*
- *Wilson; and*
- *Thackray.*

35. During the 1 May 2018 Call, Boral made the following statements:

- (a) Kane said: “I want to stress that there are no concerns with the fundamentals of the North American business. Synergy delivery is progressing well and on target and will exceed the targets. We are very pleased with the successful integration of the two businesses. We remain highly confident about what the businesses can and will deliver”;
- (b) Kane said: “moving across every asset in this portfolio [Headwaters] from head to toe, there are no surprises out there. There are not varying debt spend issues that are going to bubble up and float on us, but most of these divisions are in excellent shape, both new plants are in excellent shape. We had to do some housekeeping and we’ve had to put some guards and we’ve seen the opportunity for upgrade, but normally those are still seeing the ability to grow volumes and shares and so, no. There are no things are going to jump up and bite us in the ass coming out of the networks in North America this week did across all [inaudible]. And we’re running those operations and we understand them. It’s not a business, with the exception of windows and – windows, I guess, is the only one that we didn’t understand going into this deal. And so frankly, no surprises coming forward and we don’t expect any”,

(together and separately, **1 May 2018 Statements**).

PARTICULARS

- i. The 1 May 2018 Statements were express and were made orally by Kane during the 1 May 2018 Call.*

C.7 29 August 2018

36. On 29 August 2018, Boral:

- (a) made announcements to the ASX entitled “Results for announcement to the market – full year ended 30 June 2018”, “Results – Investor Presentation FY2018” (being a slideshow presentation) and “Media Release and Management Discussion & Analysis” (being a slideshow presentation (**29 August 2018 Announcements**));
- (b) published and released its financial results for the year ended 30 June 2018 (**FY18 Appendix 4E**).

37. In the 29 August 2018 Announcements and the FY18 Appendix 4E, Boral made the following statements:

- (a) significant contribution from Headwaters and the delivery of US\$39 million of synergies in year 1 against a target of \$US35 million;
- (b) Boral North America delivered a full year EBITDA of US\$284 million, 9% above the proforma combined Boral and Headwaters result last year. Strong fourth quarter EBITDA margins exceeded 20% with full year EBITDA margins of 7%;
- (c) we are confident in the success of our integration of the Headwaters acquisition during the year. First year delivered synergies of US\$39 million exceeded our initial US\$30-US\$35 million target. We have increased our initial 4 year synergy target by 15% to US\$115 million, as a result;
- (d) Boral North America is expected to increase EBITDA by around 20% or more in FY2019 reflecting further significant synergies of around US\$25 million in FY2019, together with operational improvements and market growth, assuming more normal weather patterns (**Boral North America FY19 Guidance**);
- (e) [tick symbol] business transformation – the successful integration of Headwaters into Boral North America marks a significant milestone;
- (f) strong earnings lift through acquisition and successful integration of Headwaters;

- (g) during FY2018, we made further progress on the integration of the Headwaters acquisition with the businesses enjoying strong cultural alignment and excellent support from employees and customers;
- (h) Windows revenue lift of 32% reflects the acquisition by Headwaters of Krestmark in August 2016 and Magnolia in February 2017, coupled with underlying volume growth of 5%. Operational issues at Magnolia in the first half negatively impacted margins;
- (i) operational improvement initiatives at the Magnolia plant, including the installation of a key new plant component and implementation of LEAN manufacturing principles, were completed in FY2018 and are expected to deliver improved performance in FY2019,

(together and separately, **29 August 2018 Statements**).

PARTICULARS

- i. The 29 August 2018 Statements were express and were made in the 29 August 2018 Announcements.*

C.8 17 September 2018

- 38. On 17 September 2018, Boral published its 2018 Annual Report on the ASX and on its website (**Boral 2018 Annual Report**).
- 39. In the Boral 2018 Annual Report, Boral made the following statements:
 - (a) with FY2018 marking the first full year of ownership of the Headwaters business in North America, the Board remains very positive about the acquisition. The compelling opportunity that we say in the acquisition and the undeniably strong fit with Boral's existing business, are reflected in the outperformance of synergy delivery. Our year one target was to deliver US\$30-35 million of synergies; we delivered US\$39 million. Our initial four year target was for US\$100 million; we have now increased this target to US\$115 million; and
 - (b) the integration of the Headwaters acquisition during the year progressed very well;

- (c) operational issues at the Magnolia plant in the first half had negatively impacted margins, but that operational improvements at the plant were completed in FY2018 and were expected to deliver improved performance in FY2019,

(together and separately, **17 September 2018 Statements**).

PARTICULARS

- i. The 17 September 2018 Statements were express and were made in writing in the Boral 2018 Annual Report.*

C.8A 18 September 2018

39A. On 18 September 2018, Boral published to the ASX a cover letter dated 18 September 2018 enclosing copies of slides on Boral North America's operation being presented to members of the investment community in Atlanta (Georgia) and Lake Wales (Florida) on 18 and 19 September 2018 (**18 September 2018 Investor Site Tour Presentation**).

39B. In the 18 September 2018 Investor Site Tour Presentation, Boral made the following statements:

- (a) integration & synergies progressing well, operational issues largely addressed;
(b) in relation to plant integration at Magnolia "operational issues largely resolved";
(c) revamped analytical capabilities via system improvements at Magnolia; and
(d) "full inventory management controls" implemented at Krestmark.

(together and separately, **18 September 2018 Statements**).

PARTICULARS

- i. The 18 September 2018 Statements were express and were made in writing in the 18 September 2018 Investor Site Tour Presentation (BOR. 601.080.4818).*

C.9 4 February 2019

40. On 4 February 2019, Boral:

- (a) made an announcement to the ASX at 7:48AM (AEDST) entitled "Boral announces trading update and revised FY2019 guidance" (**4 February 2019 Announcement**); and

- (b) convened a call at 10:00AM (AEDST) in a manner likely to bring the things said during it to the attention of the Affected Market (**4 February 2019 Call**).

PARTICULARS

- i. Notice of the 4 February 2019 Call was given in the 4 February 2019 Announcement.*
- ii. The 4 February 2019 Call was transcribed by Thomson Reuters.*
- iii. The 4 February 2019 Call was attended by Boral's senior management and analysts who follow and report on Boral including:*
 - Kane;*
 - Ng;*
 - Scott;*
 - Campbell-Crawford;*
 - Power;*
 - Wilson;*
 - Steyn;*
 - Thackray;*
 - Spartalis;*
 - Tom Westbrook (Reuters);*
 - Simon Evans (Financial Review); and*
 - James Rutledge (Perpetual).*

41. In the 4 February 2019 Announcement and 4 February Call, Boral made the following statements:

- (a) Boral Limited today announced that for the first half of FY2019 it expects net profit after tax to be approximately \$200 million and earnings before interest, tax, depreciation and amortisation to be approximately \$485 million, subject to finalisation of the auditors' review;
- (b) Boral would announce its interim FY19 results on 25 February 2019;
- (c) FY19 EBITDA growth from Boral North America, of approximately 15% in US dollars, excluding discontinued operations;

- (d) key factors impacting Boral's first half earnings include, for Boral North America:
 - (i) delivery of Headwaters acquisition synergies is progressing well; and
 - (ii) first half was impacted by above average rainfalls in key US states;
- (e) Kane said: "for Boral North America, we had said we were expecting EBITDA growth of 20% or more. We are now expecting around 15% year on year growth. Again, weather has impacted our results to date, with the extreme wet weather that hit Texas and went up to the Midwest in the September quarter continuing somewhat for the remainder of the half year, particularly in December, which impacted our Texas-based businesses";
- (f) in answer to the question "is there anything internally that might be difficult to achieve between goals of losing volumes and extracting costs, both in terms of these more recent initiatives and your synergies for the Headwaters acquisition?", Kane said: "No. The -- there's a consistency between the work we're doing on cost-out. Things within our control, we feel fairly comfortable about. Things that are outside our control, as we've announced, have -- had this impact",

(together and separately, **4 February 2019 Statements**).

PARTICULARS

- i. As to (a) to (d) the statements were express and were made in writing in the 4 February 2019 Announcement.*
- ii. As to (e) and (f) the statements were express and were made orally by Kane in the 4 February 2019 Call.*

C.10 25 February 2019

42. On 25 February 2019, Boral:

- (a) made an announcement to the ASX entitled "Results Announcement for the half year ended 31 December 2018" (**25 February 2019 Announcement**);
- (b) published and released to the ASX an investor presentation entitled "Results for the half year ended 31 December 2018" (**25 February 2019 Presentation**).

43. In the 25 February 2019 Announcement and the 25 February 2019 Presentation, Boral made the following statements:

- (a) Boral's EBITDA for the HY2019 (excluding significant items) was \$485 million;
- (b) Boral's EBIT for HY2019 (excluding significant items) was \$297 million;
- (c) Boral's NPAT for HY2019 (excluding significant items) was \$200 million;
- (d) Boral North America's EBITDA HY2019 (excluding significant items) was \$196 million or US\$141 million compared with EBITDA of \$165 million or US\$129 million in HY2018 (being an increase of 18% in AUD and 9% in USD);
- (e) Boral North America's EBIT for HY2019 (excluding significant items) was \$115 million or US\$83 million compared with EBIT of \$90 million or US\$70 million in HY2018 (being an increase of 28% in AUD and 18% in USD);
- (f) Boral North America: Synergies of US\$14m achieved, with business on track to deliver US\$25m target in FY2019;
- (g) we remain pleased with the integration of the Headwaters acquisition, with further synergies of US\$14 million delivered in the half year, adding to US\$39 million already delivered, and on track for US\$115 million in year 4,

(together and separately, **25 February 2019 Statements**).

PARTICULARS

- i. The 25 February 2019 Statements were express and were made in writing the 25 February 2019 Announcement and the 25 February 2019 Presentation.*

C.11 26 August 2019

44. On 26 August 2019, Boral:

- (a) published and released to the ASX its Appendix 4E Preliminary Financial Report for FY19 (**FY19 Appendix 4E**); and
- (b) made an announcement to the ASX entitled "Results for announcement to the market – full year ended 30 June 2019" (**26 August 2019 Announcement**).

45. In the Appendix 4E and 26 August 2019 Announcement, Boral made the following statements:

- (a) Boral's EBITDA (excluding significant items) for FY19 was \$1,033 million;
- (b) Boral's EBIT (excluding significant items) for FY19 was \$660 million;
- (c) Boral's NPAT (excluding significant items) for FY19 was \$440 million;
- (d) Boral North America's EBITDA (excluding significant items) for FY19 was \$415 million or US\$297 million compared with \$349 million or US\$270 million for FY18 (being an increase of 19% in AUD and 10% in USD);
- (e) Boral North America's EBIT (excluding significant items) for FY19 was \$252 million or US\$180 million compared with \$199 million or US\$154 million for FY18 (being an increase of 27% in AUD and 17% in USD);
- (f) Windows reported a 5% lift in revenue reflecting market share gains, partly offset by lower volumes due to the impact of adverse weather conditions. Earnings were higher, benefiting from higher volumes, modest price growth, reduced raw material costs and improvements in logistics, which offset high labour costs;
- (g) we continue to make good progress integrating the Headwaters acquisition. The consolidation of back office, finance and IT systems is continuing in line with our expectations;
- (h) Boral North America delivered revenue growth of 3% to US\$1.59b (up 12% to A\$2.23b) and EBITDA growth of 10% to US\$297m (up 19% to A\$415m) for continuing operations;
- (i) we expect Boral's NPAT (before significant items) to be around 5-15% lower in FY2020 relative to FY2019 (**FY20 Guidance**);
- (j) Boral North America: Revenue in USD up 3% largely driven by a strong lift in Roofing and increased contribution from Windows;
- (k) we continue to deliver improvements in plant operational issues in Roofing, Stone and Windows that impacted in FY2018 and realise benefits from operational improvements in FY2019,

(together and separately, **26 August 2019 Statements**).

PARTICULARS

- i. The 26 August 2019 Statements were express and were made in writing in the Appendix 4E and 26 August 2019 Announcement.*

C.11A 19 September 2019

- 45A. On 19 September 2019, Boral published to the ASX a cover letter dated 19 September 2019 enclosing copies of slides on Boral North America's operation being presented to members of the investment community in Sacramento and Napa (California) on 19 and 20 September 2019 (19 September 2019 Investor Site Tour Presentation).
- 45B. In the 19 September 2019 Investor Site Tour Presentation, Boral stated in response to the FY19 strategic objectives of "integrate business and deliver on synergies", "operational issues resolved" at Boral North America (19 September 2019 Statements).

PARTICULARS

- i. The 19 September 2019 Statements were express and were made in writing in the 19 September 2019 Investor Site Tour Presentation (BOR.607.005.4893).*

C.12 6 November 2019

- 46. On 6 November 2019, Boral held its Annual General Meeting for 2019 (**2019 AGM**).
- 47. At the 2019 AGM, Boral made the following statements:
 - (a) while integration of the Headwaters businesses has progressed well, it is fair to say that we expected earnings growth to be coming through at a faster pace;
 - (b) the consolidation of Boral North America's back office, finance and information systems is also continuing in line with expectations;
 - (c) given the challenges we have seen in the USA, I have been asked by some shareholders if Boral is still comfortable with the decision it made in 2016 to acquire the Headwaters business. My answer is a strong yes. The Board remains confident and positive about the rationale and the strategic fit of the Headwaters business;

- (d) after much consideration it was clear that the value for Boral was with the much larger acquisition of Headwaters, which was exceptionally well aligned with Boral's business;
 - (e) overall, our view of where we expect Boral's earnings to be for the full year remains unchanged. We reaffirm our FY2020 outlook guidance provided in August;
 - (f) we continue to expect Boral's NPAT (before significant items) to be around 5 to 15% lower in FY2020 relative to FY2019. This guidance reflects lower earnings and higher depreciation charges;
 - (g) after the first quarter trading, we expect Boral's EBITDA in the first half of the year to be around 5% lower than the prior year;
 - (h) the further integration of Headwaters in financial year '19 progressed very well.
- (together and separately, **6 November 2019 Statements**).

PARTICULARS

- i. The 6 November 2019 Statements were express and were made orally by Kathryn Fagg, Boral's chairman, and Kane at the 2019 AGM.*
- ii. The 6 November 2019 Statements were express and were also reported in writing by Boral to the ASX.*

D THE 5-6 DECEMBER CORRECTIVE DISCLOSURES AND THEIR PRICE IMPACT

D.1 5-6 December 2019

- 48. At approximately 5:36pm on 5 December 2019, Boral made an announcement to the ASX entitled "Financial Irregularities in Boral's North American Windows business" (**5 December 2019 Announcement**).
- 49. In the 5 December 2019 Announcement, Boral made the following statements:
 - (a) Boral advises that it has identified certain financial irregularities in its North American Windows business, involving misreporting including in relation to inventory levels and raw material and labour costs at our Windows plants;

- (b) with oversight by the Board and senior management, a privileged and confidential investigation is being conducted by lawyers retained by Boral, who have also engaged forensic accountants to assist the investigation. This is being treated with the highest priority;
 - (c) the investigation is ongoing so details are preliminary at this point but the irregularities appear to relate to the period between September 2018 and October 2019;
 - (d) based on information currently available, it is estimated the irregularities relating to the period between September 2018 and October 2019 will result in a one-off impact on earnings before interest, tax, depreciation and amortisation in the order of US\$20 million to US\$30 million;
 - (e) any potential impact on earnings from the Windows business (beyond October 2019) is still being determined;
 - (f) Boral's CEO & Managing Director, Mike Kane said that the Company is committed to thoroughly investigating the matter and taking appropriate action. "We are undertaking a comprehensive and urgent investigation of this matter to fully understand the events and what we need to do in order to address the problem. We have implemented immediate steps to bolster the management and controls within this business. Once we have all the facts, we will ensure that appropriate action is taken at all relevant levels";
 - (g) in addition to the measures already taken, Boral is reviewing its management, operating procedures and internal control processes for its Windows business and will adapt that review as the investigation results become clear; and
 - (h) this matter was not factored into Boral's first half and full year FY2020 guidance provided at its Annual General Meeting on 6 November 2019.
50. At approximately 8:30am on 6 December 2019, Boral convened a call in a manner that was to bring the things said during it to the attention of the Affected Market (**6 December 2019 Call**).

PARTICULARS

- i. Notice of the 6 December 2019 Call was given in the 5 December 2019 Announcement.*

- ii. *The 6 December 2019 Call was transcribed by Thomson Reuters.*
- iii. *The 6 December 2019 Call was attended by Boral's senior management and analysts who follow and report on Boral including:*
 - *Kane;*
 - *Ng;*
 - *Scott;*
 - *Campbell-Crawford;*
 - *Daniel Kang (Citigroup);*
 - *Chau;*
 - *Wilson;*
 - *Thackray; and*
 - *Spartalis.*

51. During the 6 December 2019 Call, Boral made the following statements:

- (a) in answer to the question “and in terms of the USD 20 million to USD 30 million impacted the EBITDA line, Mike, what’s the allocation between the 10 months that you’re calling out in FY’19 versus this year, if it can be done that way”, Kane said: “So I’ll make a comment, then I’ll ask Ros to talk about the allocation of where the money comes in the 2 financial years. We bring fences at this point in the investigation between the months of September 2018 and October 2019, and we believe that the issue largely occurs within those 2 stakes in the ground. We have a full financial year report for our financial year 2018 with other people in the financial roles at the time that we have confidence in what that information was. We’re going back and rechecking as well as looking forward and trying to look at the margins in the business and understand it going forward. But we don’t have all the answers today, but what we do know is that we estimate in the order of USD 20 million to USD 30 million as occurring between those 2 dates”;
- (b) in answer to the question “just in regards to your confidence in the broader business just in terms of the financial discipline, please?”, Kane said: “the Windows business is a unique business in the portfolio of North American in that when it came into the portfolio, there was no like-for-like business that it merged with, whereas in the other divisions, there were like-for-like mergers. There’s

also the question of the shared business service. The financial activity in the bulk of the other businesses in North America are handled outside of the individual divisions by a shared business service. So it's quite a different financial exercise that goes on in the other building products in North America, whereas the Windows business was working on a legacy ERP system stand-alone and within the business" and Ng said "the Windows business was acquired in 2017 by Headwaters. So it's a very late addition to the portfolio. So when we look at our other businesses in – for North America, not only what Mike said that there is a shared servicing centre that has that independence in terms of the financial reporting, but obviously those businesses have been owned by Headwaters for many decades and subject to SEC and the internal and external audits of Headwaters. And similarly, our own businesses involve North America, we've had ownership for decades and they have been subject to multiple audits – ongoing for decades. So the issue really is, at this stage, within the Windows business";

- (c) in answer to the question "then I guess the thought that its contained within that time period, if we take \$20 million to \$30 million of last year's earnings, it would basically mean that that Windows division was unprofitable. I'm just wondering how you get a Windows business, which was historically thought to be comfortably profitable, and the last year, on an underlying basis, reports no profit? I mean has there been a material decrease in the actual performance of that business? Or is there actually risk that those profits were overstated" Kane said: "So I think the first answer to that is that all of the losses are not in the prior year. And so they're shared across both years, so it wouldn't bring no profitability. But at this point, we are trying to restate the profitability of the business and understand what happened in the interim and whether this misreporting reflected a long-term view of the profitability of the business or an interim view based on mismanagement and/or misconduct. It's unclear at this point. And what do we know, based on the current information available, is that this is – appears to be the range of the financial impact through those months. The only comfort I take from the stakes in the ground of September '18 through October '19 is that it gives us some confidence that the prior performance of the business in financial year '18, subject to verification again by us, is – suggests that the business can be profitable to levels that we reported in '18. We have a team of experts inside the business who are attempting to clarify for us what's

the go-forward position in this business. And at this point, we don't want to may any comments about it until we complete that investigation";

- (d) in answer to the question "It's just following upon Peter's question before. Just want to understand actually what EBITDA you reported for Windows in FY'19? I know you just gave divisional EBITDA in U.S dollars of \$297 million, but what did you believe Windows contribute to that at that time, like back in August when you reported?", Ng said: "Well, I think if we go back to the results announcement, Brook, and you'll see that for our full year in our MD&A results announcement, what we have disclosed for our Windows division, an external revenue of around USD 158 million, which is – represents around 10% of the U.S. revenue. Total revenue for financial year '19 was just under \$1.6 billion. We indicated in the release, in the MD&A, that revenue increased by 5% and EBITDA also improved. We haven't talked explicitly around EBITDA margins. We have said that the EBITDA margin for the Boral North America was around 18% to 19% in financial year 2019. And I think in some of the presentations and some of the investor meetings that we have had, we have indicated that Windows fairly represented that EBITDA margin";
- (e) in answer to the question "just with regards to the investigation, will it be broadened to other divisions of the Headwaters acquisition? Or are you confident that this is isolated to Windows alone?" Kane said: "So our North American financial team has looked at the other divisions in North America. And because they're, as we mentioned earlier, situation quite distinctly from that Windows division in the shares business service for the other building products, it doesn't have the same vulnerabilities that we've obviously identified in our investigation to-date in the Windows organisation. But our financial team in North American continues to look at all the business to make sure that we haven't overlooked anything. We think this issue is isolated to the Windows business based on what we know to-date. The only caution I'd give is that our investigation is not complete at this point",

(together and separately, **6 December 2019 Statements**).

PARTICULARS

- i. The 6 December 2019 Statements were express and were made orally by Kane and Ng in the 6 December 2019 Call.*

D.2 Price effect of the 5 December 2019 Announcement and/or the 6 December 2019 Call

52. Following the release of the 5 December 2019 Announcement and the 6 December 2019 Call:

- (a) the price of Boral Shares and Boral ADRs fell materially; and
- (b) the value of Boral Equity Swaps ~~wase~~ materially adversely effected.

PARTICULARS

- i. The price of Boral Shares:*
 - (A) fell from a closing price of \$4.92 on 5 December 2019 to a closing price of \$4.61 on 6 December 2019 on a traded volume of 13,394,176;
 - (B) fell from a closing price of \$4.61 on 6 December 2019 to a closing price of \$4.57 on 9 December 2019 on a traded volume of 7,488,764;
 - (C) fell from a closing price of \$4.57 on 9 December 2019 to a closing price of \$4.5 on 10 December 2019 with a volume of 7,490,608.
- ii. The price of Boral ADRs, fell in a manner correlating to the falls in the price of Boral Shares, referred to in particular (i):*
 - (A) fell from a closing price of \$13.43 on 5 December 2019 to a closing price of \$12.60 on 6 December 2019;
 - (B) fell from a closing price of \$12.60 on 6 December 2019 to a closing price of \$12.49 on 9 December 2019.
- iii. Further particulars may be provided following service of the Applicant's expert evidence.*

E THE 10 FEBRUARY 2020 CORRECTIVE DISCLOSURES AND ITS PRICE IMPACT

E.1 10 February 2020

53. At 8:54am 10 February 2020, Boral made an announcement to the ASX entitled "Boral Update" (**10 February 2020 Announcement**).

54. In the 10 February 2020 Announcement, Boral made the following statements:

- (a) on 5 December 2019 Boral Limited advised that it had identified certain financial irregularities in its North American Windows business, involving misreporting including in relation to inventory levels and costs associated with raw materials and labour at its Windows plants;

- (b) Boral announced today that the privileged and confidential investigation undertaken by lawyers retained by Boral, and forensic accountants engaged to assist the investigation, had now been substantially completed;
- (c) the investigation determined that finance personnel within the Windows business manipulated accounts and financial statements primarily to artificially inflate the overall profitability and health of the Windows business. The investigation found no evidence that the manipulations were to hide systemic theft of raw materials or finished goods inventory. The misconduct occurred over an approximately 20-month period prior to the end of October 2019;
- (d) together with audits and reviews of other businesses in Boral North America, which have also been undertaken, the Company can confirm that the financial misreporting is limited to the Windows business;
- (e) pre-tax earnings were overstated by a total of US\$24.4 million between March 2018 and October 2019. This is in line with Boral's preliminary estimated impact on earnings before interest, tax, depreciation and amortisation of ~US\$20 million to US\$30 million. In addition, legal and associated investigation costs incurred in the first half of around US\$1 million;
- (f) Boral will restate comparative financial information to incorporate the correction of Windows earnings in underlying results. Historic pre-tax earnings will be reduced by US\$22.6 million, of which US\$18.8 million relates to FY2019 and US\$3.8 million relates to FY2018;
- (g) the Windows business is only expected to deliver low single digit EBITDA margins for FY2020. The margin recovery plan is expected to see the business achieve double digit margins in the medium term,

(together and separately, **10 February 2020 Statements**).

PARTICULARS

- i. The 10 February 2020 Statements were express and were made in writing in the 10 February 2020 Announcement.*

E.2 Price effect of the 10 February 2020 Announcement

55. Following the release of the 10 February 2020 Announcement:

- (a) the price of Boral Shares and Boral ADRs fell materially; and

- (b) the value of Boral Equity Swaps ~~was~~^{ere} materially adversely effected.

PARTICULARS

- i. The price of Boral Shares fell from a closing price of \$5.15 on 7 February 2020 to a closing price of \$4.60 on 10 February 2020.*
- ii. The price of Boral ADRs fell from a closing price of \$13.78 on 7 February 2020 to a closing price of \$12.29 on 10 February 2020.*
- iii. Further particulars may be provided following service of the Applicant's expert evidence.*

F THE TRUE POSITION

F.0 Inadequate due diligence

55A. At all material times prior to and as at ~~from~~ 21 November 2016, ~~and during the Relevant Period:~~

- (a) Headwaters' acquisition of Windows in August 2016 was a "very late addition to the portfolio" of assets that were to form part of Boral's acquisition of Headwaters;
- (b) Windows had not been subject to:
 - (i) the same level of internal and external audit and due diligence as Headwaters' existing business;
 - (ii) any internal audit conducted by Boral;
- (c) Windows did not have adequate internal controls and systems;
- (d) Boral's consideration of its acquisition of Headwaters did not involve Windows forming part of the portfolio of assets to be acquired,

(Inadequate Due Diligence Information).

PARTICULARS

- i. As to paragraph [55A(a)]:*
 - A. Headwaters acquired the assets of Krestmark Industries, L.P. and its affiliates Crest Vinyl Extrusions and Legacy Vinyl Windows LP on or around 19 August 2016 (Defence 55A);*

- B. Headwaters acquired Magnolia Windows and Doors LLC on or around 2 February 2017 (Defence 55A); and
 - C. Boral acquired Headwaters on or about 8 May 2017.
- ii. As to paragraph [55A(b)]:
- A. by 5 October 2016, due diligence workstreams had been established for each operational division other than Windows (ie, Stone, Roofing, Fly Ash, Light Building Products and Block) (BOR.002.002.8864).
 - B. a due diligence workstream was established for Windows later, by December 2016 (BOR.609.136.8899);
 - C. relatively few issues had been raised regarding Windows in the Key Issues Register used for the purposes of due diligence into Headwaters;
 - D. as at 18 May 2017, no audit had been completed of the Windows business unit, and the control environment of Windows was not understood at that time (BOR.601.015.3741);
 - E. in November 2019, a senior manager in Internal Audit, Boral Industries, acknowledged that prior to Boral's acquisition of Headwaters, there was no due diligence performed on the Windows business as Boral planned to sell it off, and it was considered insignificant at the time (BOR.602.082.2937).
- iii. As to paragraph [55A(c)]:
- A. The Windows businesses were private entities before they were purchased by Headwaters, and:
 - (1) were not subject to the level of scrutiny applicable to listed entities and / or public companies; and
 - (2) did not have internal controls and systems appropriate for listed entities and / or public companies,before being purchased by Headwaters (BOR.601.024.3893); and
 - B. Headwaters purchased Windows only shortly before Boral purchased Headwaters and did not complete an audit of the Windows business before Headwaters was purchased by Boral.
- iv. As to paragraph [55A(d)]:
- A. in August and September 2016, Kane and other members of Boral's senior management considered the issue of whether to sell Windows after acquiring Headwaters (BOR.200.045.4163); and
 - B. Boral's rationale for the acquisition of Headwaters, a business considered to be "highly complementary" to Boral, was to realise "substantial synergies" (both cost and revenue synergies), although only minimal synergies

were expected in respect of the Windows business unit (BOR.002.001.6933).

F.1 Non-integration of Windows

56. At all material times from when Boral acquired Headwaters, and during the Relevant Period, Windows:

- (a) operated on a standalone legacy enterprise resource planning (**ERP**) system that was separate and distinct from the systems that Headwaters and/or Boral North America operated on, or the majority of Headwaters and/or Boral North America operated on; ~~and/or~~
- (b) did not utilise the shared business services function (being the Boral Shared Accounting Service (**BSAS**)) that Headwaters and/or Boral North America utilised, or the majority of Headwaters and/or Boral North America utilised;
- (c) did not have an adequate perpetual inventory system that interfaced with the system for maintaining the general ledger; and/or
- (d) had systems for financial reporting that involved multiple reporting programs, requiring manual input at various stages, which were not overseen or supported by the BSAS,

(Non-integration of Windows Information).

PARTICULARS

- i. 6 December 2019 Call.*
- ii. As regards ERP systems:
 - A. as at 21 November 2016:
 - (1) two different ERP systems for managing inventory, being Fenevision (at Krestmark and Legacy) and Winsys (at Magnolia), were in use; and
 - (2) the Great Plains ERP system for financial reporting was in use at each of Krestmark, Crest Vinyl, Legacy and Magnolia (BOR.601.020.2690);
 - B. The Great Plains ERP worked best in a single user instance and did not work well for multiple divisions (BOR.602.104.4021);
 - C. Winsys and Great Plains did not interface, so transactions recorded on Winsys had to be manually reconciled with the general ledger on Great Plains (BOR.602.088.1236);

- D. By May 2017 inventory shrinkage and/or inventory theft issues had occurred at Windows sites, and it had been identified that the key to improving control over inventory began with the implementation of a Fenevision upgrade (BOR.601.027.9475);
- E. By June 2017:
- (1) Boral decided to implement a short term fix, being a simple upgrade of the Fenevision System (which occurred at Krestmark and Legacy in October and November 2017 respectively);
 - (2) Boral's long term strategy involved transferring Windows to a superior ERP system, being SAP, but such migration was delayed on a number of occasions (BOR.602.102.3801);
- F. By November 2017 basic controls at Magnolia were lacking and there was limited visibility to product profitability. The action plan to address this included upgrading the external IT interface and utilising Fenevision (BOR.002.002.1279);
- G. By the end of the Relevant Period:
- (1) Krestmark and Legacy continued to use Fenevision;
 - (2) Magnolia had not implemented Fenevision;
 - (3) none of Krestmark, Legacy, Magnolia and Houston had been transferred to SAP;
- H. During the Relevant Period, no other Boral business unit used the Fenevision or Winsys ERPs.
- iii. As regards the shared business services function / BSAS:
- A. the BSAS:
- (1) was a shared service that performed functions including independent oversight of accounting and financial functions within Boral, and independent processing and monitoring back office transactions;
 - (2) serviced Boral North America businesses that used SAP, and from April 2018 serviced Boral Building Products businesses that used Great Plains;
- B. during the Relevant Period, Windows did not integrate into, and was not subject to the oversight of, the BSAS.
- iv. As regards perpetual inventory systems:
- A. a perpetual inventory system operates through the use of a program to take stock of inventory based on electronic order and purchase records;
- B perpetual inventory systems were, as at 21 November 2016:
- (1) not in place at the Krestmark and Legacy sites (BOR.601.074.3220);

(2) supported by Magnolia's Winsys ERP, however its operation was hindered by the lack of interface with the Great Plains ERP (BOR.602.088.1236);

C. perpetual inventory systems were, by early 2017, necessary or important to resolving inventory issues relating to Windows, including in respect of an inventory shrinkage issue at Krestmark in January 2017, and to tracking ageing inventory at Krestmark and Legacy in around September 2017 (BOR.601.026.6516; BOR.601.074.3220);

D. perpetual inventory systems were planned to be implemented at all the Windows sites by 31 December 2017 (BOR.601.064.5681), but were ultimately not implemented or properly implemented at all the Windows sites during the Relevant Period;

E. the implementation of the perpetual inventory system at Magnolia:

(1) was not entirely automated (BOR.601.064.1127); and

(2) involved control weaknesses that contributed to an unadjusted variance between perpetual inventory records and the general ledger of Magnolia, which were apparent by February 2018.

v. As regards financial reporting:

A. Financial reporting was done, during the Relevant Period, by Boral using the Hyperion Financial Management (HFM) platform which was supported by the BSAS;

B. Financial reporting was done, prior to and at 21 November 2016:

(1) by Headwaters using the Prophix system (BOR.600.003.4744);

(2) by Windows using Microsoft Dynamics Great Plains (BOR.601.016.2064);

C. Financial reporting, with respect to Windows was done:

(1) during the Relevant Period until about October 2017 using the Great Plains system, from which a monthly reporting package was prepared by a Windows Controller (Lezlie Pearson) and was (or was supposed to be) reviewed by Vice President of Finance, such package being sent to a Boral Industries Corporate controller for entry into Prophix. From Prophix, a file was extracted and submitted into HFM (BOR.601.016.2064; BOR.602.107.4243; BOR.601.028.0192);

(2) between about November 2017 and August 2018 using the Great Plains system, from which a monthly reporting package was prepared by a different Windows Controller (Sean Phillips (Phillips)), such package being sent to a Boral

Industries Corporate controller for entry into Prophix. From Prophix, a file was extracted and submitted into HFM (BOR.601.057.4282). HFM and Great Plains were then (or were supposed to be) cross-checked by a Windows Controller (BOR.601.057.6680); and

(3) between about August 2018 and 2020 using the Great Plains System and submitting a monthly file into the HFM system, with business unit employees (including Phillips) directly updating the HFM file.

vi. In relation to the entire paragraph, the Applicant relies upon the findings in the following internal audits regarding Windows:

A. the business review audit which commenced in June 2017 and resulted in a final report issued in January 2018, being the audit identified as the “October 2017” audit in Boral Audit & Risk Committee Paper BOR.003.001.0147 **(June 2017 Windows Audit)**;

B. the special review audit in relation to Magnolia which commenced in March 2018 and resulted in a final results memorandum issued in June 2018, being the audit identified as the “June 2018” audit in Boral Audit & Risk Committee Paper BOR.003.001.0147 **(March 2018 Magnolia Special Review)**;

C. the business review audit which commenced in January 2019 and resulted in a final report issued in June 2019, being the audit identified as the “January 2019” audit in Boral Audit & Risk Committee Paper BOR.003.001.0147 **(January 2019 Windows Audit)**;

D. the business review audit which commenced in November 2019 and resulted in a final report issued in February 2020, being the audit identified as the “November 2019” audit in Boral Audit & Risk Committee Paper BOR.003.001.0147 **(November 2019 Windows Audit)**.

(collectively and individually, the **Internal Audits**).

vii. In relation to the entire paragraph:

A. the integration strategy for Windows was driven completely or in part by whether Boral was to sell or retain it (BOR.602.081.2025); and

B. the divestment of Windows was considered as late as September 2018 (BOR.602.112.5108; BOR.600.046.3663).

57. By reason of the matters pleaded in paragraph 56, at all material times from when Boral acquired Headwaters, and during the Relevant Period:

(a) Boral had not integrated Windows into the shared business services function (being the BSAS) that Headwaters and/or Boral North America utilised; and/or

- (b) Boral had not integrated Windows into the business and reporting systems used by Boral to report on, and forecast, Boral North America's financial performance,

(Alternative Non-integration of Windows Information).

PARTICULARS

i. The particulars to paragraph 56 are repeated.

58. ~~In about October 2017~~ Boral undertook Internal Audits:

(a) which commenced in June 2017 and resulted in a final report issued in January 2018 (being the June 2017 Windows Audit);

(b) which commenced in March 2018 and resulted in a final results memorandum issued in June 2018, in relation to Magnolia (being the March 2018 Magnolia Special Review);

(c) which commenced in January 2019 and resulted in a final report issued in June 2019 (being the January 2019 Windows Audit); and

(d) which commenced in November 2019 and resulted in a final report issued in February 2020 (being the November 2019 Windows Audit).

~~an internal audit of Windows~~ that identified many issues and control gaps, only some of which were resolved ~~to~~ by 5 December 2019, alternatively by 10 February 2020.

PARTICULARS

i. 6 December 2019 Call.

ii. The findings of the Internal Audits are relied upon.

F.2 Manipulated Financial Reporting and Financial Irregularities

59. After Boral acquired Headwaters₇:

(a) personnel within Windows manipulated accounts and financial statements ~~to~~ in a way which artificially inflated the overall profitability of the Windows business by misreporting in relation to inventory levels and costs associated with raw material and labour (Manipulated Financial Reporting Information); and

(b) other financial irregularities regarding Windows occurred that concealed the true position as to the underlying profitability of the Windows business (Other Financial Irregularities Information).

(each being **Financial Reporting Information**).

PARTICULARS

- i. *The 6 December 2019 Call.*
- ii. *10 February 2020 Announcement.*
- iii. *Phillips:*
 - A. *started working at Windows at the end of 2017 with the position as an Assistant Controller;*
 - B. *upon the departure of Alan Spear (**Spear**) (Vice President, Finance, Windows) in April 2018, was promoted to the role of Controller, Windows;*
 - C. *admitted on 7 November 2019 to adjusting the physical inventory count at Legacy, totalling approximately \$5m (BOR.002.001.4161);*
 - D. *directly contributed to certain of the financial irregularities and / or manipulated accounts and financial statements regarding Windows pleaded above (BOR.601.048.7598); and*
 - E. *had his employment terminated on 18 December 2019.*
- iv. *Brian Becker (**Becker**) (Vice President, Finance, Windows):*
 - A. *started working at Windows at the end of 2017 as a Controller under the supervision of Spear, who departed Windows in April 2018;*
 - B. *upon the departure of Spear in April 2018, was promoted to the role of Vice President, Finance, Windows;*
 - C. *had responsibility in relation to fixing certain accounting issues at Windows that had been identified in the June 2017 Windows Audit;*
 - D. *supervised Phillips at the material times;*
 - E. *centralised the inventory reconciliation and adjustment processes by transferring it to the Corporate office (BOR.602.084.4721);*
 - F. *took over the bulk of month end reporting for Windows starting in March 2018 (BOR.601.044.1858);*
 - G. *directly, by his actions or inactions, contributed to certain of the financial irregularities and / or manipulated accounts and financial statements regarding Windows pleaded above (BOR.603.102.8512); and*
 - H. *had his employment terminated on 14 January 2020.*
- v. *As regards the inventory overstatement:*
 - A. *inventory levels were overstated by an amount not currently known by the Applicant but, according to a spreadsheet prepared on 10 February 2022 for the purposes of reversing certain entries (**Adjustments***

Spreadsheet), were approximately \$18m (eg BOR.601.036.6946);

B. the inventory level overstatement related to inventory systems inaccurately recording inventory values and quantities and the requirement for manual reconciliation between the inventory system and the financial accounts;

C. at the Krestmark and Legacy sites (see BOR.002.001.4161; BOR.600.014.1986);

(1) raw material count and values from the plant floor/shelves were lower than the amounts recorded in the trial balance in Great Plains;

(2) in order for the physical count results to reconcile to the trial balance amount, the inventory quantity and cost report was manipulated by adding rows and manipulating quantities;

(3) the overstatement was caused at least in part by the fact that inventory valuations in Fenevision were inaccurate and based on historical cost. On a quarterly basis the trial balance amounts in Great Plains were to have been trued up to the actual counts but instead adjustments were made to the count results to reconcile with the trial balance and thereby overstate the value recorded in Great Plains;

(4) the overstatement commenced on a date not currently known by the Applicant but in approximately the fourth quarter of FY18; and

D. at the Magnolia site, arose in circumstances not presently known to the Applicant but apparently in circumstances where insulated glass units purchased from an external vendor were overvalued (BOR.602.108.6079).

vi. As regards accounts payable:

A. financial irregularities in relation to accounts payable accounted for an amount not currently known by the Applicant but were approximately \$8m (BOR.600.005.4728);

B. involved debits to accounts payable made by Phillips to offset costs and none of the entries were set up as reversing entries;

C. the issue affected the Krestmark and Legacy sites, though the same or a similar issue affected the Magnolia site at an earlier time (BOR.601.053.6382);

D. the issue was detected by approximately 26 November 2019 (BOR.600.021.8184); and

E. the issue commenced on a date not currently known by the Applicant but, according to the Adjustments Spreadsheet, from approximately September 2018.

vii. As regards leasehold improvement:

- A. financial irregularities in relation to leasehold improvement accounted for an amount not currently known by the Applicant but approximately in the amount of USD 1.4m (BOR.600.005.4728);
- B. the financial irregularities involved an entry made directly to Houston's leasehold improvements in October 2019 that bore the marks of being improper because it was done directly to an account that should only have had entries coming into it from the fixed assets subledger. The irregularity involved credits to labor (Vinyl and Windows) on Krestmark books and another credit against labor on Legacy's books (BOR.600.005.4728);
- C. the financial irregularity bore the marks of errant entries, being a debit to balance sheet account, large credits to labour and no support; size of the entry was not reasonably explained (BOR.602.107.3190); and
- D. the issue was detected by 6 December 2019 (BOR.600.005.4728).

viii. As regards accounts receivable:

- A. financial irregularities in relation to accounts receivable accounted for an amount not currently known by the Applicant but, according to the Adjustments Spreadsheet, were approximately USD 1.1m;
- B. the irregularity related to using accounts receivable debits to increase revenue without setting up reversing entries (BOR.600.005.4728);
- C. the irregularity was detected by 4 December 2019 (BOR.600.005.4728);
- D. the issue may have affected both Krestmark and Legacy plants; and
- E. the issue commenced on a date not currently known by the Applicant but, according to the Adjustments Spreadsheet, from approximately June 2019.

ix. As regards accounts payable receiving accrual:

- A. financial irregularities in relation to accounts payable receiving accrual accounted for an amount not currently known by the Applicant but were approximately USD 1.1m (BOR.602.027.5505);
- B. the issue arose by a system problem where certain vendors whose amounts due were entered into expense twice for every invoice (BOR.601.043.7690);
- C. the issue had been flagged as an area of concern by November 2019 but was detected by at least 5 January 2020 (BOR.602.089.2511); and
- D. the Applicant is not presently aware of the time period to which the issue relates.

- x. As regards the allowance for doubtful debts:
 - A. the financial irregularities in relation to the allowance for doubtful debts was in an amount not currently known by the Applicant but was approximately USD 1m;
 - B. the irregularity related to an inadequate provision for bad or doubtful debts;
 - C. the irregularity was detected by 4 December 2019 (BOR.600.005.4728);
 - D. the reasons some of the debts were uncollectable were that invoicing processes, and some bad or doubtful debts were inherited when Headwaters acquired Windows and had never been fixed (BOR.600.021.5056; BOR.601.043.7690); and
 - E. according to the Adjustments Spreadsheet, the irregularity affected Legacy, Krestmark and Magnolia.
- xi. As regards capitalised labour:
 - A. financial irregularities in relation to capitalised labour accounted for an amount not currently known by the Applicant but, according to the Adjustments Spreadsheet, were approximately USD0.25m (BOR.601.036.6946); and
 - B. the issue related to costs inappropriately being treated as capital work in progress that ought to have been a period cost rather than capital and dated back to 2H FY18 (BOR.601.043.7690).
- xii. Further financial irregularities, identified in the Adjustments Spreadsheet, may have included:
 - A. increased reserve for obsolete inventory;
 - B. increased provision for sales tax liability;
 - C. an adjustment related to the 2017 Robinson final distribution;
 - D. the overstatement of accrued payroll; and
 - E. deferred revenue.
- xiii. An investigation was undertaken by Alston & Bird and Ernst & Young into the financial irregularities relating to Windows commencing between 8 and 11 November 2019.
- xiv. During the Relevant Period, it was not known how Windows was really performing on an underlying basis and the impact of the irregularities concerning Windows (BOR.600.005.5423).

F.3 Manipulated Financial Reporting Margin

- 60. Were it not for the Financial Reporting Information, the Windows business would only have reported single-digit EBITDA margins in FY19 and 1H20, and would not achieve

double digit margins until the medium term, with the implementation of a margin recovery plan ~~The inflation of the profitability of Windows referred to in paragraph 59:~~

- (a) ~~[NOT USED] was not done to cover up systemic thefts of raw materials or inventory but concealed underlying poor profitability of the business; and~~
- (b) ~~[NOT USED] meant that Windows only had single-digit EBITDA margins, and would not achieve double digit margins until the medium term, with the implementation of a margin recovery plan,~~

(Manipulated Financial Reporting Margin Information).

PARTICULARS

- i. 10 February 2020 Announcement.*
- ii. The particulars to paragraph 59 are repeated.*
 - A. By reason of the Manipulated Financial Reporting Information, the underlying poor profitability of the Windows business was concealed;*
 - B. By reason of the Other Financial Irregularities Information, the underlying poor profitability of the Windows business was concealed.*
- iii. As at 10 February 2020, Boral expected EBITDA margins for Windows to be (see BOR.600.026.1902):*
 - A. FY18: 14%;*
 - B. FY19: 6%; and*
 - C. 1H FY20: 5%;*
- iv. A 6 February 2020 forecast indicated that Boral was not anticipating returning to double digit margins until around FY24 (BOR.003.001.0189).*
- v. Drivers of Windows poor profitability, included impacts associated with the departure of a former owner and staff, increase in cost of sales covering material, labour, overheads and delivery, and increases in selling, general and administrative expenses (BOR.601.044.1630; BOR.601.044.5031).*
- vi. A 23 January 2020 email from Spear to Post, Mariner, Kane, Ng, and others identified that cost issues in the Windows business with respect to labour and materials were hidden as a result of accounting manipulations (BOR.601.044.1838).*
- vii. Spear, Joel Charlton and the US Building Products Division were responsible for, or alternatively participated in, the cost improvement process / margin recovery plan (BOR.601.044.2020).*

F.4 ~~Manipulated~~ Financial Reporting Quantum and Duration

61. The ~~inflation of~~ impacts on the profitability of Windows referred to in paragraph 59:
- (a) commenced on or around 1 February 2018;
 - (b) extended for a 20 month period; and
 - (c) involved pre-tax earnings being overstated by a total of ~~amounted to~~ US\$24.4 million over that period,

(~~Manipulated~~ Financial Reporting Quantum and Duration Information).

PARTICULARS

- i. 10 February 2020 Announcement.*
- ii. The particulars to paragraphs 59 and 60 are repeated.*

F.5 Inadequate Systems

62. At all material times from when Boral acquired Headwaters, and during the Relevant Period, Windows' financial reporting systems, controls and governance mechanisms did not:
- (a) prevent the matters pleaded in paragraph 59; and/or
 - (b) detect the matters pleaded in paragraphs 59 and/or 61 promptly or at all.

PARTICULARS

- i. The matters pleaded in paragraph 59 were not detected until about 29 October 2019, when Post was notified about a potential error in the inventory balance at the Legacy site, which was then escalated to Mariner on 5 November 2019, Ng on 7 November 2019 and Kane at a similar time, not known by the Applicant with his present state of knowledge, but being a time which it may be inferred was shortly prior to the 5 December Announcement, some 22 months after the financial misreporting pleaded in paragraph 59(a) commenced.*
- ii. The particulars to paragraphs 55A, 56, 59 and 60 are repeated.*
- iii. Various system failures or inadequacies in relation to Windows had been identified:*
 - A. as a result of Sarbarnes Oxley (SOX) testing by Headwaters in January 2017 (BOR.601.015.3193);*
 - B. following incidents of inventory theft at Krestmark (BOR.601.027.9475);*

- C. in the context of assessing whether the Windows ICT infrastructure and systems were adequate to support the needs of the business (BOR.601.020.6300); and
 - D. following the failure of a Magnolia Finance Controller to perform monthly reconciliations between the Magnolia perpetual inventory record (Winsys) and the general ledger (Great Plains), resulting in an unadjusted variance of approximately \$650,000 between perpetual inventory records and the general ledger (BOR.602.097.0295).
- iv. As regards ERP systems:
- A. excessive and inappropriate systems user access was given to staff, giving rise to segregation of duties risks in Windows' general accounting and procurement functions, affecting the integrity of the business' financial records (see BOR.601.024.3893);
 - B. the security design of Great Plains at Windows did not support proper segregation of duties (BOR.601.024.3893; BOR.601.004.8036); and
 - C. issues relating to user access were raised as a critical-rated issue in the June 2017 Windows Audit, and had not been adequately rectified by 2019 (BOR.601.024.3893; BOR.601.004.8036).
- v. As regards automated processes:
- A. the lack of automated processes relating to inventory and procurement created the risk of misuse and/or misappropriation of assets;
 - B. despite being raised in the June 2017 Windows Audit and January 2019 Windows Audit (BOR.601.024.3893; BOR.601.004.8036):
 - (1) automatic 3-way matching systems for procurement functions; and
 - (2) perpetual inventory systems to accurately track raw materials, work in progress (WIP) and finished goods,had not been implemented or properly implemented at all of the Windows sites by the end of the Relevant Period; and
 - C. despite being raised in the March 2018 Magnolia Special Review and the November 2019 Windows Audit, automation of manual reconciliation between the perpetual inventory record on Winsys and the general ledger on Great Plains had not been implemented at Magnolia by the end of the Relevant Period (BOR.602.097.0295; BOR.003.001.0147).
- vi. There was a lack of formal standardised policies and procedures for several of Windows functions, which was raised in the June 2017 Windows Audit and the January 2019 Windows Audit (BOR.601.024.3893; BOR.601.004.8036).

vii. The matters particularised at sub-paragraphs (iii) to (vi) above contributed to a lack of accurate financial reporting and financial oversight and control within Windows and to the failure to identify the matters pleaded at paragraphs 59, 60 and 61 at an earlier time.

viii. The findings of the Internal Audits are relied upon.

63. At all material times from when Boral acquired Headwaters, and during the Relevant Period, Boral North America's and/or Boral's financial reporting systems, controls and governance mechanisms did not:

- (a) prevent the matters pleaded in paragraph 59; and/or
- (b) detect the matters pleaded in paragraph 59 and/or 61 and/or the matters pleaded in paragraph 62 promptly or at all.

PARTICULARS

i. The matters pleaded in paragraphs 59 and/or 62 were not detected until about 29 October 2019, when Post was notified about a potential error in the inventory balance at the Legacy site, which was then escalated to Mariner on 5 November 2019, Ng on 7 November 2019 and Kane at a similar time not known by the Applicant with his present state of knowledge, but being a time which it may be inferred was shortly prior to the 5 December Announcement, some 22 months after the financial misreporting pleaded in paragraph 59 commenced.

ii. The particulars to paragraphs 55A, 56, 59, 60 and 62 are repeated.

iii. During the Relevant Period:

A. the Windows sites did not adopt the SAP ERP;

B. Windows did not integrate into, and was not subject to the oversight of, the BSAS;

C. the process for determining the scope and timing of audits was flawed in that there existed no formal protocol to ensure red-rated internal audits (including those red-rated items in the June 2017 Windows Audit) were followed up with a further full-scope audit within 12 months (BOR.003.001.0179);

D. the process for validating the closure of issues identified in audits was insufficient to ensure that issues which were reported as being closed had, in fact, been fully addressed (BOR.002.002.8581);

E. there was insufficient reporting to the Audit & Risk Committee on unresolved audit actions that were given due date extensions (BOR.002.002.8581);

F. there was insufficient compliance with Boral Group-Wide Fraud Reporting Policy by Boral North America in relation to complaints made in relation to questionable adjustments in Magnolia's accounts in May 2019 (BOR.602.082.2906); and

G. there was insufficient supervision and oversight of the finance function in the Windows business (BOR.600.027.7375; BOR.600.027.6230, BOR.003.001.0403; BOR.600.026.2092).

which contributed to a lack of accurate financial reporting and financial oversight and control at the Boral North America and / or Boral level and to the failure to identify the matters pleaded at paragraphs 59, 60 and 61 at an earlier time.

iv. The findings of the Internal Audits are relied upon.

64. At all material times from when Boral acquired Headwaters, Boral did not have adequate financial reporting systems, controls and oversights in place in respect of the whole of the Boral North America business (including Headwaters) (**Inadequate Systems Information**).

PARTICULARS

- i. Paragraphs 55A, 56, 59 to 63 are repeated.

F.6 Inadequate Understanding of Headwaters

65. At all material times from when Boral acquired Headwaters, Boral did not understand the whole of the Headwaters' business, and could not reliably report on, and forecast, the financial performance of those businesses (**Inadequate Understanding of Headwaters Information**).

PARTICULARS

- i. The matters pleaded in paragraphs 55A, 56, 59 and/or 62 and/or 63 and/or 64 are repeated.

F.7 Overstated financial performance

66. For the twelve months ending 30 June 2018, Boral North America had:
- (a) EBITDA of less than \$US284 million (namely, \$US280million);
 - (b) less than a 9% proforma increase in EBITDA compared with the twelve months ending 30 June 2017,

(Overstated Boral North America FY18 Financial Performance Information).

67. At all material times after 29 August 2018, there was a likelihood or material risk that Boral's FY18 financial performance as reported in the FY18 Appendix 4E was materially overstated **(Alternative Overstated Boral North America FY18 Financial Performance Information)**

PARTICULARS

- i. Paragraph 66 is repeated, and gives rise to the risk or likelihood.*

68. For the six months ending 31 December 2018, Boral North America had:
- (a) EBITDA (excluding significant items) of less than \$196 million or US\$141 million (namely, \$185 million or US\$134 million);
 - (b) an increase in EBITDA for HY2019 compared with HY2018 of less than 18% in AUD and 9% in USD;
 - (c) EBIT (excluding significant items) of less than \$115 million or US\$83 million (namely, \$105 million or US\$76 million);
 - (d) an increase in EBIT for HY2019 compared with HY2018 of less than 28% in AUD and 18% in USD,

(Overstated Boral North America HY19 Financial Performance Information).

69. At all material times after 4 February 2019, alternatively 25 February 2019, there was a likelihood or material risk that Boral's HY19 financial performance as reported in the 4 February 2019 Announcement, alternatively 25 February 2019 Announcement was materially overstated **(Alternative Overstated Boral North America HY19 Financial Performance Information)**.

PARTICULARS

- i. Paragraph 68 is repeated, and gives rise to the risk or likelihood.*

70. For the twelve months ending 30 June 2019:
- (a) Boral had NPAT (excluding significant items) of less than \$440 million (namely, \$420 million);
 - (b) Boral North America had:

- (i) EBITDA (excluding significant items) of less than \$415 million or US\$297 million (namely, \$388 million or US\$278 million);
- (ii) an increase in EBITDA for FY2019 compared with FY2018 of less than 19% in AUD and 10% in USD;
- (iii) EBIT (excluding significant items) of less than \$252 million or US\$180 million (namely, \$225 million or US\$161 million);
- (iv) an increase in EBIT for FY2019 compared with FY2018 of less than 27% in AUD and 17% in USD,

(Overstated FY19 Financial Performance Information).

71. At all material times after 26 August 2019, there was a material risk or likelihood that Boral's FY19 financial performance as reported in the FY19 Appendix 4E was materially overstated (**Alternative Overstated FY19 Financial Performance Information**).

PARTICULARS

- i. Paragraph 70 is repeated, and gives rise to the risk or likelihood.*

F.8 Overstated guidance

72. The Boral North America FY19 Guidance did not take into account:
- (a) the ~~Manipulated~~ Financial Reporting Information (or any of it); and/or
 - (b) the Overstated Boral North American FY18 Financial Performance Information.
73. At all material times after 29 August 2018 ~~there was a material risk or likelihood it was likely~~ that Boral North America's EBITDA for FY19 would be significantly less than US\$340.8 million (that is, 20% higher than US\$284 million, (being the EBITDA for Boral North America for FY18 announced on 29 August 2018) (Overstated FY19 Guidance Information).

PARTICULARS

- i. Paragraph 72 is repeated, and gives rise to the ~~risk or~~ likelihood.*
- ii. Most of the underlying causes of the higher cost trends experienced by Windows in FY18 were not "quick fixes" (BOR.602.065.1021).*
- iii. Drivers of Windows' poor profitability included:*

- A. the increased cost associated with outsourcing of insulated glass units by Windows as opposed to making the units in-house (BOR.602.061.6402; BOR.602.100.5000 at 5087);
- B. the departure of most of the front line plant management from Krestmark in October 2018, which had a financial impact that continued to be felt throughout FY19 (BOR.003.001.8674; BOR.602.090.1306);
- C. stronger national competition, pricing pressures and costs increases for Windows in FY19 (BOR.002.002.3607); and
- D. increases in cost of sales covering material, labour, overheads and delivery, and increases in selling, general and administrative expenses (BOR.601.044.1630; BOR.601.044.5031).

iv. The findings of the Internal Audits are relied upon.

74. The Boral's FY20 Guidance did not take into account:
- (a) the ~~Manipulated~~ Financial Reporting Information;
 - (b) the Overstated Boral North America HY19 Financial Performance Information; and/or
 - (c) the Overstated Boral North America FY19 Financial Performance Information.
75. At all material times after 26 August 2019 ~~there was a material risk or likelihood it was likely~~ that Boral's FY20 NPAT (before significant items) would be significantly lower than \$374 million to \$418 million (that is, 5% to 15% less than \$440 million, (being the NPAT (excluding significant items) for FY19 announced on 26 August 2019) (Overstated FY20 Guidance Information).

PARTICULARS

- i. Paragraph 74 is repeated, and gives rise to the ~~risk or likelihood.~~*
- ii. Most of the underlying causes of the higher cost trends experienced by Windows in FY18 were not "quick fixes" (BOR.602.065.1021).
- iii. Drivers of Windows' poor profitability included:
 - A. the increased cost associated with outsourcing of insulated glass units by Windows as opposed to making the units in-house (BOR.602.061.6402; BOR.602.100.5000 at 5087);
 - B. the departure of most of the front line plant management from Krestmark in October 2018, which had a financial

impact that continued to be felt throughout FY19 (BOR.003.001.8674; BOR.602.090.1306);

C. stronger national competition, pricing pressures and costs increases for Windows in FY19 (BOR.002.002.3607); and

D. increases in cost of sales covering material, labour, overheads and delivery, and increases in selling, general and administrative expenses (BOR.601.044.1630; BOR.601.044.5031).

iv. The findings of the Internal Audits are relied upon.

G MISLEADING OR DECEPTIVE CONDUCT

G.0 Representations made from 21 November 2016

75A. By reason of the matters pleaded in paragraphs 20 and 21 above, on 21 November 2016, Boral represented to the Affected Market that:

- (a) Headwaters had been rigorously assessed;
- (b) a detailed due diligence of Headwaters had been completed;
- (c) ~~[NOT USED] Boral's assessment and due diligence of Headwaters was adequate to detect whether Headwaters had sufficient internal controls and systems to detect and/or manage the risk of financial irregularities if and when they arose;~~
- (d) had ~~issues~~ deficiencies within Headwaters' internal controls and systems to detect financial irregularities existed, they would have been detected as part of Boral's assessment and due diligence of Headwaters,

(together and separately, **2016 Due Diligence Representations**).

PARTICULARS

- i. *The 2016 Due Diligence Representations were partly express and partly implied.*
 - A. *To the extent the 2016 Due Diligence Representations were express, the Applicant refers to the 21 November 2016 Statements.*
 - B. *To the extent the 2016 Due Diligence Representations were implied they were implied from the 21 November 2016 Statements and the absence of anything to modify, qualify or contradict those statements.*

75B. Further, by reason of the matters pleaded in paragraphs 20 and 21 above, on 21 November 2016, Boral represented to the Affected Market that Boral had a reasonable basis for making the 2016 Due Diligence Representations (**2016 Due Diligence Basis Representation**).

75C. From 21 November 2016 until 5 December 2019, Boral continued to make the 2016 Due Diligence Representation and the 2016 Due Diligence Basis Representation.

PARTICULARS

- i. The continuing representation is implied from Boral not saying anything during the period to modify, qualify or contradict the 2016 Due Diligence Representation and/or the 2016 Due Diligence Basis Representation.*

75D. The making and failing to correct and/or qualify each of the 2016 Due Diligence Representations and/or the 2016 Due Diligence Basis Representation was conduct engaged in by Boral:

- (a) in trade or commerce; and
- (b) in relation to Boral Shares and/or Boral ADRs.

75DA. As at and from 21 November 2016, Boral did not have reasonable grounds for making the 2016 Due Diligence Representations in the circumstances pleaded in paragraphs 55A, 56, 57, 58, 59, 62 to 63, 64 and/or 65 above.

PARTICULARS

- i. The 2016 Due Diligence Representation was in whole or in part a statement of opinion.*
- ii. The particulars to paragraph 55A are repeated.*
- iii. As at 21 November 2016:*
 - A. Headwaters had acquired the assets of Krestmark L.P and its affiliates Crest Vinyl Extrusions and Legacy Vinyl Windows LP only months before, on 19 August 2016;*
 - B. Headwaters had not acquired Magnolia Windows and Doors LLC;*
 - C. A due diligence workstream had been established for each operational division, except for Windows;*
 - D. Relatively few issues had been raised regarding Windows in the Key Issues Register used for the purposes of due diligence into Headwaters;*
 - E. The Windows businesses were private entities before being purchased by Headwaters, and;*

(1) were not subject to the level of scrutiny applicable to listed entities and / or public companies; and

(2) did not have internal controls and systems appropriate for listed entities and / or public companies.

before being purchased by Headwaters (BOR.601.024.3893);

F. Boral was considering whether to sell the Windows business; and

G. Minimal synergies were expected to be derived from the Windows business unit.

iv. The findings of the Internal Audits are relied upon.

75E. As at and from 21 November 2016, by making and/or failing to correct and/or qualify the 2016 Due Diligence Representations and the 2016 Due Diligence Basis Representation in the circumstances pleaded in paragraph 55A above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

75F. By reason of the matters pleaded in:

(a) paragraphs 75A, 75C, 75D, 75DA and/or to 75E above; and/or

(b) paragraphs 75B, 75C, 75D and 75E above,

Boral contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a **Misleading Conduct Contravention**).

G.1 Representations made from 30 August 2017

76. By reason of the matters pleaded in paragraphs 26 to 29 above, on 30 August 2017, Boral represented to the Affected Market that:

(a) Headwaters was successfully being integrated into Boral's business and reporting systems; and/or

(b) the ongoing successful integration of Headwaters into Boral's business and reporting systems meant Boral understood the whole of the Headwaters' business sufficiently to reliably report on, and forecast, the financial performance of Boral North America (including Headwaters),

(together and separately **2017 Successful Integration Representations**).

PARTICULARS

- i. The Successful Integration Representation was partly express and partly implied.*
 - A. To the extent the Successful Integration Representation was express, the Applicant refers to the statements in paragraphs 27(a), 27(c), 27A and 29 above.*
 - B. To the extent the Successful Integration Representation was implied they were implied from the statements in paragraphs 27(a), 27(c), 27A and 29 above and the absence of anything to modify, qualify or contradict those statements.*

77. Further, by reason of the matters pleaded in paragraphs 26 to 29 above, on 30 August 2017, Boral represented to the Affected Market that Boral had a reasonable basis for making the 2017 Successful Integration Representation (**2017 Successful Integration Basis Representation**).

PARTICULARS

- i. The 2017 Successful Integration Basis Representation was implied from the making of the 2017 Successful Integration Representations.*

78. From:

- (a) 30 August 2017 until 5 December 2019 inclusive, Boral continued to make the 2017 Successful Integration Representation and the 2017 Successful Integration Basis Representation;
- (b) alternatively:
 - (i) from 30 August 2017 until 13 February 2018, Boral continued to make the 2017 Successful Integration Representation and the 2017 Successful Integration Basis Representation; and then
 - (ii) from 13 February 2018 until 5 December 2019, Boral continued to make the 2017 Successful Integration Representation and the 2017 Successful Integration Basis Representation as modified by the First 2018 Successful Integration Representation and the First 2018 Successful Integration Basis Representation as pleaded at paragraphs 83 and 84.

PARTICULARS

- i. The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the 2017 Successful Integration Representation and/or the 2017 Successful Integration Basis Representation.*
- 79. The making and failing to correct and/or qualify each of the Successful Integration Representations and/or the Successful Integration Basis Representations was conduct engaged in by Boral:
 - (a) in trade or commerce; and
 - (b) in relation to Boral Shares and/or Boral ADRs.
- 80. As at and from 30 August 2017, Boral did not have reasonable grounds for making the 2017 Successful Integration Representation in the circumstances pleaded in paragraphs 56, 57, 58, 59, 62 to 63, 64 and/or 65 above.

PARTICULARS

- i. The 2017 Successful Integration Representation was in part a representation with respect to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. The particulars to paragraph 56 are repeated.*
- iii. As at 30 August 2017:*
 - A. the synergy and integration plan for Windows was in its infancy, including because:*
 - (1) the integration strategy for Windows was driven completely or in part by whether Boral was to sell or retain it (BOR.602.081.2025); and*
 - (2) the divestment of Windows was being considered around this time, and was considered as late as September 2018 (BOR.602.112.5108; BOR.600.046.3663).*
 - C. there existed a short term plan to upgrade Fenevision at Krestmark and Legacy, and to implement it at Magnolia, notwithstanding the limitations of this system, and the longer term plan to transfer Windows to SAP had not been implemented (BOR.602.102.3801);*
 - D. BSAS did not provide oversight with respect to Windows;*
 - E. perpetual inventory systems had not been implemented at Krestmark and Legacy, and were not fully implemented at Magnolia; and*
 - F. financial reporting with respect to Windows was using the Great Plains system, the output of which was fed into the*

Prophix system, the output of which was fed into the HFM system.

iv. The findings of the Internal Audits are relied upon.

81. As at and from 30 August 2017, by making and/or failing to correct and/or qualify the 2017 Successful Integration Representation and/or the 2017 Successful Integration Basis Representation in the circumstances pleaded in paragraphs 56, 57, 58, 59, 62 to 63, 64 and/or 65 and/or 80 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
82. By reason of the matters pleaded in:
- (a) paragraphs 76 and 78 to 80 and/or 81 above; and/or
 - (b) paragraphs 77 to 79 and 81 above,

Boral contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

G.2 Representations made from 13 February 2018

83. By reason of the matters pleaded in paragraphs 30 and 31 above, on 13 February 2018, Boral represented to the Affected Market that:
- (a) Boral's successful integration of Headwaters into Boral's business and reporting systems was close to completion, with all initial integration issues resolved, and all key IT processes having now been integrated;
 - (b) the ongoing successful integration of Headwaters into Boral's business and reporting systems meant Boral understood the whole of the Headwaters' business sufficiently to reliably report on, and forecast, the financial performance of Boral North America (including Headwaters); and/or
 - (c) based on the ongoing successful integration of Headwaters into Boral's business and reporting systems, no further integration issues would arise which would prevent Boral from reliably reporting on, and forecasting, the financial performance of Boral North America (including Headwaters),
- (together and separately **First 2018 Successful Integration Representations**).

PARTICULARS

i. The First 2018 Successful Integration Representation was partly express and partly implied.

A. To the extent the First 2018 Successful Integration Representation was express, the Applicant refers to the statements in pleaded in paragraphs 31(a), 31(b), 31(c), 31(d) 31(h), 31(i), 31(k) and 31(m) above in the context of the 13 February 2018 Statements as a whole.

B. To the extent the First 2018 Successful Integration Representation was implied from the statements in paragraphs 31(a), 31(b), 31(c), 31(d) 31(h), 31(i), 31(k) and 31(m) above and the absence of anything to modify, qualify or contradict those statements.

84. Further, by reason of the matters pleaded in paragraphs 30 and 31 above, on 13 February 2018, Boral represented to the Affected Market that Boral had a reasonable basis for making the First 2018 Successful Integration Representations (**First 2018 Successful Integration Basis Representation**).

PARTICULARS

i. The First 2018 Successful Integration Basis Representation was implied from the making of the First 2018 Successful Integration Representation.

85. From:

(a) 13 February 2018 until 5 December 2019 inclusive, Boral continued to make the First 2018 Successful Integration Representations and/or the First 2018 Successful Integration Basis Representation;

(b) alternatively:

(i) from 13 February 2018 until 1 May 2018, Boral continued to make the First 2018 Successful Integration Representation and the First 2018 Successful Integration Basis Representation; and then

(ii) from 1 May 2018 until 5 December 2019 Boral continued to make the First 2018 Successful Integration Representation and the First 2018 Successful Integration Basis Representation as modified by the Second 2018 Successful Integration Representation and the Second 2018 Successful Integration Basis Representation as pleaded at paragraphs 90 and 92.

PARTICULARS

- i. The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the First 2018 Successful Integration Representations and/or the First 2018 Successful Integration Basis Representations.*
 - ii. The continuing representation is implied by Boral subsequently making the statements in paragraphs 35, 37(c), 37(e), 37(f), 39(b), 39B, 43(g), 45B, and 47(a), 47(b) and 47(h) above.*
- 86. The making and failing to correct and/or qualify each of the First 2018 Successful Integration Representations and/or the First 2018 Successful Integration Basis Representation was conduct engaged in by Boral:
 - (a) in trade or commerce; and
 - (b) in relation to Boral Shares and/or Boral ADRs.
- 87. As at and from 13 February 2018, Boral did not have reasonable grounds for making the First 2018 Successful Integration Representations in the circumstances pleaded in paragraphs 56, 57, 58, 59, 62 to 63, 64 and/or 65 above.

PARTICULARS

- i. The First 2018 Successful Integration Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. The particulars to paragraphs 56 and 80 are repeated.*
- iii. As at 13 February 2018:*
 - A. significant issues regarding the integration plan for Windows were outstanding including because:*
 - (1) the integration strategy for Windows was driven completely or in part by whether Boral was to sell or retain it (BOR.602.081.2025);*
 - (2) the divestment of Windows was being considered around this time, and was considered as late as September 2018 (BOR.602.112.5108; BOR.600.046.3663);*
 - (3) a number of integration initiatives concerning operational issues at the Magnolia and Krestmark sites had been identified in a strategic deep dive dated 5 December 2017 and were outstanding (BOR.002.002.1279);*
 - B. the June 2017 Windows Audit had identified many issues and control gaps, some of which had not been addressed;*

C. Fenevision had not been implemented at Magnolia, and the longer term plan to transfer Windows to SAP had not been implemented;

D. BSAS did not provide oversight with respect to Windows;

E. perpetual inventory systems had not been implemented at Krestmark and Legacy, and were not fully implemented at Magnolia; and

F. financial reporting with respect to Windows was using the Great Plains system, the output of which was fed into the Prophix system, the output of which was fed into the HFM system.

iv. The findings of the Internal Audits are relied upon.

88. As at and from 13 February 2018, by making and/or failing to correct and/or qualify the First 2018 Successful Integration Representation and/or the First 2018 Successful Integration Basis Representation in the circumstances pleaded in paragraphs 56, 57, 58, 59, 62 to 63, 64 and/or 65 and/or 87 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

89. By reason of the matters pleaded in:

(a) paragraphs 83, 85 to 87 and/or 88 above; and/or

(b) paragraphs 84 to 86 and/or 88 above;

Boral contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

G.3 Representations from 1 May 2018

90. By reason of the matters pleaded in paragraphs 34 and 35 above, on 1 May 2018, Boral represented to the Affected Market that:

(a) Boral had completed the successful integration of Headwaters into Boral's business and reporting system; ~~and/or~~

(b) the successful integration of Headwaters into Boral's business and reporting systems meant Boral understood the whole of the Headwaters' business sufficiently to reliably report on, and forecast, the financial performance of Boral North America (including Headwaters); and/or

(c) based on the successful integration of Headwaters into Boral's business and reporting systems, no further integration issues would arise which would prevent

Boral from reliably reporting on, and forecasting, the financial performance of Boral North America) (including Headwaters),

(together, and separately **Second 2018 Successful Integration Representation**).

91. Further, or alternatively, by reason of the matters pleaded in paragraphs 34 and 35 above, on 1 May 2018 Boral represented to the affected market that:

- (a) Boral had adequate systems in place to detect any issues with the reporting systems or integration of Headwaters in Boral North America; and/or
- (b) there were no issues of significance concerning the reporting systems or integration of Headwaters in Boral North America which would surprise Boral going forward,

(Adequate Systems Representation).

PARTICULARS

- i. The Second 2018 Successful Integration Representation was partly express and partly implied.*
 - A. To the extent the Second 2018 Successful Integration Representation was express, the Applicant refers to the statements in paragraph 35 above.*
 - B. To the extent the Second 2018 Successful Integration Representation was implied from the statements in paragraph 35 above and the absence of anything to modify, qualify or contradict those statements.*
- ii. The Adequate Systems Representation was partly express and partly implied:*
 - A. To the extent the Adequate Systems Representation was express the Applicant refers to the statements in paragraph 35 above.*
 - B. To the extent the Adequate Systems Representation was implied from the statements in paragraph 35 above and the absence of anything to modify, qualify or contradict those statements.*

92. Further, by reason of the matters pleaded in paragraphs 34 and 35 above, on 1 May 2018, Boral represented to the Affected Market that:

- (a) Boral had a reasonable basis for making the Further Successful Integration Representation (**Second 2018 Successful Integration Basis Representation**);

- (b) Boral had a reasonable basis for making the Adequate Systems Representation (**Adequate Systems Basis Representation**).

PARTICULARS

- i. The Second 2018 Successful Integration Basis Representation was implied from the making of the Second 2018 Successful Integration Representation.*
- ii. The Adequate Systems Basis Representation was implied from the making of the Adequate Systems Representation.*

93. From 1 May 2018 until 5 December 2019 inclusive, Boral continued to make:

- (a) the Second 2018 Successful Integration Representations and the Second 2018 Successful Integration Basis Representations; and

PARTICULARS

- i. The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the Second 2018 Successful Integration Representation, Adequate Systems Representations, Second 2018 Successful Integration Basis Representations and/or the Adequate Systems Basis Representation.*
- ii. So far as the Second 2018 Successful Integration Representations and the Second 2018 Successful Integration Basis Representations are concerned, the continuing representation is implied by Boral subsequently making the statements in 37(c), 37(e), 37(f), 39(b), 39B, 43(g), 45B and 47(a), 47(b) and 47(h) above.*

- (b) the Adequate Systems Representation and the Adequate Systems Basis Representation.

PARTICULARS

- i. The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the Second 2018 Successful Integration Representation, Adequate Systems Representations, Second 2018 Successful Integration Basis Representations and/or the Adequate Systems Basis Representation.*
- ii. So far as the Adequate Systems Representation and the Adequate Systems Basis Representation are concerned, the continuing representation is implied by Boral subsequently making the statements in paragraph 41(f) above.*

94. The making and failing to correct and/or qualify each of the Second 2018 Successful Integration Representation, the Adequate Systems Representation, the Second 2018

Successful Integration Basis Representation and/or the Adequate Systems Basis Representation was conduct engaged in by Boral:

- (a) in trade or commerce; and
- (b) in relation to Boral Shares and/or Boral ADRs.

95. As at and from 1 May 2018, Boral did not have reasonable grounds for making the Second 2018 Successful Integration Representation in the circumstances pleaded in paragraphs 56, 57, 58, 59, 62 to 63, 64 and/or 65 above.

PARTICULARS

- i. The Second 2018 Successful Integration Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. The particulars to paragraph 56, 80 and 87 are repeated.*
- iii. As at 1 May 2018:*
 - A. the synergy and integration plan for Windows was not complete including because:*
 - (1) the integration strategy for Windows was driven completely or in part by whether Boral was to sell or retain it (BOR.602.081.2025);*
 - (2) the divestment of Windows was being considered around this time, and was considered as late as September 2018 (BOR.602.112.5108; BOR.600.046.3663);*
 - (3) a number of integration initiatives concerning operational issues at the Magnolia and Krestmark sites had been identified in a strategic deep dive dated 5 December 2017 and were outstanding (BOR.002.002.1279);*
 - B. the June 2017 Windows Audit had identified many issues and control gaps, some of which had not been addressed;*
 - C. Fenevision had not been implemented at Magnolia, and the longer term plan to transfer Windows to SAP had not been implemented;*
 - D. BSAS did not provide oversight with respect to Windows;*
 - E. perpetual inventory systems had not been implemented at Krestmark and Legacy, and were not fully implemented at Magnolia; and*
 - F. financial reporting with respect to Windows was using the Great Plains system, the output of which was fed into the Prophix system, the output of which was fed into the HFM system.*

iv. The findings of the Internal Audits are relied upon.

96. As at and from 1 May 2018, by making and/or failing to correct and/or qualify the Second 2018 Successful Integration Representation and/or the Second 2018 Successful Integration Basis Representation in the circumstances pleaded in paragraphs 56, 57, 58, 59, 62 to 63, 64 and/or 65 and/or 95 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
97. As at and from 1 May 2018, Boral did not have reasonable grounds for making the Adequate Systems Representations in the circumstances pleaded in paragraphs 56, 57, 58, 59, 62 to 63, 64 and/or 65 above.

PARTICULARS

- i. *The Adequate Systems Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. The particulars to paragraphs 56, 62, 63, 80, 87 and 95 are repeated.
- iii. As at 1 May 2018:
- A. it was known that the Windows businesses were private entities before they were purchased by Headwaters, and:
- (1) were not subject to the level of scrutiny applicable to listed entities and / or public companies; and
- (2) did not have internal controls and systems appropriate for listed entities and / or public companies,
- before being purchased by Headwaters (BOR.601.024.3893);
- B. it was known that Headwaters purchased Windows only shortly before Boral purchased Headwaters;
- C. SOX testing by Headwaters in January 2017 had identified various ineffective controls at Windows including in respect of user access, journal entry review, accounts receivable and bad debt write-offs, accounts payable to general ledger reconciliation, inventory reconciliation, and fixed assets reconciliation (BOR.601.015.3193);
- D. as a result of suspected inventory theft at Krestmark, a Fenevision system upgrade had been identified as a key to improving control over inventory (BOR.601.027.9475);
- E. the Windows ICT infrastructure and systems had been identified as potentially not supporting current and future needs of the business, and there was a need to consolidate the variety of ERP systems used across the Boral North America businesses (BOR.601.020.6300);

F. a Magnolia Finance Controller had failed to perform monthly reconciliations between the Magnolia perpetual inventory record (Winsys) and the general ledger (Great Plains), and had made manual adjustments to the perpetual inventory record to conceal discrepancies, which resulted in an unadjusted variance of approximately \$650,000 between the perpetual inventory records and the general ledger (BOR.602.097.0295);

G. the June 2017 Windows Audit (BOR.601.024.3893) had obtained a red rating and identified that the control environment for the Boral North America Windows Division was immature and in some cases non-existent, and identified several control gaps within the business including:

(1) Two Critical-rated (the highest rating) findings regarding (i) excessive IT user access within Great Plains whereby all users were granted 'Power User' access, and (ii) the lack of a perpetual inventory system across the business to track raw material, WIP and finished good movements;

(2) Two High-rated findings related to limited or no segregation of duties in key accounting functions (whereby the same user could raise and approve their own journal entries), and a lack of formal pricing strategy or delegated limits; and

(3) 10 Medium-rated and two Low-rated findings indicating a lack of formalised procedures and automated processes across various functions of the business including accounting, financial reporting, accounts receivable and pricing, procurement, and inventory;

H. the June 2017 Windows Audit identified significant risks from its key findings, including:

(1) risk to the integrity of financial statements arising from the lack of proper segregation of duties controls within the Great Plains system;

(2) increased risk of fraud or error due to the lack of segregation of duties between sales and pricing administration; and

(3) increased risk of fraud or misstatement due to the lack of segregation of duties in key accounting functions, noting that the majority of journal entries at Krestmark, and all journal entries at Magnolia were prepared, entered, reviewed and posted by the same persons;

I. Windows:

(1) had not transitioned to the SAP ERP;

(2) had not implemented Fenevision at the Magnolia site;

(3) had not adopted a perpetual inventory system at each of the Windows sites;

(4) had purchasing processes which were informal and manual; and

(5) had not integrated with and / or was not subject to the oversight of the BSAS.

iv. The findings of the Internal Audits are relied upon.

98. As at and from 1 May 2018, by making and/or failing to correct and/or qualify the Adequate Systems Representations and/or the Adequate Systems Basis Representation in the circumstances pleaded in paragraphs 56, 57, 58, 59 to 63, 64 and/or 65 and/or 97 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

99. By reason of the matters pleaded in:

(a) Paragraphs ~~90~~ 90(a), 93 to 94, 95 and/or 96 above;

(b) Paragraphs 92(a) ~~90(b)~~, 93 to 94 and 96 above;

(c) Paragraphs 91 ~~92(a)~~, 93 to 94, 97 and/or 98 above; and/or

(d) paragraphs 92(b), 93 to 94 and 98 above.

Boral contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

G.4 Representations from 29 August 2018

100. By reason of the matters pleaded in paragraphs 36 and 37 above, on 29 August 2018, Boral represented to the Affected Market that:

(a) Boral North America's EBITDA for FY18 was US\$284 million, 9% above the proforma combined Boral and Headwaters result last year (**Boral North America FY18 Financial Performance Representation**);

(b) in FY19 Boral North America would increase, or was likely to increase, EBITDA by a significant percentage on a base of US\$284 million, as long as weather patterns were more normal than in FY18 (**Boral North America FY19 Guidance Representation**).

PARTICULARS

- i. The Boral North America FY18 Financial Performance Representation was express and the Applicant refers to the statement in paragraph 37(b) above.*
- ii. The Boral North America FY19 Guidance Representation was partly express and partly implied and the Applicant refers to the statement in paragraph 37(d) above.*

101. Further, by reason of the matters pleaded in paragraphs 36 and 37 above, on 29 August 2018, Boral represented to the Affected Market that:

- (a) Boral had a reasonable basis for making the Boral North America FY18 Financial Performance Representation (**Boral North America FY18 Financial Performance Basis Representation**);
- (b) Boral had a reasonable basis for making the Boral North America FY19 Guidance Representation (**Boral North America FY19 Guidance Basis Representation**); and
- (c) Boral was able to reliably report on, and forecast, the financial performance of Boral North America (including Headwaters) (**Boral North America Reliable Guidance Representation**).

PARTICULARS

- i. The Boral North America FY18 Financial Performance Basis Representation was implied from the making of the Boral North America FY18 Financial Performance Representation.*
- ii. The Boral North America FY19 Guidance Basis Representation was implied from the Boral North America FY19 Guidance Representation.*
- iii. The Boral North America Reliable Guidance Representation was implied from the making of the Boral North America FY18 Financial Performance Representation, the Boral North America FY19 Guidance Representation, the Boral North America FY18 Financial Performance Basis Representation and the Boral North America FY19 Guidance Basis Representation*

102. From 29 August 2018:

- (a) until 10 February 2020 inclusive, Boral continued to make the Boral North America FY18 Financial Performance Representation;
- (b) until 5 December 2019 (alternatively, 10 February 2020) inclusive, Boral continued to make:

- (i) the Boral North America FY18 Financial Performance Representation and/or the Boral North America FY18 Financial Performance Basis Representation;

PARTICULARS

- i. *The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the Boral North America FY18 Financial Performance Representation and/or the Boral North America FY18 Financial Performance Basis Representation*
 - ii. *By reason of the matters pleaded in paragraphs 40 and 41, on 4 February 2019 Boral repeated the Boral North America FY19 Guidance Representation and the FY19 Boral North America FY19 Guidance Basis Representation on 4 February 2019. The repetition is implied from the fact that although Boral reduced FY19 guidance from 20% EBITDA growth to 15% EBITDA growth, it attributed this reduction to weather impacts (as pleaded in paragraph 41(e) above), and by the Boral North America FY19 Guidance Representation Boral's guidance had been given on the basis that such weather impacts would not exist, and the EBITDA growth guidance given was still a significant percentage measured against the same reported base of US\$284 million.*
- (ii) the Boral North America FY19 Guidance Representation and/or the Boral North America FY19 Guidance Basis Representation;

PARTICULARS

- i. *The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the Boral North America FY19 Guidance Representation and/or the Boral North America FY19 Guidance Basis Representation.*
 - ii. *Even after Boral delivered its FY19 results on 26 August 2019 as pleaded in paragraphs 44 and 45, Boral did not modify, qualify or contract the Boral North America FY19 Guidance Representation and/or the Boral North America FY19 Guidance Basis Representation.*
- (iii) the Boral North America Reliable Guidance Representation.

PARTICULARS

- i. *The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the Boral North America Reliable Guidance Representation.*
103. The making and failing to correct and/or qualify each of the Boral North America FY18 Financial Performance Representation, the Boral North America FY18 Financial Performance Basis Representation, the Boral North America FY19 Guidance

Representation, the Boral North America FY19 Guidance Basis Representation and/or the Boral North America Reliable Guidance Representation was conduct engaged in by Boral:

- (a) in trade or commerce; and
 - (b) in relation to Boral Shares and/or Boral ADRs.
104. As at and from 29 August 2018, by making and/or failing to correct and/or qualify the Boral North America FY18 Financial Performance Information and/or the Boral North America FY18 Financial Performance Basis Information in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65 and/or 66 to 67 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
105. As at and from 29 August 2018, Boral did not have reasonable grounds for making the Boral North America FY19 Guidance Representation in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65, 66 to 67, 72 and/or 73 above.

PARTICULARS

- i. The Boral North America FY19 Guidance Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. The matters particularised above at paragraphs 72, 80, 87, 95 and 97 are repeated.*
- iii. As at 29 August 2018:*
 - A. the June 2017 Windows Audit had identified many issues and control gaps, some of which had not been addressed;*
 - B. the March 2018 Magnolia Special Review (concerning inventory at Magnolia) identified that the Controller at Magnolia who had responsibility over finance and accounting duties had not been performing monthly reconciliations between the perpetual inventory record (Winsys) and the general ledger (Great Plains) for some time;*
 - C. most of the underlying causes of the higher cost trends experienced by Windows in FY18 were not “quick fixes” (BOR.602.065.1021); and*
 - D. outsourcing of insulated glass units was more costly than making the units in-house and Windows had been exploring alternatives for outsourcing at the Krestmark and Legacy plants (BOR.602.061.6402; BOR.602.100.5000 at 5087).*
- iv. The findings of the Internal Audits are relied upon.*

106. As at and from 29 August 2018, by making and/or failing to correct and/or qualify the Boral North America FY19 Guidance Representation and/or the Boral North America FY19 Guidance Basis Representation in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65, 66, 72 and 73 above and/or 105 above, Boral engaged in conduct which was misleading or deceptive or likely to misleading or deceive.
107. As at and from 29 August 2018, Boral did not have reasonable grounds for making the Boral North America Reliable Guidance Representation in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65, 66 to 67, and/or 72 to 73 above.

PARTICULARS

- i. The Boral North America Reliable Guidance Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. The particulars to paragraph 105 are repeated.*
108. As at and from 29 August 2018, by making and/or failing to correct and/or qualify the Boral North America Reliable Guidance Representation in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65, 66, 72 to 73 above and/or 107 above, Boral engaged in conduct which was misleading or deceptive or likely to misleading or deceive.
109. By reason of the matters pleaded in:
- (a) paragraphs 100(a), 102 to 104 above;
 - (b) paragraphs 100(b), 102, 103, 105 and/or 106 above;
 - (c) paragraphs 101(a), 102 to 104 above;
 - (d) paragraphs 101(b), 102, 103, 105 and/or 106 above;
 - (e) paragraphs 101(c), 102, 106 and/or 107 above,

Boral contravened s 10141H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

G.5 Representations from 25 February 2019

110. By reason of the matters pleaded in paragraphs 42 and 43 above, on 25 February 2019, Boral represented to the Affected Market that Boral North America had:

- (a) EBITDA (excluding significant items) for HY2019 of \$196 million or US\$141 million;
- (b) an increase in EBITDA for HY2019 compared with HY2018 of 18% in AUD and 9% in USD;
- (c) EBIT (excluding significant items) for HY2019 of \$115 million or US\$83 million;
- (d) an increase in EBIT for FY2019 compared with HY2018 of 28% in AUD and 18% in USD,

(together and separately, **HY19 Financial Performance Representations**).

PARTICULARS

- i. The HY19 Financial Performance Representations were express and the Applicant refers to the statements in paragraph 43 above.*

111. Further, by reason of the matters pleaded in paragraphs 42 and 43, on 25 February 2019, Boral represented to the Affected Market that Boral had a reasonable basis for making the HY19 Financial Performance Representations (**HY19 Financial Performance Basis Representation**).

PARTICULARS

- i. The HY19 Financial Performance Basis Representation was implied by the making of the HY19 Financial Performance Representation.*

112. From 25 February 2019 until 5 December 2019 inclusive, Boral continued to make the HY19 Financial Performance Representations and the HY19 Financial Performance Basis Representation.

PARTICULARS

- i. The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the HY19 Financial Performance Representations and/or the HY19 Financial Performance Basis Representation.*

113. The making and failing to correct and/or qualify each of the HY19 Financial Performance Representations and/or the HY19 Financial Performance Basis Representation was conduct engaged in by Boral:
- (a) in trade or commerce; and
 - (b) in relation to Boral Shares and/or Boral ADRs.
114. As at and from 25 February 2019, by making and/or failing to correct and/or qualify the HY19 Financial Performance Representations and/or the HY19 Financial Performance Basis Representations in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65 and/or 66 to 67 and/or 68 to 69 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
115. By reason of the matters pleaded in paragraphs 110 to 114 above, Boral contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

G.6 Representations from 26 August 2019

116. By reason of the matters pleaded in paragraphs 44 and 45 above, on 26 August 2019, Boral Represented to the Affected Market that:
- (a) Boral's FY19 financial performance was as follows:
 - (i) Boral's NPAT (excluding significant items) for FY19 was \$440 million;
 - (ii) Boral North America's EBITDA (excluding significant items) for FY19 was \$415 million or US\$297 million;
 - (iii) Boral North America had an increase in EBITDA for FY19 compared with FY18 of 19% in AUD and 10% in USD;
 - (iv) Boral North America's EBIT (excluding significant items) for FY19 was \$252 million or US\$180 million;
 - (v) Boral North America had an increase in EBIT for FY19 Compared with FY18 of 27% in AUD and 17% in USD,
- (together and separately, **FY19 Financial Performance Representations**);
and

- (b) Boral's NPAT (before significant items) was expected to be around 5-15% lower in FY2020 than \$440 million (**FY20 Guidance Representation**).

PARTICULARS

- i. The FY19 Financial Performance Representations and the FY20 Guidance Representation were express and the Applicant refers to the statements in paragraph 45 above.*

117. Further, by reason of the matters pleaded in paragraphs 44 and 45 above, on 26 August 2019, Boral represented to the Affected Market that Boral had a reasonable basis for making:

- (a) the FY19 Financial Performance Representations (**FY19 Financial Performance Basis Representation**); and
- (b) the FY20 Guidance Representation (**FY20 Guidance Basis Representation**).

PARTICULARS

- i. The FY19 Financial Performance Basis Representation and the FY20 Guidance Basis Representation were implied by the making of the FY19 Financial Performance Representation and the FY20 Guidance Representation.*

118. From 26 August 2019 until:

- (a) 5 December 2019 inclusive, Boral continued to make the FY19 Financial Performance Representations and the FY19 Financial Performance Basis Representation;
- (b) ~~until~~ 10 February 2020 inclusive, alternatively 5 December 2019 inclusive, Boral continued to make the FY20 Guidance Representation and/or the FY20 Guidance Basis Representation.

PARTICULARS

- i. The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the FY19 Financial Performance Representations, the FY19 Financial Performance Basis Representation, the FY20 Guidance Representation and/or the FY20 Guidance Basis Representation.*
- ii. So far as the FY20 Guidance Representation is concerned, the continuing representation is implied by Boral subsequently making the statements in paragraphs 47(e) and 47(f) above.*

119. The making and failing to correct and/or qualify each of the FY19 Financial Performance Representations, the FY19 Financial Performance Basis Representation, the FY20 Guidance Representation and/or the FY20 Guidance Basis Representation was conduct engaged in by Boral:
- (a) in trade or commerce; and
 - (b) in relation to the Boral Shares and/or Boral ADRs.
120. As at and from 26 August 2019, by making and/or failing to correct and/or qualify the FY19 Financial Performance Representations and/or the FY19 Financial Performance Basis Representation in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65 and/or 66 to 67, 68 to 69 and/or 70 to 71 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
121. As at and from 26 August 2019, Boral did not have reasonable grounds for making the FY20 Financial Guidance Representation and/or the FY20 Financial Guidance Basis Representation in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65, 66 to 67, 68 to 69, 70 to 71 and/or 74 to 75 above.

PARTICULARS

- i. The FY20 Guidance Representation was a representation with respect to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. The matters particularised above at paragraphs 75, 80, 87, 95, 97 and 105 are repeated.*
- iii. As at 26 August 2019:*
 - A. the June 2017 Windows Audit had identified many issues and control gaps, some of which had not been addressed;*
 - B. the March 2018 Magnolia Special Review (concerning inventory at Magnolia) had identified that the Controller at Magnolia who had responsibility over finance and accounting duties had not been performing monthly reconciliations between the perpetual inventory record (Winsys) and the general ledger (Great Plains) for some time;*
 - C. most of the underlying causes of the higher cost trends experienced by Windows in FY18 were not “quick fixes” (BOR.602.065.1021);*
 - D. outsourcing of insulated glass units was more costly than making the units in-house and Windows had been exploring alternatives for outsourcing at the Krestmark and Legacy plants (BOR.602.061.6402; BOR.602.100.5000 at 5087);*

E. most of the front line plant management from Krestmark had departed in October 2018 and the financial impact associated with the departure continued to be felt throughout FY19 (BOR.003.001.8674; BOR.602.090.1306); and

F. there had been stronger national competition, pricing pressures and costs increases for Windows in FY19 (BOR.002.002.3607).

iv. The findings of the Internal Audits are relied upon.

122. As at and from 26 August 2019, by making and/or failing to correct and/or qualify the FY20 Guidance Representations and/or the FY20 Guidance Basis Representation in the circumstances pleaded in paragraphs 56 to 58, 59, 60, 64, 65, 66 to 67, 68 to 69, 70 to 71 and/or 74 to 75 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

123. By reason of the matters pleaded in:

- (a) paragraphs 116(a) and 118 to 120 above;
- (b) paragraphs 117(a) and 118 to 120 above;
- (c) paragraphs 116(b), 118 to 119 and 122 above;
- (d) paragraphs 117(b), 118 to 119 and 122 above,

Boral contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

G.7 Representations from 6 December 2019

124. By reason of the matters pleaded in paragraphs 48 to 51 above, on 5 and 6 December 2019 prior to the commencement of trading on the ASX on 6 December 2019, Boral represented to the Affected Market that:

- (a) the financial misreporting in Windows was, or was likely to be, limited to the period from September 2018 to October 2019 (**Duration of Misreporting Representation**); and
- (b) the impact of the financial misreporting in Windows was one-off, and it was possible that it reflected a temporary issue concerning mismanagement or

misconduct, rather than longer-term issues reflecting the profitability of the business (**Impact of Misreporting Representation**).

PARTICULARS

- i. The Duration of Misreporting Representation was partly express and partly implied and the Applicant refers to the statements in paragraphs 49(c), 49(d), 49(e), 51(a), 51(c) and 51(d) above and the absence of anything to modify, qualify or contradict those statements.*
- ii. The Impact of Misreporting Representation was partly express and partly implied and the Applicant refers to the statements in paragraphs 49(d) and 51(c) above and the absence of anything to modify, qualify or contradict those statements.*

125. Further, by reason of the matters pleaded in paragraphs 48 to 51 above, on 5 and 6 December 2019 prior to the commencement of trading on the ASX on 6 December 2019, Boral represented to the Affected Market that:

- (a) Boral had a reasonable basis for making the Duration of Misreporting Representation (**Duration of Misreporting Basis Representation**); and
- (b) Boral had a reasonable basis for making the Impact of Misreporting Representation (**Impact of Misreporting Basis Representation**).

PARTICULARS

- i. The Duration of Misreporting Basis Representation was implied by the making of the Duration of Misreporting Representation.*
- ii. The Impact of Misreporting Basis Representation was implied by the making of the Impact of Misreporting Representation.*

126. From 6 December 2019 (prior to the commencement of trading on the ASX on 6 December 2019) until 10 February 2020, Boral continued to make the Duration of Misreporting Representation, the Impact of Misreporting Representation, the Duration of Misreporting Basis Representation and the Impact of Misreporting Basis Representation.

PARTICULARS

- i. The continuing representation is implied by Boral not saying anything during that period to modify, qualify or contradict the Duration of Misreporting Representation, the Impact of Misreporting Representation, the Duration of Misreporting Basis Representation and the Impact of Misreporting Basis Representation.*

127. The making and failing to correct and/or qualify each of the Duration of Misreporting Representation, the Impact of Misreporting Representation, the Duration of Misreporting Basis Representation and the Impact of Misreporting Basis Representation was conduct engaged in by Boral:
- (a) in trade or commerce; and
 - (b) in relation to the Boral Shares and/or Boral ADRs.
128. As at and from 5 and 6 December 2019 (prior to the commencement of trading on the ASX on 6 December 2019), Boral did not have reasonable grounds for making the Duration of Misreporting Representation in the circumstances pleaded in paragraphs 62 to 64, 65, 66 to 67, 68 to 69 and/or 70 to 71 above.

PARTICULARS

- i. *The Duration of Misreporting Representation was in part a representation with respect to future matters, and s 12BB of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the ACL are relied upon.*
- ii. *The particulars to paragraphs 59, 60, 61, 80, 87, 95 and 97 are repeated.*
- iii. *As at 5 and 6 December 2019:*
 - A. *the investigation being undertaken by Alston & Bird and Ernst & Young was still underway, and new information was continuing to come to light;*
 - B. *Phillips and Becker had both been working at Windows since the end of 2017, and Spear had worked at Windows for much of FY18 and had left Windows in April 2018;*
 - C. *the nature of the irregularities extended beyond inventory overstatement, to issues concerning accounts payable, accounts receivable, leasehold improvements, and the inadequate reserve for bad debts, and these issues were still being investigated;*
 - D. *there were varied reasons for the uncollectability of certain aged debts including issues with Windows' invoicing processes, and issues inherited following the purchase of Headwaters;*
 - E. *it was not known how Windows was really performing on an underlying basis and what the impact of the irregularities concerning Windows was for the rest of FY2020 (BOR.600.005.5423);*
 - F. *inventory controls (including perpetual inventory systems) within Windows were lacking or unstable;*
 - G. *there was a history at Windows of not booking adjustments to inventory following physical counts;*

H. the issues identified at Krestmark and Legacy in November 2019 were, the same or similar as the issues at Magnolia in December 2017;

I. Windows was not, and had not been, subject to corporate oversight by Boral North America (including BSAS) and had been working in a silo; and

J. Windows operated on multiple ERP systems, which diminished Boral's visibility into areas of the business.

iv. The findings of the Internal Audits are relied upon.

129. As at and from 5 and 6 December 2019 (prior to the commencement of trading on the ASX on 6 December 2019), by making and/or failing to correct and/or qualify the Duration of Misreporting Representation and/or the Duration of Misreporting Basis Representation in the circumstances pleaded in paragraphs 62 to 64, 65, 66 to 67, 68 to 69, 70 to 71 and/or 128 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
130. As at and from 5 and 6 December 2019 (prior to the commencement of trading on the ASX on 6 December 2019), Boral did not have reasonable grounds for making the Impact of Misreporting Representation in the circumstances pleaded in paragraphs 60, 62 to 64, 65, 66 to 67 68 to 69 and/or 70 to 71 above.

PARTICULARS

i. The Duration of Misreporting Representation was in part a representation with respect to future matters, and s 12BB of the ASIC Act, s 796C of the Corporations Act and/or s 4 of the ACL are relied upon.

ii. The particulars to paragraphs 59, 60, 61, 80, 87, 95, 97 and 128 are repeated.

131. As at and from 5 December 2019, by making and/or failing to correct and/or qualify the Duration of Misreporting Representation and/or the Impact of Misreporting Basis Representation in the circumstances pleaded in paragraphs 60, 62 to 64, 65, 66 to 67 68 to 69, 70 to 71 and/or 130 above, Boral engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
132. By reason of the matters pleaded in:
- (a) paragraphs 124(a), 126 to 128 and/or 129 above;
 - (b) paragraphs 125(a), 126 and 127 and 129 above;
 - (c) paragraphs 124(b), 126, 127, 130 and/or 131 above;

(d) paragraphs 125(b), 126, 127 and 131 above,

Boral contravened s 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the ACL (each being a Misleading Conduct Contravention).

H CONTINUOUS DISCLOSURE CONTRAVENTIONS

H.0 Inadequate due diligence

132A. During the period from 21 November 2016 to 5 December 2019, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Inadequate Due Diligence Information.

PARTICULARS

- i. The Inadequate Due Diligence Information was known or ought reasonably to have been known by Kane by reason of:*
 - A. ~~(a)~~ his role as Chief Executive Officer and Managing Director of Boral;*
 - B. ~~(b)~~ since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business; and*
 - C. ~~(c)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits); an internal audit in October 2017 of Windows that had identified many issues and control gaps.*
 - D. his role as a project sponsor for the acquisition of Headwaters (BOR.002.002.8864);*
 - E. the fact that Headwaters acquired Krestmark and Legacy in August 2016, and Windows in February 2017;*
 - F. an email Kane sent on 7 September 2016 indicating that a decision to sell Windows could be made within 3 months of acquiring Headwaters (BOR.200.045.4163);*
 - G. his attendance and participation in Boral's Due Diligence Committee (DDC) meetings, constituted for the purposes of consideration of the acquisition of Headwaters;*
 - H. the fact that the documents prepared for the DDC, at DDC1 and DDC2, indicated that due diligence workstreams had been established for each operation division other than Windows (BOR.002.002.8864; BOR.005.001.0161);*
 - I. the fact that despite Boral's rationale for the acquisition of Headwaters being to realise "substantial synergies" (both cost and revenue synergies), a presentation prepared for DDC5 identified that only minimal synergies were*

expected in respect of the Windows business unit (BOR.002.003.0914);

J. the fact that a KPMG presentation prepared for DDC7 identified the need to conduct gap analysis for SOX requirements on recent acquisitions such as Krestmark (BOR.002.003.2485);

K. the fact that the 'Key Issues Register', prepared for the DDC, contained relatively few issues concerning Windows compared with other business units;

L. the fact that a due diligence workstream was created in respect of Windows later, by about 1 December 2016 (BOR.609.136.8899);

M. the fact that "Magnolia" had become, by February 2019 a term understood by senior management at Boral (including Kane) as synonymous with an inadequate due diligence process (BOR.600.035.2510);

N. the matters particularised at paragraphs 133, 138, 153, 163, 168 and 173, insofar as they concern Kane;

O. the matters pleaded and particularised at paragraph 55A above.

ii. The Inadequate Due Diligence Information was known or ought reasonably to have been known by Ng by reason of:

A. ~~(a)~~ her role as Chief Financial Officer of Boral;

B. ~~(b)~~ Ng's responsibility for project management of the Headwaters transaction; and

C. ~~(c)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps;

D. her role as a project sponsor for the acquisition of Headwaters (BOR.002.002.8864);

E. her role leading the Boral Ltd Steering Committee (BOR.002.002.8864);

F. the fact that Headwaters acquired Krestmark and Legacy in August 2016, and Windows in February 2017;

G. an email Ng received on 22 August 2016, indicating that consideration was being given to the sale of Windows shortly after Boral purchased Headwaters (BOR.200.045.4163);

H. her attendance and participation at Boral's DDC meetings, constituted for the purposes of consideration of the acquisition of Headwaters;

I. the fact that the documents prepared for the DDC, at DDC1 and DDC2, indicated that due diligence workstreams had been established for each operational division other than Windows (BOR.002.002.8864; BOR.005.001.0161);

- J. the fact that despite Boral's rationale for the acquisition of Headwaters being to realise "substantial synergies" (both cost and revenue synergies), a presentation prepared for DDC5 identified that only minimal synergies were expected in respect of the Windows business unit (BOR.002.003.0914);
 - K. the fact that a KPMG presentation prepared for DDC7 identified the need to conduct gap analysis for SOX requirements on recent acquisitions such as Krestmark (BOR.002.003.2485);
 - L. the fact that the 'Key Issues Register' presented to the DDC contained relatively few issues concerning Windows compared with other business units;
 - M. an email Ng received in November 2016, shortly before Boral's board approved the acquisition of Headwaters, that indicated that Windows FY16 full year actual results had not yet been received by Boral or its advisors (BOR.605.013.0682);
 - N. the fact that a due diligence workstream was created in respect of Windows later, by about 1 December 2016 (BOR.609.136.8899);
 - O. the fact that "Magnolia" had become, by February 2019 a term understood by senior management at Boral (including Ng) as synonymous with an inadequate due diligence process (BOR.600.035.2510);
 - P. the matters particularised at paragraphs 133, 138, 153, 163, 168 and 173, insofar as they concern Ng;
 - Q. the matters pleaded and particularised at paragraph 55A above.
- iii. The Inadequate Due Diligence Information was known or ought reasonably to have been known by Mariner by reason of:
- A. ~~(a) his role as President and Chief Executive Officer of Boral North America; and~~
 - B. ~~(b) the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps.;~~
 - C. Mariner's role as a project sponsor for the acquisition of Headwaters (BOR.002.002.8864);
 - D. his role on the US Steering Committee concerning the acquisition of Headwaters (BOR.002.002.8864);
 - E. the fact that Headwaters acquired Krestmark and Legacy in August 2016, and Windows in February 2017;
 - F. his attendance and participation at Boral's DDC meetings constituted for the purposes of consideration of the acquisition of Headwaters;
 - G. the fact that the documents prepared for the DDC, at DDC1 and DDC2, indicated that due diligence

workstreams had been established for each operational division other than Windows (BOR.002.002.8864; BOR.005.001.0161);

- H. the fact that Mariner was told on or about 31 October 2016, that, among other things, there were six different instances of the Microsoft Great Plains Enterprise Resource Planning system in use at Headwaters, that Windows was using a system different to the other parts of Headwaters, and that the different instances hampered back-office synergies (BOR.605.016.5993);
 - I. the fact that despite Boral's rationale for the acquisition of Headwaters being to realise "substantial synergies" (both cost and revenue synergies), a presentation prepared for DDC5 identified that only minimal synergies were expected in respect of the Windows business unit (BOR.002.003.0914);
 - J. the fact that a KPMG presentation prepared for DDC7 identified the need to conduct gap analysis for SOX requirements on recent acquisitions such as Krestmark (BOR.002.003.2485);
 - K. the fact that a due diligence workstream was created in respect of Windows later, by about 1 December 2016 (BOR.609.136.8899);
 - L. the fact that the 'Key Issues Register' presented to the DDC contained relatively few issues concerning Windows compared with other business units;
 - M. an email Mariner received in May 2017 indicating that Boral did not have the opportunity to review detailed financial records for Headwaters (including Windows) during due diligence (BOR.600.012.8750);
 - N. the fact that "Magnolia" had become, by February 2019 a term used by Mariner as meaning an inadequate due diligence process (BOR.600.035.2510);
 - O. the matters particularised at paragraphs 133, 138, 153, 163, 168 and 173, insofar as they concern Mariner;
 - P. the matters pleaded and particularised at paragraph 55A above.
- iv. The Inadequate Due Diligence Information was known or ought reasonably to have been known by Sullivan by reason of:
- A. his role as Group General Counsel of Boral and his position on Boral's Executive Committee;
 - B. his role on the Boral Limited Steering Committee concerning the acquisition of Headwaters (BOR.002.002.8864);
 - C. his attendance at Audit & Risk Committee meetings;
 - D. the Internal Audits (including the audit processes and the findings of the Internal Audits);

- E. the fact that Headwaters acquired Krestmark and Legacy in August 2016, and Windows in February 2017;
 - F. his attendance at Boral's DDC meetings, constituted for the purposes of consideration of the acquisition of Headwaters;
 - G. the fact that the documents prepared for the DDC, at DDC1 and DDC2, indicated that due diligence workstreams had been established for each operational division other than Windows (BOR.002.002.8864; BOR.005.001.0161);
 - H. the fact that despite Boral's rationale for the acquisition of Headwaters being to realise "substantial synergies" (both cost and revenue synergies), a presentation prepared for DDC5 identified that only minimal synergies were expected in respect of the Windows business unit (BOR.002.003.0914);
 - I. the fact that a KPMG presentation prepared for DDC7 identified the need to conduct gap analysis for SOX requirements on recent acquisitions such as Krestmark (BOR.002.003.2485);
 - J. an email Sullivan received in November 2016, shortly before Boral's board approved the acquisition of Headwaters, that indicated that Windows FY16 full year actual results had not yet been received by Boral or its advisors (BOR.605.013.0682);
 - K. the fact that a due diligence workstream was created in respect of Windows later, by about 1 December 2016 (BOR.609.136.8899);
 - L. the fact that the 'Key Issues register' presented to the DDC contained relatively few issues concerning Windows compared with other business units;
 - M. a presentation Sullivan received on 13 December 2016, indicating that consideration was to be given to the sale of Windows shortly after the purchase of Headwaters (BOR.602.081.2188);
 - N. the matters particularised at paragraphs 133, 138, 153, 163, 168 and 173, insofar as they concern Sullivan;
 - O. the matters pleaded and particularised at paragraph 55A above Further particulars may be provided following discovery.
- v. The Inadequate Due Diligence Information was known or ought reasonably to have been known by Post by reason of:
- A. his role as Chief Financial Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. his role on the US Steering Committee concerning the acquisition of Headwaters (BOR.002.002.8864);

- D. the fact that Headwaters acquired Krestmark and Legacy in August 2016, and Windows in February 2017;
- E. the fact that Post was told on or about 31 October 2016, that, among other things, there were six different instances of the Microsoft Great Plains Enterprise Resource Planning system in use at Headwaters, that Windows was using a system different to the other parts of Headwaters, and that the different instances hampered back-office synergies (BOR.605.016.5993);
- F. his attendance at Boral's DDC5 constituted for the purposes of consideration of the acquisition of Headwaters;
- G. the fact that despite Boral's rationale for the acquisition of Headwaters being to realise "substantial synergies" (both cost and revenue synergies), a presentation prepared for DDC5 identified that only minimal synergies were expected in respect of the Windows business unit (BOR.002.003.0914);
- H. the fact that the 'Key Issues Register' presented to the DDC contained relatively few issues concerning Windows compared with other business units;
- I. the fact that Post was scheduled to conduct a site visit at the Krestmark site as part of the due diligence process, but that such visit appears to have been cancelled;
- J. a presentation Post received on 13 December 2016, indicating that consideration was to be given to the sale of Windows shortly after the purchase of Headwaters (BOR.602.081.2188);
- K. an email Post received in May 2017 indicating that Boral did not have the opportunity to review detailed financial records for Headwaters (including Windows) during due diligence (BOR.600.012.8750);
- L. an email Post received on 18 May 2017, indicating that an audit of Windows' control environment had not occurred by that time (BOR.601.015.3741);
- M. an email Post received on 3 July 2018 indicating that several control issues concerning Magnolia had not been addressed prior to Boral's acquisition of Headwaters (BOR.601.038.5294);
- N. the fact that "Magnolia" had become, by February 2019 a term understood by senior management at Boral (including Post) as synonymous with an inadequate due diligence process (BOR.605.013.0682);
- O. the matters particularised at paragraphs 133, 138, 153, 163, 168 and 173, insofar as they concern Post;
- P. the matters pleaded and particularised at paragraph 55A above.

- 132B. The Inadequate Due Diligence Information was information that:
- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
 - (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
- 132C. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Inadequate Due Diligence Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 132A above.
- 132D. In the circumstances set out in paragraphs 132A to 132C above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period up to and including 5 December 2019 (being a **Continuous Disclosure Contravention**).

H.1 Non-integration of Windows

133. During the Relevant Period, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Non-integration of Windows Information and/or the Alternative Non-integration of Windows Information.

PARTICULARS

- i. *The Non-integration of Windows Information and/or the Alternative Non-integration of Windows Information was known or ought reasonably to have been known by Kane by reason of:*
 - A. ~~(a)~~ *his role as Chief Executive Officer and Managing Director of Boral;*
 - B. ~~(b)~~ *since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business; and*
 - C. ~~(c)~~ *the Internal Audits (including the audit processes and the findings of the Internal Audits) - an internal audit in October 2017 of Windows that had identified many issues and control gaps;*
 - D. *his attendance and participation in Boral's DDC meetings, constituted for the purposes of consideration of the acquisition of Headwaters;*
 - E. *his role on the Australian Steering Committee (ASC) (BOR.602.088.8929);*

- F. his receipt of Board Integration updates;
- G. his receipt of AU Integration updates;
- H. a report he received on 25 February 2017 to the effect that integration planning was not able to be progressed materially due to the regulatory review that was underway and that IT integration would play a significant role in unlocking gates for future synergies (BOR.602.124.2342);
- I. a 9 June 2017 Board Update he received indicating that no synergies were targeted for the Windows business given it was completely new to the portfolio and requires time to learn (BOR.600.012.6724);
- J. the fact that he was to take a close look at Windows as Boral firmed up long term holding assessments (BOR.600.046.3663);
- K. Kane's attendance at a 14 August 2017 Audit & Risk Committee meeting, where an 8 August 2017 Audit & Risk Committee paper was tabled indicating a risk associated with Boral North America having a variety of ERP systems, and that the strategy was to progressively consolidate them (BOR.601.020.6300)
- L. a Board Update dated 17 September 2017 indicating that Magnolia operations required a significant makeover (BOR.600.011.5560);
- M. his attendance at a Board Meeting in December 2017 where a Strategic Deep Dive paper concerning Windows was presented indicating that basic controls were lacking at Magnolia, and there was limited visibility to product productivity and that the action plan to address this included upgrading the external IT interface and utilising Fenevision (BOR.002.002.1279);
- N. his receipt of a 7 August 2018 Audit & Risk Committee paper indicating that the long term strategy was to standardise all operations onto SAP (BOR.002.001.2895);
- O. his acknowledgement in February 2020 of Boral's vulnerabilities when business units sit outside the normal checks and balances that exist through shared services units and ERP platforms outside the control of individual business units (BOR.600.026.1913);
- P. the matters particularised at paragraphs 132A, 138, 153, 163, 168 and 173, insofar as they concern Kane;
- Q. the matters particularised in paragraphs 132A and 153, insofar as they concern Kane;
- R. the matters pleaded and particularised at paragraphs 56 and 57 above.

- ii. The Non-integration of Windows Information and/or the Alternative Non-integration Information was known or ought reasonably to have been known by Ng by reason of:
- A. ~~(a)~~ her role as Chief Financial Officer of Boral;
 - B. ~~(b)~~ Ng's responsibility for project management of the Headwaters transaction; ~~and~~
 - C. ~~(c)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) - an internal audit in October 2017 of Windows that had identified many issues and control gaps;
 - D. her attendance and participation in Boral's DDC meetings, constituted for the purposes of consideration of the acquisition of Headwaters;
 - E. her role on the ASC (BOR.602.088.8929);
 - F. her receipt of AU Integration updates;
 - G. a report she received on 25 February 2017 to the effect that integration planning was not able to be progressed materially due to the regulatory review that was underway and that IT integration would play a significant role in unlocking gates for future synergies (BOR.602.124.2342);
 - H. a report she received in about June 2017 indicating that Headwaters operations appeared to run more independently and that there had been some issues, and that it was necessary to watch carefully (BOR.600.025.5383);
 - I. a 9 June 2017 Board Update she received indicating that no synergies were targeted for the Windows business given it was completely new to the portfolio and requires time to learn (BOR.600.012.6724);
 - J. an email Ng received indicating that the long term holding assessment of Windows had not been finalised as at June 2017 (BOR.600.046.3663);
 - K. an 8 August 2017 Audit & Risk Committee paper she received indicating a risk associated with Boral North America having a variety of ERP systems, and that the strategy was to progressively consolidate them (BOR.601.029.6983);
 - L. a Board Update dated 17 September 2017 indicating that Magnolia operations required a significant makeover (BOR.600.011.5560);
 - M. a report she received on 16 November 2017 proposing balance sheet adjustments relating to Windows to which the absence of a perpetual inventory system at Krestmark and Legacy contributed (BOR.601.074.3220);
 - N. her attendance at a Board Meeting in December 2017 where a Strategic Deep Dive paper concerning

Windows was presented indicating that basic controls were lacking at Magnolia, and there was limited visibility to product productivity and that the action plan to address this included upgrading the external IT interface and utilising Fenevision (BOR.002.002.1279);

Q. her receipt of a 7 August 2018 Audit & Risk Committee paper indicating that the long term strategy was to standardise all operations onto SAP (BOR.002.001.2895);

P. her receipt of a Windows Announcement Q&A draft on 4 December 2019;

Q. her receipt of a draft update on Windows announcement Q&A on 6 February 2020;

R. her receipt of a draft announcement in December 2019 indicating that centralisation of the financial reporting function which creates independence in reporting and reduces the risk of collaboration/collusion, as well as the integration onto more robust ERPs (Oracle and SAP), are critical to minimising the opportunity for financial manipulation to occur (BOR.602.108.0497);

S. discussion materials circulated by Ng on 24 January 2020 acknowledging, that there was no perpetual inventory system at Krestmark, the perpetual inventory system at Legacy was unreliable, and Magnolia's Winsys system was operational but needing improvement, and acknowledging that the move to perpetual inventory at Windows had progressed very slowly since 2017 and was critical to managing the operations and resolving internal control weaknesses (BOR.600.021.5056);

T. the matters particularised at paragraphs 132A, 138, 153, 163, 168 and 173, insofar as they concern Ng;

U. the matters pleaded and particularised at paragraphs 56 and 57 above.

iii. The Non-integration of Windows Information and/or the Alternative Non-integration of Windows information was known or ought reasonably to have been known by Mariner by reason of:

A. (a) his role as President and Chief Executive Officer of Boral North America; and

B. ~~(b) the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~

C. his attendance and participation in Boral's DDC meetings, constituted for the purposes of consideration of the acquisition of Headwaters;

- D. his role on the ASC and on the Executive Steering Committee (**ESC**), which was responsible for matters including managing the master integration timeline, providing strategic direction and priorities (BOR.602.088.8929);
- E. his role leading the integration planning process;
- F. his attendance at Integration Management Office (**IMO**) meetings;
- G. his role in relation to AU integration updates;
- H. his receipt of integration kickoff notes dated 8 December 2016 indicating that the integration strategy for Windows was completely driven by whether Boral divests it or not (BOR.602.081.2025);
- I. an email he sent on 25 February 2017 following the first Joint IMO meeting to the effect that integration planning was not able to be progressed materially due to the regulatory review that was underway and that IT integration would play a significant role in unlocking gates for future synergies (BOR.602.124.2342);
- J. his receipt of a 28 March 2017 integration update indicating that the potential divestment of Windows was being considered at that time (BOR.600.044.3699);
- K. a 9 June 2017 Board Update he received indicating that no synergies were targeted for the Windows business given it was completely new to the portfolio and requires time to learn (BOR.600.012.6724);
- L. an 8 August 2017 Audit & Risk Committee paper he received indicating a risk associated with Boral North America having a variety of ERP systems, and that the strategy was to progressively consolidate them (BOR.601.019.4415);
- M. his presentation of a Strategic Deep Dive paper concerning Windows to the Board in December 2017 indicating that basic controls were lacking at Magnolia, and there was limited visibility to product productivity and that the action plan to address this included upgrading the external IT interface and utilising Fenevision (BOR.002.002.1279);
- N. his receipt of a Windows Announcement Q&A draft on 4 December 2019;
- O. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
- P. his receipt of a draft announcement in December 2019 indicating that centralisation of the financial reporting function which creates independence in reporting and reduces the risk of collaboration/collusion, as well as the integration onto more robust ERPs (Oracle and

SAP), are critical to minimising the opportunity for financial manipulation to occur (BOR.602.108.0497);

Q. the matters particularised at paragraphs 132A, 138, 153, 163, 168 and 173, insofar as they concern Mariner;

R. the matters pleaded and particularised at paragraphs 56 and 57 above.

iv. The Non-integration of Windows Information and/or the Alternative Non-integration of Windows information was known or ought reasonably to have been known by Sullivan by reason of:

A. his role as Group General Counsel of Boral and his position on Boral's Executive Committee;

B. his attendance at Audit & Risk Committee meetings;

C. his role on the Boral Limited Steering Committee concerning the acquisition of Headwaters (BOR.002.002.8864);

D. his attendance and participation in Boral's DDC meetings, constituted for the purposes of consideration of the acquisition of Headwaters;

E. the Internal Audits (including the audit processes and the findings of the Internal Audits);

F. an email he received indicating that the long term holding assessment of Windows had not been finalised as at June 2017 (BOR.600.046.3663);

G. his receipt of a Windows Announcement Q&A draft on 4 December 2019;

H. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;

I. his receipt of a draft announcement in December 2019 indicating that centralisation of the financial reporting function which creates independence in reporting and reduces the risk of collaboration/collusion, as well as the integration onto more robust ERPs (Oracle and SAP), are critical to minimising the opportunity for financial manipulation to occur (BOR.602.108.0497);

J. the matters particularised at paragraphs 132A, 138, 153, 163, 168 and 173, insofar as they concern Sullivan;

K. the matters pleaded and particularised at paragraphs 56 and 57 above. Further particulars may be provided following discovery.

v. The Non-integration of Windows Information and/or the Alternative Non-integration of Windows information was known or ought reasonably to have been known by Post by reason of:

A. his role as Chief Financial Officer of Boral North America;

- B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
- C. his role on the ESC (BOR.002.001.7810);
- D. his role leading the IT and Finance workstreams related to integration (BOR.002.001.7810) and providing periodic reports regarding their progress;
- E. his role in relation AU Integration updates;
- F. his role in developing the ERP integration strategy for the Headwaters businesses including the long and short term strategies for Windows (BOR.602.102.4190);
- G. his role setting objectives in the integration process, including consolidation of reporting across Headwaters/Boral and to roll out Prophix to Boral SBU (BOR.602.100.4659);
- H. his involvement regarding the SAP integration process (BOR.602.102.1576);
- I. an April 2017 report he received indicating that the Great Plains ERP worked best in a single user instance and did not work well for multiple divisions, and that the 2010 version of the software would no longer be supported by 2021 (BOR.602.104.4021);
- J. emails he sent and received in May 2017 regarding an audit planned for Windows given that the control environment was not understood at that time, and noting inventory theft issues that had occurred in the past 12 months, and indicating that Windows required attention (BOR.601.026.6655);
- K. a report he received around the time Boral acquired Headwaters indicating that Headwaters was a multi-platform entity and that it was anticipated that ERP transition would take 2.5 to 4 years to complete (BOR.602.103.0774);
- L. his receipt of a June 2017 email indicating that the short term fix for Windows was to upgrade Fenevision (BOR.602.102.3801);
- M. an email he received in July 2017 indicating that the business was flying blind without a Fenevision upgrade, and this was key to resolving some control weaknesses (BOR.602.102.1576);
- N. an 8 August 2017 Audit & Risk Committee paper he received indicating a risk associated with Boral North America having a variety of ERP systems, and that the strategy was to progressively consolidate them (BOR.601.019.4415);
- O. a report he received on 16 November 2017 proposing balance sheet adjustments relating to Windows to which the absence of a perpetual inventory system at

- Krestmark and Legacy contributed (BOR.601.074.3220);
- P. a December 2017 IT update he received indicating that the Fenevision upgrade had occurred at Krestmark and Legacy (BOR.602.061.7208);
- Q. his attendance at a Board Meeting in December 2017 where a Strategic Deep Dive paper concerning Windows was presented indicating that basic controls were lacking at Magnolia, and there was limited visibility to product productivity and that the action plan to address this included upgrading the external IT interface and utilising Fenevision (BOR.002.002.1279);
- R. his receipt of a 7 August 2018 Audit & Risk Committee paper indicating that the long term strategy was to standardise all operations onto SAP (BOR.002.001.2895);
- S. an ERP update he received in June 2019 indicating that the transfer of Magnolia to Fenevision, Great Plains or SAP was then under consideration but had not occurred (BOR.602.092.1004);
- T. documents he received indicating that the rollout of Fenevision at Magnolia was delayed on a number of occasions;
- U. an 18 July 2019 Windows Risk worksheet he sent, which included a risk associated with a lack of a unified sustainable ERP system throughout all locations (BOR.602.090.1757);
- V. his receipt of a Windows Announcement Q&A draft on 4 December 2019;
- W. discussion materials circulated by Ng on 15 January 2020 acknowledging that the move to perpetual inventory at Windows had progressed very slowly since 2017 and was critical to managing the operations and resolving internal control weaknesses (BOR.600.021.5056);
- X. the matters particularised at paragraphs 132A, 138, 153, 163, 168 and 173, insofar as they concern Post;
- Y. the matters pleaded and particularised at paragraphs 56 and 57 above.

134. The Non-integration of Windows Information and/or the Alternative Non-integration of Windows Information was information that:

- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and

- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
135. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Non-integration of Windows Information and/or the Alternative Non-Integration of Windows Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 133 above.
136. Boral did not communicate the Non-integration of Windows Information and/or the Alternative Non-Integration of Windows Information to the ASX before 5 December 2019.
137. In the circumstances set out in paragraphs 133 to 136 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period up to and including 5 December 2019 (being a Continuous Disclosure Contravention).

H.2 ~~Manipulated Financial Reporting Information~~

138. From 31 March 2018, or alternatively from 30 June 2018, or alternatively from 16 May 2019, or alternatively from 29 October 2019, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the ~~Manipulated~~ Financial Reporting Information.

PARTICULARS

- i. *The ~~Manipulated~~ Financial Reporting Information ought reasonably to have been known by Kane by reason of:*
- A. *~~(a)~~ his role as Chief Executive Officer and Managing Director of Boral;*
 - B. *~~(b)~~ since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;*
 - C. *~~(c)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps; and*
 - D. *his regular attendance at Audit & Risk Committee meetings; at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated*

- E. his regular attendance at Boral board meetings, including the Boral board meetings held on 5, 6 and 20 December 2019 and 24 January 2020;
- F. his regular attendance at Executive Committee meetings;
- G. on about 29 October 2019, Post was notified about a potential error in the inventory balance at the Legacy site, which was then escalated to Mariner on 5 November 2019, Ng on 7 November 2019 and Kane at a similar time (BOR.002.001.4161);
- H. an admission made by Phillips on 7 November 2019 to adjusting the physical inventory count at Legacy (BOR.002.001.4161);
- I. between 8 and 11 November 2019, an investigation by lawyers Alston & Bird and Ernst & Young had commenced (BOR.012.002.0001);
- J. a 19 November 2019 Audit & Risk Committee paper by Ng addressing, among other things inventory overstatement (BOR.002.001.4161);
- K. by 25 November 2019, Ng, Post, Mariner and Spear were considering a profitability restatement in the order of \$18-20 million, having the impact of reducing Windows EBITDA margins to 8.4% in FY20, increasing to 10.5% in FY21 (BOR.601.047.5169);
- L. on 26 November 2019, Mariner informed Kane that there was an estimated USD20 million overstatement of Windows' profitability and that this would reduce EBITDA margins to roughly 10% moving forward (BOR.603.030.2579);
- M. a Strategic Plan presented to the Board on 6 December 2019, which forecasted EBITDA margins to reduce to single digits in FY20 and that EBITDA margins would remain between 10-11.5% up until FY21, but which was premised on what was, or ought to have been, known as an underestimate of the adverse adjustment to Windows EBITDA in FY20 (such underestimated adjustment being USD 18M) (BOR.002.002.7959);
- N. an email Kane received on 18 December 2019 indicating that the restated FY19 EBITDA was still being refined but that 6% was a starting point, and that at that time a timeline could not be given about when Windows' margins could be raised to 14-15% (BOR.600.045.9438);
- O. a 9 January 2020 document circulated to Kane titled Boral Windows Update and Discussion, identifying EBITDA margins being in the single digits from FY19 to FY20 (BOR.602.066.6322);
- P. an email from Kane on 20 January 2020 stating that beginning in November FY19 cost came into the

business in response to the former owner walking off with a majority of plant workers and the simultaneous tampering with financial results by key Window Division finance managers (BOR.600.026.3069);

Q. a 20 January 2020 email chain in which Kane indicated that the margin recovery process was under the management of Joel Charlton and the US Building Products Division (BOR.601.044.2020);

R. a 22 January 2020 Board Paper titled Windows Workplan Update (BOR.002.002.8572);

S. a 22 January 2020 board document titled 'Financial Assessment – Windows adjustment – Summary' identifying an adjustment to the FY18, FY19 and FY20 results for Windows, including an EBITDA margin in the single digits for FY19 and FY20 (BOR.002.002.8580);

T. a 23 January 2020 email from Spear to Post, Mariner, Kane, Ng, and others identifying that cost issues in the Windows business with respect to labour and materials were hidden as a result of accounting manipulations (BOR.601.044.1838);

U. a 4 February 2020 report emailed to Kane, with a covering email stating that "In due time, the windows management team will have a better understanding and visibility of cost of manufacture by windows at the plants" (BOR.600.021.4662);

V. had Boral and / or Windows' systems been unaffected by the inadequacies pleaded and particularised in paragraphs 62 to 64 above, the identification of the Financial Reporting Information would have occurred at an earlier time;

W. the matters particularised at paragraphs 132A, 133, 153, 163, 168 and 173, insofar as they concern Kane;

X. the matters pleaded and particularised in paragraphs 59 and 60 above.

ii. ~~The Manipulated~~ Financial Reporting Information ought reasonably to have been known by Ng by reason of:

A. (a) her role as Chief Financial Officer of Boral;

B. (b) Ng's responsibility for project management of the Headwaters transaction;

C. (c) her regular attendance at Audit & Risk Committee meetings ~~an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~

D. (d) her attendance at Boral board meetings, including the Boral board meetings held on 5, 6 and 20 December 2019 and 24 January 2020 ~~at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached~~

- ~~management and informed them that Windows' accounts had been manipulated;~~
- E. her regular attendance at Executive Committee meetings;
- F. the Internal Audits (including the audit processes and the findings of the Internal Audits);
- G. on about 29 October 2019, Post was notified about a potential error in the inventory balance at the Legacy site, which was then escalated to Mariner on 5 November 2019, Ng on 7 November 2019 and Kane at a similar time (BOR.002.001.4161);
- H. an admission made by Phillips on 7 November 2019 to adjusting the physical inventory count at Legacy (BOR.002.001.4161);
- I. between 8 and 11 November 2019, an investigation by lawyers Alston & Bird and Ernst & Young had commenced (BOR.012.002.0001);
- J. a 19 November 2019 Audit & Risk Committee paper by Ng addressing, among other things inventory overstatement (BOR.002.001.4161);
- K. by 25 November 2019, Ng, Post, Mariner and Spear were considering a profitability restatement in the order of \$18-20 million, having the impact of reducing Windows EBITDA margins to 8.4% in FY20, increasing to 10.5% in FY21 (BOR.601.047.5169);
- L. an email she received from Daryl Johanson on 25 November 2019 indicating that an area of risk was that receivers were not always entered into Fenevision timely (BOR.602.089.2511);
- M. on 26 November 2019, Ng indicated that she agreed with a scenario proposed by Spear in relation to an \$18m adjustment regarding Windows, holding EBITDA margin at 10% beyond FY20 (BOR.601.048.8188);
- N. a 27 November 2019 email she sent to others including Sullivan concerning the deterioration of Windows and identifying an issue regarding accounts payable at Windows (BOR.600.021.8184);
- O. on 29 November 2019, Ng advised that the impact to Windows' EBITDA extended back to September 2018, and said that "we do not know how windows is really performing on an underlying basis and the impact for the rest of FY2020" (BOR.600.005.5423);
- P. her receipt of a Windows Announcement Q&A draft on 4 December 2019;
- Q. her receipt of a draft update on Windows announcement Q&A on 6 February 2020;

- R. a 4 December 2019 email she received from Daryl Johanson indicating that Phillips had used accounts payable to offset costs and that he used most of the debit to accounts receivable to increase revenue in FY19 (BOR.600.005.4728);
- S. a 4 December 2019 email she received from Daryl Johanson identifying that the reserve for bad debts was probably inadequate, and that one customer owed \$600,000 from 2018 and was paying \$5,000 per month (BOR.600.005.4728);
- T. by 4 December 2019, Ng was informed that Windows' profitability had been overstated by more than USD 23m, including a USD 15m overvaluation of inventory, at least USD 8m of accounts payable entries made by Phillips, which had been offset against costs, that Phillips had used debits to accounts receivable to increase revenue in FY19 and that there was probably an inadequate reserve (BOR.600.005.4728);
- U. a 6 December 2019 email she received from Daryl Johanson identifying that an entry of more than \$1.4m was made directly to Houston's Leasehold Improvements that bore the marks of being improper (BOR.600.005.4728);
- V. a Strategic Plan presented to the Board on 6 December 2019, which forecasted EBITDA margins to reduce to single digits in FY20 and that EBITDA margins would remain between 10-11.5% up until FY21, but which was premised on what was, or ought to have been, known as an underestimate of the adverse adjustment to Windows EBITDA in FY20 (such underestimated adjustment being USD 18M) (BOR.002.002.7959);
- W. an email Ng received on 18 December 2019 indicating that the restated FY19 EBITDA was still being refined but was 6% as a starting point, and that at that time a timeline could not be given about when Windows' margins could be raised to 14-15% (BOR.600.045.9438);
- X. on 9 January 2020, Post informed Ng that adverse adjustment to Windows' profitability totalled \$24.2m and was split between each of FY18 (\$3.4m), FY19 (\$17.8m) and FY20 (\$3m) (BOR.602.103.1917);
- Y. a 20 January 2020 email chain in which Kane indicates that the margin recovery process was under the management of Joel Charlton and the US Building Products Division (BOR.601.044.2020);
- Z. an email Ng received on 19 January 2020 from Kane stating that beginning in November FY19 cost came into the business in response to the former owner walking off with a majority of plant workers and the

simultaneous tampering with financial results by key Window Division finance managers (BOR.600.026.3069);

AA. a 21 January 2020 email she received from Daryl Johanson indicating that the accounts payable receiving accrual issue was believed to be \$1.1m, and that the amount was adjusted for in December (BOR.601.044.8060);

BB. a 22 January 2020 Board Paper titled Windows Workplan Update (BOR.002.002.8572);

CC. a 22 January 2020 board document titled 'Financial Assessment – Windows adjustment – Summary' identifying an adjustment to the FY18, FY19 and FY20 results for Windows, including an EBITDA margin in the single digits for FY19 and FY20 (BOR.002.002.8580);

DD. a 23 January 2020 email from Spear to Post, Mariner, Kane, Ng, and others identifying that cost issues in the Windows business with respect to labour and materials were hidden as a result of accounting manipulation (BOR.601.044.1838);

EE. a 4 February 2020 report emailed to Ng, with a covering email stating that "In due time, the windows management team will have a better understanding and visibility of cost of manufacture by windows at the plants" (BOR.600.021.4662);

FF. on 4 February 2020 Ng was informed that the restatement amounts for FY18 was USD 3.8m and for FY19 was USD 18.8m, being the amounts that were identified in the 10 February 2020 Announcement;

GG. had Boral and / or Windows' systems been unaffected by the inadequacies pleaded and particularised in paragraphs 62 to 64 above, the identification of the Financial Reporting Information would have occurred at an earlier time;

HH. the matters particularised at paragraphs 132A, 133, 153, 163, 168 and 173, insofar as they concern Ng;

II. the matters pleaded and particularised in paragraphs 59 and 60 above.

iii. The ~~Manipulated~~ Financial Reporting Information ought reasonably to have been known by Mariner by reason of:

A. ~~(a)~~ his role as President and Chief Executive Officer of Boral North America;

B. ~~(b)~~ his attendance at Boral board meetings, including the Boral board meetings held on 5 and 6 December 2019 and 24 January 2020; an internal audit in October 2017 of Windows that had identified many issues and control gaps; and

- C. ~~(c) the Internal Audits (including the audit processes and the findings of the Internal Audits) at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated;~~
- D. his regular attendance at Executive Committee meetings;
- E. by 16 May 2019, it was relayed to Mariner that a Windows plant controller resigned stating that Phillips and the Magnolia accounting team had been processing transactions to make Magnolia's financials more favourable (BOR.603.102.7481);
- F. on about 29 October 2019, Post was notified about a potential error in the inventory balance at the Legacy site, which was then escalated to Mariner on 5 November 2019, Ng on 7 November 2019 and Kane at a similar time (BOR.002.001.4161);
- G. an admission made by Phillips on 7 November 2019 to adjusting the physical inventory count at Legacy (BOR.002.001.4161);
- H. between 8 and 11 November 2019, an investigation by lawyers Alston & Bird and Ernst & Young had commenced (BOR.012.002.0001);
- I. a 19 November 2019 Audit & Risk Committee paper by Ng addressing, among other things inventory overstatement (BOR.602.108.4309);
- J. by 25 November 2019, Ng, Post, Mariner and Spear were considering a profitability restatement in the order of \$18-20 million, having the impact of reducing Windows EBITDA margins to 8.4% in FY20, increasing to 10.5% in FY21 (BOR.601.047.5169);
- K. on 26 November 2019, Mariner informed Kane that there was an estimated USD20 million overstatement of Windows' profitability and that this would reduce EBITDA margins to roughly 10% moving forward (BOR.603.030.2579);
- L. on 26 November 2019, Mariner received an email in which Ng indicated that she agreed with a scenario proposed by Spear in relation to an \$18m adjustment regarding Windows, holding EBITDA margin at 10% beyond FY20 (BOR.601.048.8188);
- M. on 29 November 2019, Ng advised that the impact to Windows' EBITDA extended back to September 2018, and said that "we do not know how windows is really performing on an underlying basis and the impact for the rest of FY2020" (BOR.600.005.5423);
- N. his receipt of a Windows Announcement Q&A draft on 4 December 2019;

- Q. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
- P. a Strategic Plan presented to the Board on 6 December 2019, which forecasted EBITDA margins to reduce to single digits in FY20 and that EBITDA margins would remain between 10-11.5% up until FY21, but which was premised on what was, or ought to have been, known as an underestimate of the adverse adjustment to Windows EBITDA in FY20 (such underestimated adjustment being USD 18M) (BOR.002.002.7959);
- Q. a 9 January 2020 document circulated to Mariner titled Boral Windows Update and Discussion, identifying EBITDA margins being in the single digits from FY19 to FY20 (BOR.602.066.6322);
- R. an email Mariner received on 19 January 2020 from Kane stating that beginning in November FY19 cost came into the business in response to the former owner walking off with a majority of plant workers and the simultaneous tampering with financial results by key Window Division finance managers (BOR.600.026.3069);
- S. a 20 January 2020 email chain in which Kane indicates that the margin recovery process was under the management of Joel Charlton and the US Building Products Division (BOR.601.044.2020);
- T. a 22 January 2020 Board Paper titled Windows Workplan Update (BOR.002.002.8572);
- U. a 22 January 2020 board document titled 'Financial Assessment – Windows adjustment – Summary' identifying an adjustment to the FY18, FY19 and FY20 results for Windows, including an EBITDA margin in the single digits for FY19 and FY20 (BOR.002.002.8580);
- V. an email Spear sent Mariner on 31 January 2020 indicating that "erratic manipulation of the general ledger" made it difficult to ascertain whether cost increases in the Windows business was a result of "market driven increases or just dumb decisions and poor management" (BOR.601.043.7690);
- W. a 4 February 2020 report emailed to Mariner, with a covering email stating that "in due time, the windows management team will have a better understanding and visibility of cost of manufacture by windows at the plants" (BOR.600.021.4662);
- X. had Boral and / or Windows' systems been unaffected by the inadequacies pleaded and particularised in paragraphs 62 to 64 above, the identification of the Financial Reporting Information would have occurred at an earlier time;

- Y. the matters particularised at paragraphs 132A, 133, 153, 163, 168 and 173, insofar as they concern Mariner;
 - Z. the matters pleaded and particularised in paragraphs 59 and 60 above.
- iv. The ~~Manipulated~~ Financial Reporting Information ought reasonably to have been known by Sullivan by reason of:
- A. his role as Group General Counsel for Boral;
 - B. his attendance at Boral board meetings, including the Boral board meetings held on 5, 6 and 20 December 2019 and 24 January 2020;
 - C. his attendance at Audit & Risk Committee meetings;
 - D. his regular attendance at Executive Committee meetings;
 - E. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - F. between 8 and 11 November 2019, an investigation by lawyers Alston & Bird and Ernst & Young had commenced (BOR.012.002.0001);
 - G. a 27 November 2019 email he received from Ng concerning the deterioration of Windows and identifying an issue regarding accounts payable at Windows (BOR.600.021.8184);
 - H. a 19 November 2019 Audit & Risk Committee paper by Ng addressing, among other things inventory overstatement (BOR.002.001.4161);
 - I. his receipt of a Windows Announcement Q&A draft on 4 December 2019;
 - J. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - K. a Strategic Plan presented to the Board on 6 December 2019, which forecasted EBITDA margins to reduce to single digits in FY20 and that EBITDA margins would remain between 10-11.5% up until FY21, but which was premised on what was, or ought to have been, known as an underestimate of the adverse adjustment to Windows EBITDA in FY20 (such underestimated adjustment being USD 18M) (BOR.002.002.7959);
 - L. a 22 January 2020 Board Paper titled Windows Workplan Update (BOR.002.002.8572);
 - M. a 22 January 2020 board document titled 'Financial Assessment – Windows adjustment – Summary' identifying an adjustment to the FY18, FY19 and FY20 results for Windows, including an EBITDA margin in the single digits for FY19 and FY20 (BOR.002.002.8580);

- N. had Boral and / or Windows' systems been unaffected by the inadequacies pleaded and particularised in paragraphs 62 to 64 above, the identification of the Financial Reporting Information would have occurred at an earlier time;
 - O. the matters particularised at paragraphs 132A, 133, 153, 163, 168 and 173, insofar as they concern Sullivan;
 - P. the matters pleaded and particularised in paragraphs 59 and 60 above.
- v. The Financial Reporting Information was known or ought reasonably to have been known by Post by reason of:
- A. his role as Chief Financial Officer of Boral North America;
 - B. his attendance at Boral board meetings, including the Boral board meetings held on 5 and 6 December 2019, and 24 January 2020;
 - C. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - D. a January 2017 Headwaters SOX control status report Post received on 24 May 2017 disclosing ineffective controls regarding accounts payable, fixed assets and past due account balances (BOR.601.015.3741);
 - E. Post was informed on 26 May 2017 that there may have been inventory theft at Windows in the 12 months prior (BOR.601.015.3185);
 - F. on 6 February 2018, Post notified internal audit regarding an inventory discrepancy at the Magnolia site (being an occurrence of an issue that was the same as or similar to the inventory overstatement issue affecting Windows) (BOR.601.043.3418);
 - G. the March 2018 Magnolia Special Review that he received identifying that the Controller at Magnolia who had responsibility over finance and accounting duties had not been performing monthly reconciliations between the perpetual inventory record (Winsys) and the general ledger (Great Plains) for some time;
 - H. by 16 May 2019, it was relayed to Post that a Windows plant controller resigned stating that Phillips and the Magnolia accounting team had been processing transactions to make Magnolia's financials more favourable (BOR.603.102.7481);
 - I. on about 29 October 2019, Post was notified about a potential error in the inventory balance at the Legacy site, which was then escalated to Mariner on 5 November 2019, Ng on 7 November 2019 and Kane at a similar time (BOR.002.001.4161);

- J. an admission made by Phillips on 7 November 2019 to adjusting the physical inventory count at Legacy (BOR.002.001.4161);
- K. between 8 and 11 November 2019, an investigation by lawyers Alston & Bird and Ernst & Young had commenced (BOR.012.002.0001);
- L. a 19 November 2019 Audit & Risk Committee paper by Ng addressing, among other things inventory overstatement (BOR.602.108.4309);
- M. by 25 November 2019, Ng, Post, Mariner and Spear were considering a profitability restatement in the order of \$18-20 million, having the impact of reducing Windows EBITDA margins to 8.4% in FY20, increasing to 10.5% in FY21 (BOR.601.047.5169);
- N. an email he received from Daryl Johanson on 25 November 2019 indicating that an area of risk was that receivers were not always entered into Fenevision timely (BOR.602.089.2511);
- O. on 26 November 2019, Post indicated that he preferred a scenario proposed by Spear in relation to an \$18m adjustment regarding Windows, holding EBITDA margin at 10% beyond FY20 (BOR.601.048.8188);
- P. his receipt of a Windows Announcement Q&A draft on 4 December 2019;
- Q. a 5 January 2020 email Post received from Daryl Johanson relating to the reconciliation of AP Receiving (BOR.601.043.7690);
- R. a Strategic Plan presented to the Board on 6 December 2019, which forecasted EBITDA margins to reduce to single digits in FY20 and that EBITDA margins would remain between 10-11.5% up until FY21, but which was premised on what was, or ought to have been, known as an underestimate of the adverse adjustment to Windows EBITDA in FY20 (such underestimated adjustment being USD 18M) (BOR.002.002.7959);
- S. on 9 January 2020, Post informed Ng that adverse adjustment to Windows' profitability totalled \$24.2m and was split between each of FY18 (\$3.4m), FY19 (\$17.8m) and FY20 (\$3m) (BOR.602.103.1917);
- T. a 9 January 2020 document circulated by Post titled Boral Windows Update and Discussion, identifying EBITDA margins being in the single digits from FY19 to FY20 (BOR.602.066.6322);
- U. emails that Post received on 17 to 19 January 2020 regarding the reserve for uncollectable accounts concerning Windows (BOR.601.046.0919)

- V. a 20 January 2020 email chain that Post received that indicated that the margin recovery process was under the management of Joel Charlton and the US Building Products Division (BOR.601.044.2020);
- W. a 21 January 2020 email he received from Daryl Johanson indicating that the accounts payable receiving accrual issue was believed to be \$1.1m, and that the amount was adjusted for in December (BOR.601.044.8060);
- X. a 22 January 2020 Board Paper titled Windows Workplan Update (BOR.002.002.8572);
- Y. a 22 January 2020 board document titled 'Financial Assessment – Windows adjustment – Summary' identifying an adjustment to the FY18, FY19 and FY20 results for Windows, including an EBITDA margin in the single digits for FY19 and FY20 (BOR.002.002.8580);
- Z. a 23 January 2020 email from Spear to Post, Mariner, Kane, Ng, and others identifying that cost issues in the Windows business with respect to labour and materials were hidden as a result of accounting manipulation (BOR.601.044.1838);
- AA. a 31 January 2020 email he received, which forwarded information concerning capitalised labour (BOR.601.043.7690);
- BB. had Boral and/or Windows' systems been unaffected by the inadequacies pleaded and particularised in paragraphs 62 to 64 above, the identification of the Financial Reporting Information would have occurred at an earlier time;
- CC. the matters particularised at paragraphs 132A, 133, 153, 163, 168 and 173, insofar as they concern Post;
- DD. the matters pleaded and particularised in paragraphs 59 and 60 above. Further particulars may be provided following discovery.

139. The Manipulated Financial Reporting Information was information that:

- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

140. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the ~~Manipulated~~ Financial Reporting Information immediately on and from the dates that Boral had, or obtained that information, as pleaded in paragraph 138 above.
141. Boral did not communicate the ~~Manipulated~~ Financial Reporting Information to the ASX before 5 December 2019.
142. In the circumstances set out in paragraphs 138 to 141 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period up to and including 5 December 2019 (being a Continuous Disclosure Contravention).

H.3 ~~Manipulated~~ Financial Reporting Margin

143. From 31 March 2018, alternatively from 30 June 2018, or alternatively from 25 November 2019, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the ~~Manipulated~~ Financial Reporting Margin Information.

PARTICULARS

- i. ~~The ~~Manipulated~~ Finance Financial Reporting Margin Information ought reasonably to have been known by Kane by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Kane (a) his role as Chief Executive Officer and Managing Director of Boral; (b) since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business; (c) at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated; and (d) on a date not presently known to the Applicant but materially earlier than 5 December 2019 an investigation by lawyers retained by Boral and a forensic account was being conducted.~~
- ii. ~~The ~~Manipulated~~ Financial Reporting Margin Information ought reasonably to have been known by Ng by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Ng: (a) her role as Chief Financial Officer of Boral; (b) Ng's responsibility for project management of the Headwaters transaction; (c) at a date not presently known to the applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated; and (d) on a date not presently known to the Applicant but materially earlier than 5 December 2019 an investigation by lawyers retained by Boral and a forensic account was being conducted.~~

- iii. ~~The Manipulated Financial Reporting Margin Information~~ ought reasonably to have been known by Mariner by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Mariner; ~~(a) his role as President and Chief Executive Officer of Boral North America; (b) at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated;~~ and (c) on a date not presently known to the Applicant but materially earlier than 5 December 2019 an investigation by lawyers retained by Boral and a forensic account was being conducted.
- iv. The Financial Reporting Margin Information ought reasonably to have been known by Sullivan by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Sullivan. ~~Further particulars may be provided following discovery.~~
- v. The Financial Reporting Margin Information ought reasonably to have been known by Post by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Post.

144. The ~~Manipulated~~ Financial Reporting Margin Information was information that:

- (a) until 10 February 2020 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

145. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the ~~Manipulated~~ Financial Reporting Margin Information immediately on and from the dates that Boral had, or obtained that information, as pleaded in paragraph 143 above.

146. Boral did not communicate the ~~Manipulated~~ Financial Reporting Margin Information to the ASX before 10 February 2020.

147. In the circumstances set out in paragraphs 143 to 146 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period up to and including 10 February 2020 (being a Continuous Disclosure Contravention).

H.4 ~~Manipulated~~ Financial Reporting Quantum and Duration

148. ~~By and f~~From 5 December 2019, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the ~~Manipulated~~ Financial Reporting Quantum and Duration Information.

PARTICULARS

- i. ~~The Manipulated Financial Reporting Quantum and Duration Information ought reasonably to have been known by Kane by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Kane(a) his role as Chief Executive Officer and Managing Director of Boral; (b) since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business; (c) at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated; and (d) on a date not presently known to the Applicant but materially earlier than 5 December 2019 an investigation by lawyers retained by Boral and a forensic account was being conducted.~~
- ii. ~~The Manipulated Financial Reporting Quantum and Duration Information ought reasonably to have been known by Ng by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Ng(a) her role as Chief Financial Officer of Boral; (b) Ng's responsibility for project management of the Headwaters transaction; (c) at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated; and (d) on a date not presently known to the Applicant but materially earlier than 5 December 2019 an investigation by lawyers retained by Boral and a forensic account was being conducted.~~
- iii. ~~The Manipulated Financial Reporting Quantum and Duration Information ought reasonably to have been known by Mariner by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Mariner. (a) his role as President and Chief Executive Officer of Boral North America; (b) at a date not presently known to the Applicant but materially earlier than 5 December 2019 a person approached management and informed them that Windows' accounts had been manipulated.; and (c) on a date not presently known to the Applicant but materially earlier than 5 December 2019 an investigation by lawyers retained by Boral and a forensic account was being conducted.~~
- iv. ~~The Financial Reporting Quantum and Duration Information ought reasonably to have been known by Sullivan by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Sullivan. Further particulars may be provided following discovery.~~

- v. *The Financial Reporting Quantum and Duration Information ought reasonably to have been known by Post by reason of the matters identified above in the particulars to paragraph 138, insofar as they concern Post.*

149. The ~~Manipulated~~ Financial Reporting Quantum and Duration Information was information that:
 - (a) until 10 February 2020 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
 - (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
150. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the ~~Manipulated~~ Financial Reporting Quantum and Duration Information immediately on and from the dates that Boral had, or obtained that information, as pleaded in paragraph 148 above.
151. Boral did not communicate the ~~Manipulated~~ Financial Reporting Quantum and Duration Information to the ASX before 10 February 2020 (alternatively, 5 December 2019 as to only part of the ~~Manipulated~~ Financial Reporting Quantum and Duration Information, namely a range including the dollar amount pleaded in paragraph 61(c)).
152. In the circumstances set out in paragraphs 148 to 151 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period up to and including 10 February 2020 (being a Continuous Disclosure Contravention).

H.5 Inadequate systems

153. During the Relevant Period, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Inadequate Systems Information.

PARTICULARS

- i. *The Inadequate Systems Information ought reasonably to have been known by Kane by reason of:*
 - A. ~~(a)~~ his role as Chief Executive Officer and Managing Director of Boral;
 - B. ~~(b)~~ since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;
 - C. ~~(c)~~ Kane “helped build the [Boral North America] team since 2010”; and

- D. (d) the Internal Audits (including the audit processes and the findings of the Internal Audits) - an internal audit in October 2017 of Windows that had identified many issues and control gaps;
 - E. Kane's regular attendance at Audit & Risk Committee meetings, including those meetings at which the findings of the audits of the Windows business were discussed;
 - F. the fact that Kane routinely received draft papers of quarterly Audit & Risk Committee meetings, including papers that summarised the results of audits of the Windows business;
 - G. Kane, along with Ng and the Boral North America Management team, requested that Windows have the first internal audit undertaken following Boral's acquisition of Headwaters (such audit being the June 2017 Windows Audit) (BOR.601.001.7462);
 - H. Kane's attendance at a 20 November 2017 Audit & Risk Committee meeting, where the Group Internal Audit Report was tabled, which summarised the June 2017 Windows Audit report (BOR.002.002.1096);
 - I. Kane's attendance at a 13 August 2018 Audit & Risk Committee meeting, where the Group Internal Audit Report, which summarised the findings of the March 2018 Magnolia Special Review audit (concerning inventory at Magnolia), was tabled (BOR.002.001.2944);
 - J. Kane's attendance at a 16 August 2019 Audit & Risk Committee meeting where the 9 August 2019 Group Internal Audit Report was presented, with a verbal update by David Aurelius recognising that the two prior year critical rated actions for Windows had not been completed at that time (BOR.002.002.6619);
 - K. his acknowledgement in February 2020 of Boral's vulnerabilities when business units sit outside the normal checks and balances that exist through shared services units and ERP platforms outside the control of individual business units (BOR.600.045.9225);
 - L. Kane's attendance at a 9 February 2020 Audit & Risk Committee meeting (BOR.010.001.0001);
 - M. the matters identified in the particulars to paragraphs 132A, 133, 138 163, 168 and 173, insofar as they concern Kane;
 - N. the matters pleaded and particularised in paragraphs 62 to 65 above.
- ii. The Inadequate Systems Information ought reasonably to have been known by Ng by reason of:
- A. (a) her role as Chief Financial Officer of Boral;

- B. ~~(b)~~ Ng's responsibility for project management of the Headwaters transaction; and
 - C. ~~(c)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;
 - D. Ng's regular attendance at Audit & Risk Committee meetings;
 - E. the fact that Ng received draft papers of quarterly Audit & Risk Committee meetings, including papers that summarised the results of audits of the Windows business;
 - F. Kane, along with Ng and the Boral North America Management team, requested that Windows have the first internal audit undertaken following Boral's acquisition of Headwaters (such audit being the June 2017 Windows Audit) (BOR.601.001.7462);
 - G. Ng's attendance at a 20 November 2017 Audit & Risk Committee meeting, where the Group Internal Audit Report was tabled, which summarised the June 2017 Windows Audit report (BOR.002.002.1096);
 - H. Ng's attendance at a 13 August 2018 Audit & Risk Committee meeting, where the Group Internal Audit Report, which summarised the findings of the March 2018 Magnolia Special Review audit (concerning inventory at Magnolia), was tabled (BOR.002.001.2944);
 - I. Ng's attendance at a 16 August 2019 Audit & Risk Committee meeting where the 9 August 2019 Group Internal Audit Report was presented, with a verbal update by David Aurelius recognising that the two prior year critical rated actions for Windows had not been completed at that time;
 - J. her receipt of a Windows Announcement Q&A draft on 4 December 2019;
 - K. her receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - L. Ng's attendance at a 9 February 2020 Audit & Risk Committee meeting (BOR.010.001.0001);
 - M. the matters identified in the particulars to paragraphs 132A, 133, 138 163, 168 and 173, insofar as they concern Ng; and
 - N. the matters pleaded and particularised in paragraphs 62 to 65 above.
- iii. The Inadequate Systems Information ought reasonably to have been known by Mariner by reason of:
- A. ~~(a)~~ his role as President and Chief Executive Officer of Boral North America; and

- B. (b) the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;
 - C. Kane, along with Ng and the Boral North America Management team, requested that Windows have the first internal audit undertaken following Boral's acquisition of Headwaters (such audit being the June 2017 Windows Audit) (BOR.601.001.7462);
 - D. the fact that Mariner signed off on the Boral North America responses to the biannual Audit & Risk Committee Questionnaires which included information on control issues, fraud/theft incidents, and progress on the implementation of key audit recommendations in respect of Windows (eq BOR.602.095.4278);
 - E. Mariner was sent Internal Audit Action Status Reports, which included details on outstanding audit actions in respect of Windows;
 - F. his receipt of a Windows Announcement Q&A draft on 4 December 2019;
 - G. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - H. matters identified in the particulars to paragraphs 132A, 133, 138 163, 168 and 173, insofar as they concern Mariner;
 - I. the matters pleaded and particularised in paragraphs 62 to 65 above.
- iv. The Inadequate Systems Information ought reasonably to have been known by Sullivan by reason of:
- A. his role as Group General Counsel for Boral;
 - B. his attendance at Audit & Risk Committee meetings;
 - C. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - D. his receipt of a Windows Announcement Q&A draft on 4 December 2019;
 - E. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - F. the matters identified in the particulars to paragraphs 132A, 133, 138 163, 168 and 173, insofar as they concern Sullivan;
 - G. the matters pleaded and particularised in paragraphs 62 to 65 above. Further particulars may be provided following discovery.
- v. The Inadequate Systems Information ought reasonably to have been known by Post by reason of:
- A. his role as Chief Financial Officer of Boral North America;

- B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
- C. his role in determining the scope and approach of Boral's first internal audit of Windows;
- D. his receipt in May 2017 of SOX testing of Windows that had been carried out by Headwaters (BOR.601.015.3741);
- E. a 10 June 2017 email in which he agreed that there was "some additional risk around the Windows business" from what he had heard (BOR.602.107.4119);
- F. an Internal Audit Planning Memorandum Post reviewed in relation to the June 2017 Windows Audit (BOR.601.038.6763);
- G. a 26 May 2017 email in which Post acknowledged that he had been alerted that Windows needed attention, and that there had been an incident of theft at Windows (BOR.601.015.3163);
- H. the June 2017 Windows Audit that had identified many issues and control gaps, a draft report of which Post received on 19 September 2017 (BOR.601.020.2868);
- I. Kane, along with Ng and the Boral North America Management team, requested that Windows have the first internal audit undertaken following Boral's acquisition of Headwaters (such audit being the June 2017 Windows Audit) (BOR.601.001.7462);
- J. the fact that he received drafts of, and signed off on, the Boral North America responses to the biannual Audit & Risk Committee Questionnaires which included information on control issues, fraud/theft incidents, and progress on the implementation of key audit recommendations in respect of Windows (eg BOR.602.095.4278);
- K. the fact that he received monthly summaries of the progress of all audit actions for the Boral North American businesses (including Windows);
- L. the fact that he requested the March 2018 Magnolia Special Review regarding the inventory management controls at Magnolia (BOR.002.001.2856);
- M. a 23 March 2018 Internal Audit Scope Memorandum regarding the March 2018 Magnolia Special Review that Post received (BOR.602.084.2291);
- N. the fact that he was sent draft reports for the June 2017, January 2019 and November 2019 audits into Windows;
- O. his receipt of a Windows Announcement Q&A draft on 4 December 2019;

- P. the matters identified in the particulars to paragraphs 132A, 133, 138 163, 168 and 173, insofar as they concern Post;
- Q. the matters pleaded and particularised in paragraphs 62 to 65 above.

154. The Inadequate Systems Information was information that:
- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
 - (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
155. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Inadequate Systems Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 153 above.
156. Boral did not communicate the Inadequate Systems Information to the ASX before 5 December 2019.
157. In the circumstances set out in paragraphs 153 to 156 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period up to and including 5 December 2019 (being a Continuous Disclosure Contravention).

H.6 Inadequate understanding of Headwaters

158. During the Relevant Period, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Inadequate Understanding of Headwaters Information.

PARTICULARS

- i. *The Inadequate Understanding of Headwaters Information ought reasonably to have been known by Kane by reason of:*
 - A. ~~(a)~~ *his role as Chief Executive Officer and Managing Director of Boral; and*
 - B. ~~(b)~~ *since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;*
 - C. ~~(c)~~ *the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps;*

- D. the matters identified in the particulars to paragraphs 132A, 133, 138, 153, 163, 168 and 173 insofar as they concern Kane.
 - ii. The Inadequate Understanding of Headwaters Information ought reasonably to have been known by Ng by reason of:
 - A. ~~(a)~~ her role as Chief Financial Officer of Boral; and
 - B. ~~(b)~~ Ng's responsibility for project management of the Headwaters transaction;
 - C. ~~-(e) the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~
 - D. the matters identified in the particulars to paragraphs 132A, 133, 138, 153, 163, 168 and 173 insofar as they concern Ng.
 - iii. The Inadequate Understanding of Headwaters Information ought reasonably to have been known by Mariner by reason of:
 - A. ~~(a)~~ his role as President and Chief Executive Officer of Boral North America; and
 - B. ~~(b) the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~
 - C. the matters identified in the particulars to paragraphs 132A, 133, 138, 153, 163, 168 and 173 insofar as they concern Mariner.
 - iv. The Inadequate Understanding of Headwaters Information ought reasonably to have been known by Sullivan by reason of:
 - A. his role as Group General Counsel for Boral;
 - B. his attendance at Audit & Risk Committee meetings;
 - C. the matters identified in the particulars to paragraphs 132A, 133, 138, 153, 163, 168 and 173 insofar as they concern Sullivan. Further particulars may be provided following discovery.
 - v. The Inadequate Understanding of Headwaters Information ought reasonably to have been known by Post by reason of the matters identified in the particulars to paragraphs 132A, 133, 138, 153, 163, 168 and 173 insofar as they concern Post.

159. The Inadequate Understanding of Headwaters Information was information that:
- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
 - (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
160. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Inadequate Understanding of Headwaters Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 158 above.
161. Boral did not communicate the Inadequate Understanding of Headwaters Information to the ASX before 5 December 2019.
162. In the circumstances set out in paragraphs 158 to 161 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period up to and including 5 December 2019 (being a Continuous Disclosure Contravention).

H.7 Overstated Boral North America FY18 financial performance

163. From 29 August 2018, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Overstated Boral North America FY18 Financial Performance Information and/or the Alternative Overstated Boral North America FY18 Financial Performance Information.

PARTICULARS

- i. The Overstated Boral North America FY18 Financial Performance Information and/or Alternative Overstated Boral North America FY18 Financial Performance Information ought reasonably to have been known by Kane by reason of:*
 - A. ~~(a)~~ his role as Chief Executive Officer and Managing Director of Boral;
 - B. ~~(b)~~ since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;
 - C. ~~(c)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;
 - D. the matters particularised at paragraphs 132A, 133, 138, 153, 168 and 173 insofar as they concern Kane;

- E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- ii. The Overstated Boral North America FY18 Financial Performance Information and/or Alternative Overstated Boral North America FY18 Financial Performance Information ought reasonably to have been known by Ng by reason of:
- A. ~~(a)~~ her role as Chief Financial Officer of Boral;
- B. ~~(b)~~ Ng's responsibility for project management of the Headwaters transaction;
- C. ~~(c) the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~
- D. the Windows Ops Review for the period ending September 2017 that had identified that the underlying causes of the cost trends being seen in the Windows business were not quick fixes (BOR.602.065.1021);
- E. her receipt of a draft update on Windows announcement Q&A on 6 February 2020;
- F. the matters particularised at paragraphs 132A, 133, 138, 153, 168 and 173 insofar as they concern Ng;
- G. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iii. The Overstated Boral North America FY18 Financial Performance Information ought and/or Alternative Overstated Boral North America FY18 Financial Performance Information ought reasonably to have been known by Mariner by reason of:
- A. ~~(a)~~ his roles as President and Chief Executive Officer of Boral North America; and
- B. ~~(b) the Internal Audits (including the audit processes and the findings of the Internal Audits) an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~
- C. the Windows Ops Review for the period ending September 2017 that had identified that the underlying causes of the cost trends being seen in the Windows business were not quick fixes (BOR.602.065.1021);
- D. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
- E. the matters particularised at paragraphs 132A, 133, 138, 153, 168 and 173 insofar as they concern Mariner;
- F. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iv. The Overstated Boral North America FY18 Financial Performance Information and/or Alternative Overstated Boral North America FY18 Financial Performance Information ought reasonably to have been known by Sullivan by reason of:

- A. his role as Group General Counsel for Boral;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - D. the matters particularised at paragraphs 132A, 133, 138, 153, 168 and 173 insofar as they concern Sullivan;
 - E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128. ~~Further particulars may be provided following discovery.~~
- v. The Overstated Boral North America FY18 Financial Performance Information and/or Alternative Overstated Boral North America FY18 Financial Performance Information ought reasonably to have been known by Post by reason of:
- A. his roles as Chief Financial Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the Windows Ops Review for the period ending September 2017 that had identified that the underlying causes of the cost trends being seen in the Windows business were not quick fixes (BOR.602.065.1021);
 - D. the matters particularised at paragraphs 132A, 133, 138, 153, 168 and 173 insofar as they concern Post;
 - E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.

164. The Overstated Boral North America FY18 Financial Performance Information and/or the Alternative Overstated Boral North America FY18 Financial Performance Information was information that:

- (a) until 5 December 2019 (alternatively, 10 February 2020) was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

165. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Overstated Boral North America FY18 Financial Performance Information and/or the Alternative Overstated Boral North America FY18 Financial Performance Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 163 above.

166. Boral did not communicate the Overstated HY19 Financial Performance Information and/or the Alternative Overstated Boral North America FY18 Financial Performance Information to the ASX before 5 December 2019 (further, or alternatively 10 February 2020).
167. In the circumstances set out in paragraphs 163 to 166 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period after 29 August 2018 (being a Continuous Disclosure Contravention).

H.8 Overstated Boral North America HY19 financial performance

168. By 25 February 2019, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information.

PARTICULARS

- i. The Overstated Boral North American HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information ought reasonably to have been known by Kane by reason of:*
- A. ~~(a)~~ his role as Chief Executive Officer and Managing Director of Boral; and*
 - B. ~~(b)~~ since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;*
 - C. ~~(c)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps;*
 - D. the BNA Monthly Reporting Pack for the Executive Committee for the period ending October 2018 that had reported the departure of most of the front line plant management from Krestmark (BOR.003.001.8674);*
 - E. the Boral North America Strategic Plan for the board meeting on 6 December 2018 that had identified stronger national competition, pricing pressures and cost increases for Windows and risks associated with ERP integration projects not being implemented effectively and loss of key personnel (BOR.002.002.3607);*
 - F. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 173 insofar as they concern Kane;*
 - G. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.*

- ii. The Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information ought reasonably to have been known by Ng by reason of:
- A. ~~{a}~~ her role as Chief Financial Officer of Boral;
 - B. ~~{b}~~ Ng's responsibility for project management of the Headwaters transaction;
 - C. ~~{c}~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps;
 - D. the Windows Ops Review for the period ending August 2017 that reported that production capacity issues were causing Windows to buy pre-fabricated insulated glass units at roughly 2.5 times the cost of making them in-house (BOR.602.061.6402);
 - E. the BNA Monthly Reporting Pack for the Executive Committee for the period ending October 2018 that had reported the departure of most of the front line plant management from Krestmark (BOR.003.001.8674);
 - F. the Boral North America Strategic Plan for the board meeting on 6 December 2018 that had identified stronger national competition, pricing pressures and cost increases for Windows and risks associated with ERP integration projects not being implemented effectively and loss of key personnel (BOR.002.002.3607);
 - G. her receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - H. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 173 insofar as they concern Ng; (i) the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iii. The Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information ought reasonably to have been known by Mariner by reason of:
- A. ~~{a}~~ his roles as President and Chief Executive Officer of Boral North America; ~~and~~
 - B. ~~{b}~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps;
 - C. the Windows Ops Review for the period ending August 2017 that reported that production capacity issues were causing Windows to buy pre-fabricated insulated glass units at roughly 2.5 times the cost of making them in-house (BOR.602.061.6402);
 - D. the BNA Monthly Reporting Pack for the Executive Committee for the period ending October 2018 that had

- reported the departure of most of the front line plant management from Krestmark (BOR.003.001.8674);
- E. the Boral North America Strategic Plan for the board meeting on 6 December 2018 that had identified stronger national competition, pricing pressures and cost increases for Windows and risks associated with ERP integration projects not being implemented effectively and loss of key personnel (BOR.002.002.3607);
 - F. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - G. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 173 insofar as they concern Mariner;
 - H. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iv. The Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information ought reasonably to have been known by Sullivan by reason of:
- A. his role as Group General Counsel for Boral;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the BNA Monthly Reporting Pack for the Executive Committee for the period ending October 2018 that had reported the departure of most of the front line plant management from Krestmark (BOR.003.001.8674);
 - D. the Boral North America Strategic Plan for the board meeting on 6 December 2018 that had identified stronger national competition, pricing pressures and cost increases for Windows and risks associated with ERP integration projects not being implemented effectively and loss of key personnel (BOR.002.002.3607);
 - E. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - F. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 173 insofar as they concern Sullivan;
 - G. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128. Further particulars may be provided following discovery.
- v. The Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information ought reasonably to have been known by Post by reason of:
- A. his roles as Chief Financial Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the Windows Ops Review for the period ending August 2017 that reported that production capacity issues were

causing Windows to buy pre-fabricated insulated glass units at roughly 2.5 times the cost of making them in-house (BOR.602.061.6402);

D. the BNA Monthly Reporting Pack for the Executive Committee for the period ending October 2018 that had reported the departure of most of the front line plant management from Krestmark (BOR.003.001.8674);

E. the Boral North America Strategic Plan for the board meeting on 6 December 2018 that had identified stronger national competition, pricing pressures and cost increases for Windows and risks associated with ERP integration projects not being implemented effectively and loss of key personnel (BOR.002.002.3607);

F. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 173 insofar as they concern Post;

G. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.

169. The Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information was information that:
- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
 - (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
170. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 168 above.
171. Boral did not communicate the Overstated Boral North America HY19 Financial Performance Information and/or the Alternative Overstated Boral North America HY19 Financial Performance Information to the ASX before 5 December 2019 (further, or alternatively 10 February 2020).
172. In the circumstances set out in paragraphs 168 to 171 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period after 25 February 2019 (being a Continuous Disclosure Contravention).

H.9 Overstated FY19 financial performance

173. By 26 August 2019, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information.

PARTICULARS

- i. *The Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information ought reasonably to have been known by Kane by reason of:*
- A. ~~(a) his role as Chief Executive Officer and Managing Director of Boral; and~~
 - B. ~~(b) since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;~~
 - C. ~~(c) the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~
 - D. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 168 insofar as they concern Kane;
 - E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121, and 128.
- ii. *The Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information ought reasonably to have been known by Ng by reason of:*
- A. ~~(a) her role as Chief Financial Officer of Boral;~~
 - B. ~~(b) Ng's responsibility for project management of the Headwaters transaction;~~
 - C. ~~(c) the Internal Audits (including the audit processes and the findings of the Internal Audits) – an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~
 - D. the Windows Ops Review for the period ending May 2019 that reported Magnolia had a significant accrual issue resulting in a \$700K negative adjustment and that the financial impact of the departure of front line plant management from Krestmark in October 2018 was still being felt (BOR.602.090.2072);
 - E. her receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - F. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 168 insofar as they concern Ng; (g) the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.

- iii. The Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information ought reasonably to have been known by Mariner by reason of:
- A. ~~(a)~~ his roles as President and Chief Executive Officer of Boral North America; and
 - B. ~~(b)~~ the Internal Audits (including the audit processes and the findings of the Internal Audits) ~~an internal audit in October 2017 of Windows that had identified many issues and control gaps;~~
 - C. the Windows Ops Review for the period ending May 2019 that reported that Magnolia had a significant accrual issue resulting in a \$700K negative adjustment and that the financial impact of the departure of front line plant management from Krestmark in October 2018 was still being felt (BOR.602.090.2072);
 - D. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - E. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 168 insofar as they concern Mariner; and
 - F. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iv. The Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information ought reasonably to have been known by Sullivan by reason of:
- A. his role as Group General Counsel for Boral;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. his receipt of a draft update on Windows announcement Q&A on 6 February 2020;
 - D. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 168 insofar as they concern Sullivan;
 - E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128. ~~Further particulars may be provided following discovery.~~
- v. The Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information ought reasonably to have been known by Post by reason of:
- A. his role as Chief Financial Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the Windows Ops Review for the period ending May 2019 that reported that Magnolia had a significant accrual issue resulting in a \$700K negative adjustment and that the financial impact of the departure of front line plant

management from Krestmark in October 2018 was still being felt (BOR.602.090.2072);

D. the matters particularised at paragraphs 132A, 133, 138, 153, 163 and 168 insofar as they concern Post;

E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.

174. The Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information was information that:
- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
 - (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
175. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Overstated FY19 Financial Performance Information and/or the Alternative Overstated FY19 Financial Performance Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 173 above.
176. Boral did not communicate the Overstated FY19 Financial Reporting Information and/or the Alternative Overstated FY19 Financial Performance Information to the ASX before 5 December 2019.
177. In the circumstances set out in paragraphs 173 to 176 above, Boral contravened s 674(2) of the Corporations Act during the Relevant Period after 26 August 2019 (being a Continuous Disclosure Contravention).

H.10 Overstated FY19 guidance

178. From 29 August 2018, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Overstated FY19 Guidance Information.

PARTICULARS

- i. *The Overstated FY19 Guidance Information ought reasonably to have been known by Kane by reason of:*
 - A. (a) his role as Chief Executive Officer and Managing Director of Boral; and

- B. ~~(b)~~ since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;
 - C. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - D. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Kane;
 - E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- ii. The Overstated FY19 Guidance Information ought reasonably to have been known by Ng by reason of:
- A. her role as Chief Financial Officer of Boral;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Ng;
 - D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iii. The Overstated FY19 Guidance Information ought reasonably to have been known by Mariner by reason of:
- A. his roles as President and Chief Executive Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Mariner;
 - D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iv. The Overstated FY19 Guidance Information ought reasonably to have been known by Sullivan by reason of:
- A. his role as Group General Counsel for Boral;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Sullivan;
 - D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128. Further particulars may be provided following discovery.
- v. The Overstated FY19 Guidance Information ought reasonably to have been known by Post by reason of:
- A. his role as Chief Financial Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);

C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Post;

D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.

179. The Overstated FY19 Guidance Information was information that:

- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

180. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Overstated FY19 Guidance Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 178 above.

181. Boral did not communicate the Overstated FY19 Guidance Information to the ASX before 5 December 2019.

182. In the circumstances set out in paragraphs 178 to 181 above, Boral contravened s 674(2) of the Corporations Act (being a Continuous Disclosure Contravention).

H.11 Overstated FY20 guidance

183. By 26 August 2019, Boral was aware (within the meaning of r 19.12 of the ASX Listing Rules) of the Overstated FY20 Guidance Information.

PARTICULARS

i. The Overstated FY20 Guidance Information ought reasonably to have been known by Kane by reason of:

A. ~~(a)~~ his role as Chief Executive Officer and Managing Director of Boral; ~~and~~

B. ~~(b)~~ since the acquisition of Headwaters Kane had spent approximately half his time in the USA to oversee the integration of the Headwaters business;

C. the Internal Audits (including the audit processes and the findings of the Internal Audits);

D. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Kane;

E. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.

- ii. *The Overstated FY20 Guidance Information ought reasonably to have been known by Ng by reason of:*
 - A. her role as Chief Financial Officer of Boral;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Ng;
 - D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iii. *The Overstated FY20 Guidance Information ought reasonably to have been known by Mariner by reason of:*
 - A. his roles as President and Chief Executive Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Mariner;
 - D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.
- iv. *The Overstated FY20 Guidance Information ought reasonably to have been known by Sullivan by reason of:*
 - A. his role as Group General Counsel for Boral;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Sullivan;
 - D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.—Further particulars may be provided following discovery.
- v. *The Overstated FY20 Guidance Information ought reasonably to have been known by Post by reason of:*
 - A. his role as Chief Financial Officer of Boral North America;
 - B. the Internal Audits (including the audit processes and the findings of the Internal Audits);
 - C. the matters particularised at paragraphs 132A, 133, 138, 153, 163, 168 and 173, insofar as they concern Post;
 - D. the matters pleaded and particularised above at paragraphs 66 to 75, 105, 121 and 128.

184. The Overstated FY20 Guidance Information was information that:

- (a) until 5 December 2019 was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and

- (b) a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Boral Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.
185. Pursuant to ASX Listing Rule 3.1, Boral became obliged to tell the ASX the Overstated FY20 Guidance Information immediately on and from the date that Boral had, or obtained that information, as pleaded in paragraph 183 above.
186. Boral did not communicate the Overstated FY20 Guidance Information to the ASX before 5 December 2019.
187. In the circumstances set out in paragraphs 183 to 186 above, Boral contravened s 674(2) of the Corporations Act (being a Continuous Disclosure Contravention).

I CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

I.1 Acquisition of Boral Shares, Boral ADRs and Boral Equity Swaps

188. During the Relevant Period, the Applicant and the Group Members acquired:
- (a) interests in Boral Shares; and/or
 - (b) interests in Boral ADRs; and/or
 - (c) Boral Equity Swaps.

PARTICULARS

- i. Paragraph 2 is repeated.*
- ii. Particulars of acquisitions by Group Members will be provided after the trial of the Applicant's claim.*

I.2 Market-based causation

189. The Applicant and the Group Members acquired their interests in Boral Shares in a market of investors or potential investors in Boral Shares:
- (a) operated by the ASX;
 - (b) regulated by, inter alia, the ASX Listing Rules and section 674(2) of the Corporations Act;

- (c) where Boral had the obligations pleaded in paragraphs 5 to 6 above;
- (d) where the price or value of Boral Shares would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and section 674(2) of the Corporations Act;
- (e) where:
 - (i) material information had not been disclosed at the time it ought to have been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of Boral Shares, namely:
 - (A) the information the subject of the Continuous Disclosure Contraventions; and/or
 - (B) Information correcting or qualifying the representations the subject of the Misleading Conduct Contraventions (individually and together, the **Material Representations**),
 (individually and together, the **Material Information**);
 - (ii) misleading or deceptive conduct had been engaged in (namely the conduct the subject of the Misleading Conduct Contraventions) that a reasonable person would expect to have a material effect on the price or value of Boral Shares, in that if it had not been engaged in no investors or potential investors in Boral Shares would have been in a position to read or rely upon the Misleading Representations.

190. During the Relevant Period, the market for Boral ADRs and Boral Equity Swaps was a market that traded on the basis that the market for the Boral Shares had the features pleaded in paragraph 189 above.

190A. During the Relevant Period, Group Members acquired Boral Equity Swaps in a market of investors and potential investors in Boral Equity Swaps:

- (a) when the Boral Equity Swaps had been defined by reference to the price of Boral Shares on the ASX; and

- (b) which would reasonably be expected that the price at which they entered in to the Boral Equity Swaps was set by reference to the market for Boral Shares in a market with the features pleaded in paragraph 189 above.

191. In the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions (and each of them) (**Market Contraventions**) caused the market price of Boral Shares and Boral ADRs to be, or materially contributed to the market price of Boral Shares and Boral ADRs being, substantially 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, as pleaded in this Further Amended Statement of Claim.

PARTICULARS

- i. The extent to which the Market Contraventions caused the price for Boral Shares and Boral ADRs to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided following expert evidence.*

191A. In the Relevant Period, by reason of the matters pleaded in paragraphs 190A and 191, the value of the future cashflows to be received by the equity amount receiver pursuant to the Boral Equity Swaps by reference to the performance of Boral Shares was diminished and/or the value of the cashflows to be paid by the equity amount receiver in return was inflated.

192. The declines in the price of Boral Shares and Boral ADRs pleaded in paragraphs 52 and/or 55 above was caused or materially contributed to by:

- (a) the market's reaction to:
 - (i) the 5 December 2019 Announcement and/or the 6 December 2019 Call; and/or
 - (ii) the 10 February 2020 Announcement; and
- (b) the Market Contraventions.

PARTICULARS

- i. The extent to which the Market Contraventions caused the price for Boral Shares and Boral ADRs to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided following expert evidence.*

192A. The declines in the price of Boral Shares pleaded in paragraphs 52 and/or 55 caused the value of Boral Equity Swaps to adjust downward such that the value of the future cashflows to be received by the equity amount receiver pursuant to the Boral Equity Swaps by reference to the performance of Boral Shares was diminished and/or the value of the cashflows to be paid by the equity amount receiver in return being correspondingly inflated.

193. Further, or alternatively, if Boral had:

- (a) disclosed to the market the Material Information at any time in the Relevant Period; and/or
- (b) not engaged in the conduct the subject of the Misleading Conduct Contraventions,

the price of Boral Shares and Boral ADRs would have fallen substantially.

PARTICULARS

- i. The extent to which the price for Boral Shares and Boral ADRs would have fallen will be provided following expert evidence.*

193A. Further, or alternatively, if Boral had:

- (a) disclosed to the market the Material Information at any time in the Relevant Period; and/or
- (b) not engaged in the conduct the subject of the Misleading Conduct Contraventions,

the value of the Boral Equity Swaps would have adjusted downward such that the future cashflows to be received by the equity amount receiver pursuant to the Boral Equity Swaps by reference to the performance of Boral Shares would have been diminished

and/or the value of the cashflows to be paid by the equity amount receiver in return would have been correspondingly inflated.

I.3 Reliance

194. Further, or in the alternative, in the decision to acquire Boral Shares and/or Boral ADRs:

- (a) the Applicant and some Group Members would not have acquired Boral Shares and/or Boral ADRs at the prices and in the volumes that they did, if the Material Information had been disclosed to them and/or the ASX;
- (b) some Group Members acquired Boral Shares and/or Boral ADRs at the prices and in the volumes that they did in reliance upon some or all of the Material Representations (and/or Boral not having corrected or qualified such representations).

PARTICULARS

- i. The Applicant would not have acquired the Boral Shares at the price or volume that he did if the Material Information had been disclosed to him and/or the ASX.*
- ii The identity of all those Group Members which or who relied directly on any or all of the representations referred to in the paragraph above are not within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Applicant's claims and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

194A. Further, or in the alternative, in the decision to acquire Boral Equity Swaps some Group Members:

- (a) would not have acquired Boral Equity Swaps by reference to the price for, and volume of, Boral Shares that they did, if the Material Information had been disclosed to them and/or the ASX;
- (b) acquired Boral Equity Swaps by reference to a price of Boral Shares in reliance upon some or all of the Material Representations (and/or Boral not having corrected or qualified such representations).

I.4 Off market acquisitions

194B. In the 21 November 2016 Announcement, Boral made the following statements:

- (a) the Headwaters acquisition was to be funded, inter alia, by:
 - (i) a fully underwritten \$450 million institutional placement at an offer price of \$4.80 per share (**Institutional Placement**); and
 - (ii) a fully underwritten \$1.6 billion, 1 for 2.22 pro rata accelerated renounceable entitlement offer with retail entitlements trading at an offer price of \$4.80 per share (**Entitlement Offer**).

194C. On 24 November 2016, Boral:

- (a) successfully completed:
 - (i) the Institutional Placement, raising approximately \$450 million; and
 - (ii) the institutional component of the Entitlement Offer, raising approximately \$1.03 billion; and
- (b) published and released a retail offer booklet for the retail component of the Entitlement Offer.

194D. On 13 December 2016, Boral:

- (a) successfully completed the retail component of the Entitlement Offer, raising approximately \$242 million; and
- (b) announced to the Affected Market that it would conduct a retail shortfall bookbuild in respect of the retail component of the Entitlement Offer (**Retail Shortfall Bookbuild**).

194E. On 14 December 2016, Boral successfully completed the Retail Shortfall Bookbuild.

194F. On 20 December 2016, Boral issued:

- (a) 334,982,487 Boral Shares at \$4.80 per share pursuant to the Entitlement Offer; and
- (b) 93,750,000 Boral Shares per share pursuant to the Institutional Placement.

194G. The Entitlement Offer, Institutional Placement and Retail Shortfall were undertaken:

- (a) at an offer price of \$4.80 per new Boral Share, being a price fixed by reference to the market price of Boral Shares, which traded in a market with the features pleaded in paragraph 189 above; and
- (b) at a price which, by reason of the matters pleaded in (a):
 - (i) would reasonably be expected to have been informed or affected by information disclosed in accordance with s 674(2) of the Corporations Act and ASX Listing Rule 3.1;
 - (ii) was set in circumstances where material information had not been disclosed, which a reasonable person would expect, had it been disclosed, would have had a material adverse effect on the price or value of Boral Shares (namely the information the subject of the Market Contraventions, being the Continuous Disclosure Contraventions, which occurred prior to the Institutional Placement and Retail Shortfall Bookbuild); and
 - (iii) was set in circumstances where the Misleading Conduct Contraventions which occurred prior to the Institutional Placement and Entitlement Offer had occurred, being conduct involving making, and failing to correct or qualify, representations that a reasonable person would expect to have a material effect on the price or value of Boral Shares, in that if they had not been made no investors or potential investors in Boral Shares would have been in a position to read or rely upon them.
- (c) at a price which, by reason of the matters pleaded in (b), if Boral had:
 - (i) disclosed to the market the Material Information at any time prior to the offer price being set; and/or
 - (ii) not engaged in the conduct the subject of the Misleading Conduct Contraventions,would have fallen substantially.

PARTICULARS

- i. The offer price was set by reference to the market price of Boral Shares in that it was set by reference to a discount to the theoretical ex-rights price of Boral Shares (BOR.005.001.0206).*

I.5 Loss and damage

195. The Applicant and the Group Members suffered loss and damage resulting from the Market Contraventions.

PARTICULARS

- i. The loss suffered by the Applicant will be calculated by reference to:*
 - A. the difference between the price at which he acquired his interest in the Boral Shares and the true value of that interest;*
 - B. alternatively, the difference between the price at which he acquired his ~~its~~ interest in the Boral Shares and whatever is 'left in hand', or has been realised upon a sale;*
 - C. alternatively, the difference between the price at which he acquired his interest in the Boral Shares and whatever is 'left in hand', or has been realised upon a sale modified to take into account any part of the movement in the market price of the shares which did not 'result from' the contravening conduct;*
 - D. alternatively, the difference between the price at which he acquired his interest in the Boral Shares and the price that would have prevailed but for the Market Contraventions;*
 - E. in addition to the loss in A to D, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the Boral Shares.*
- ii. Further particulars in relation to the Applicant's losses will be provided after the service of evidence in chief.*
- iii. Particulars of the losses of Group Members are not known within the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims; those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Applicant's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

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Date: 19 June 2023

A handwritten signature in black ink, appearing to read 'Julian Schimmel', written over a horizontal dotted line.

Signed by Julian Schimmel
Lawyer for the Applicant

This pleading was prepared W A D Edwards and R J May of counsel. The further amendments were prepared by J A Brezniak, R J May of counsel and settled by W A D Edwards of Senior Counsel.

Certificate of lawyer

I, Julian Schimmel, certify to the Court that, in relation to the further amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 19 June 2023

A handwritten signature in black ink, appearing to read 'Julian Schimmel', written over a horizontal dotted line.

Signed by Julian Schimmel
Lawyer for the Applicant