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Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	VID513/2015
File Title:	Money Max Int Pty Limited, as trustee for the Goldie Superannuation Fund v QBE Insurance Group Limited
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 9/09/2015 5:20:25 PM AEST

A handwritten signature in blue ink, reading "Warwick Soden".

Registrar

### Important Information

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## Statement of claim

No. of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

**Money Max Int Pty Limited (ACN 152 073 580), as trustee for the Goldie Superannuation Fund**

Applicant

**QBE Insurance Group Limited (ACN 008 485 014)**

Respondent

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## **A PRELIMINARY**

### **A.1 The Applicant and the Group Members**

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

(a) at some time during the period 20 August 2013 to 6 December 2013 inclusive (**Relevant Period**) acquired an interest in ordinary fully-paid shares in QBE Insurance Group Limited (**QBE Shares**); and

(b) allege they have suffered loss or damage by or resulting from the conduct of QBE pleaded below;

(**Group Members**).

2. At all material times the Applicant was and is a company registered pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**), and was and is the trustee for the Goldie Superannuation Fund, a self-managed superannuation fund.
3. As at the commencement of this proceeding, there were more than seven Group Members.

## A.2 The Respondent

4. The Respondent (**QBE**) is and at all material times was:

- (a) a company registered pursuant to the Corporations Act and capable of being sued;
- (b) incorporated pursuant to the Corporations Act and capable of being sued;
- (c) a person within the meaning of ss 1041E and 1041H of the Corporations Act;
- (d) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (e) 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 26 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, **Australian Consumer Law**).

## **B QBE'S BUSINESS**

### **B.1 QBE North American Operations**

5. QBE conducted business through various subsidiaries (together with QBE referred to as the **QBE Group**).
6. At all material times, QBE Group conducted operations in North America (**North American Operations**).
7. QBE Group's North American Operations included its:
  - (a) North American Program portfolio (**North American Program Business**);
  - (b) Financial Partner Services business (**FPS Business**); and
  - (c) North American Crop Business (**Crop Business**).

### **PARTICULARS**

*The North American Operations are referred to in QBE's announcement to the Australian Securities Exchange (ASX) dated 9 December 2013 and entitled 'QBE increases North American claims provision and writes down North American goodwill, identifiable intangibles and other assets', and QBE's 2013 Annual Report.*

### **B.2 Relevant QBE personnel**

8. From about 18 August 2012 and at all material times prior to and during the Relevant Period, John Neal was QBE Group Chief Executive Officer.
9. From about 1995 and at all material times prior to and during the Relevant Period, Neil Drabsch was QBE Group Chief Financial Officer.
10. From about 1 April 2013 and at all subsequent material times prior to and during the Relevant Period, David Duclos was the Chief Executive Officer of QBE's North American Operations.

### **B.3 Compliance and reporting requirements**

11. At all material times, QBE was required:
  - (a) pursuant to s 296 of the Corporations Act, to comply with the accounting standards made by the Australian Accounting Standards Board; and

- (b) pursuant to s 297 of the Corporations Act, to ensure that QBE's financial statements and notes gave a true and fair view of the financial position and performance of QBE.

12. At all material times, QBE was:

- (a) included in the official list of the financial market operated by ASX (**Official List**);
- (b) an entity, the securities of which are ED securities for the purposes of s 111AE of the Corporations Act;
- (c) a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
- (d) subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
- (e) 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 QBE that a reasonable person would expect to have a material effect on the price or value of QBE Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rule 3.1A apply) (**Continuous Disclosure Obligations**).

13. At all material times, QBE 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 QBE Shares (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.

14. At all material times, QBE was prohibited, pursuant to section 1041E of the Corporations Act, from making a statement or disseminating information if:

- (a) the statement or information was false in a material particular or was materially misleading; and
- (b) the statement or information was likely:

- (i) to induce persons in this jurisdiction to apply for financial products; or
  - (ii) to induce persons in this jurisdiction to dispose of or acquire financial products; or
  - (iii) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market operated in this jurisdiction; and
- (c) when QBE made the statement, or disseminated the information:
- (i) QBE did not care whether the statement or information was true or false; or
  - (ii) QBE knew, or ought reasonably to have known, that the statement or information was false in a material particular or was materially misleading.

## **C RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES OF QBE**

### **C.1 November 2012 Conduct**

15. On 12 November 2012, QBE convened a 'Q4 2012 Guidance Call' (**12 November Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in QBE Shares.

#### **PARTICULARS**

*The 12 November Call was transcribed and published by Bloomberg [SOC.001.001.0001].*

*The participants on the 12 November Call included senior managers of QBE, and analysts who followed and reported on QBE Shares:*

- *John Neal and Neil Drabsch of QBE;*
- *Nigel Pittaway (Citigroup);*
- *James Coghill (UBS);*
- *Ryan Fisher (Goldman Sachs);*
- *Kieren Chidgey (Deutsche Bank);*
- *Andrew Adams (Credit Suisse);*
- *Siddharth Parameswaran (JPMorgan);*
- *Richard Coles (CIMB);*

- *Daniel P. Toohey (Morgan Stanley);*
- *Toby Langley (Nomura);*
- *Jan van der Schalk (CLFA);*
- *Brett Le Mesurier (BBY).*

16. In the 12 November Call, QBE said that its North American Program Business:
- (a) required an additional US\$180 million provision for its program and run-off;
  - (b) required an additional US\$83 million provision 'for any further prior year claims development';
  - (c) required an additional US\$125 million provision to 'maintain an appropriate level of risk margins' for uncertainty in the discounted central estimate for outstanding claims provisions; and
  - (d) otherwise anticipated no 'further meaningful prior-year developments';
- (together, the **November 2012 Statements**).

#### PARTICULARS

*The November 2012 Statements were express, and made by Mr Neal in the 12 November Call:*

- *As to Statements (a)-(c), refer to [SOC.001.001.0001 at .0002];*
- *As to Statement (d), refer to [SOC.001.001.0001 at .0003].*

#### C.2 February 2013 Conduct

17. On 26 February 2013, QBE published and released to the ASX:
- (a) its annual report for the year ended 31 December 2012 to the ASX (**2012 Annual Report**) [SOC.001.005.0001]; and
  - (b) an announcement entitled '2012 full year results announcement' (**26 February Announcement**) [SOC.001.004.0001].
18. On or about 26 February 2013, QBE convened a 'Q4 2012 Earnings Call' (**26 February Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in QBE Shares.

#### PARTICULARS

*The 26 February Call was transcribed and published by Bloomberg [SOC.001.003.0001].*



*The participants on the 26 February Call included senior managers of QBE, and analysts who followed and reported on QBE Shares:*

- *John Neal and Neil Drabsch of QBE;*
- *Nigel Pittaway (Citigroup);*
- *James Coghill (UBS);*
- *Daniel P. Toohey (Morgan Stanley);*
- *Ross N. Curran (CBA);*
- *Andrew Kearnan (Merrill Lynch);*
- *Brett Le Mesurier (BBY);*
- *Toby Langlely (Nomura);*
- *Kieren Chidgey (Deutsche Bank);*
- *Ryan Fisher (Goldman Sachs);*
- *Siddharth Parameswaran (JPMorgan);*
- *Andrew Adams (Credit Suisse).*

19. On 26 February 2013, QBE said:

- (a) in respect of its North American Program Business, that:
- (i) it now required a provision of US\$316 million for 'prior accident year' claims;
  - (ii) the US\$316 million was an increase of US\$53 million on the program and prior-year development provisions announced on 12 November 2012;
  - (iii) it had 'undertaken a very extensive review' of its 'entire claims portfolio, with particular emphasis on the U.S.' and said that it was 'confident' that it had 'done that job as thoroughly and as completely as you could ask'; and
  - (iv) QBE had 'confidence' in the appropriateness of its year end claims provision because:
    - (A) a 'thorough year end review' had been conducted by in-house and external actuaries;
    - (B) 'independent external actuaries' had concluded QBE's claims central estimate was 'appropriate';

- (C) prior accident year claims had been strengthened and risk margin topped up; and
- (D) there had been 'aggressive portfolio remediation initiatives';
- (b) in respect of its Crop Business, that it saw 'no reason as to why the Crop Business should not return to its long-term average combined operating ratio (COR) of 88% or better in 2013';
- (c) in respect of its 2013 financial results, that:
  - (i) it saw 'no reason why' it could not achieve a QBE Group-wide COR of '92% or better' for 2013; and
  - (ii) it would achieve an insurance margin of 11%;

(together, the **February 2013 Statements**).

#### **PARTICULARS**

*The February 2013 Statements were partly express and partly implied, and made by Mr Neal in the 26 February Call [SOC.001.003.0001] and/or in the 2012 Annual Report [SOC.001.005.0001] and/or the 26 February Announcement [SOC.001.004.0001]:*

- *Statement (a)(i) was express; refer to the 26 February Call at [.0002], and the 26 February Announcement at [.0010];*
- *Statement (a)(ii) was implied in that US\$316 million is \$53 million more than the sum of the provisions set out in paragraphs 16(a) and (b), and the 26 February Announcement referred to this reserve having been 'strengthened' at [.0010];*
- *Statement (a)(iii) was express; refer to the 26 February Call at [.0002];*
- *Statement (a)(iv) was express; refer to the 2012 Annual Report at p.10 [.0012], and the 26 February Announcement at [.0010];*
- *Statement (b) was express; refer to the 26 February Call at [.0004];*
- *Statement (c)(i) was express; refer to the 26 February Call at [.0004];*
- *Statement (c)(ii) was express; refer to the 26 February Call at [.0007].*

### **C.3 August 2013 Conduct**

20. On 20 August 2013, QBE published and released to the ASX:

- (a) its report for the half-year to 30 June 2013 (**1H13**) to the ASX (**2013 Half Year Report**) [SOC.001.009.0001];
  - (b) an announcement entitled '2013 half year results announcement' (**20 August Announcement**) [SOC.001.008.0001].
21. On or about 20 August 2013, QBE convened a 'Q2 2013 Earnings Call' (**20 August Call**), in a manner likely to bring things said during it to the attention of the market of investors and potential investors in QBE Shares.

#### PARTICULARS

*The 20 August Call was transcribed and published by Bloomberg [SOC.001.007.0001].*

*The participants on the 20 August Call included senior managers of QBE, and analysts who followed and reported on QBE Shares:*

- *John Neal, Neil Drabsch and Colin Fagen of QBE;*
- *James Coghill (UBS);*
- *Nigel Pittaway (Citigroup);*
- *Ross N. Curran (CBA);*
- *Brett Le Mesurier (BBY);*
- *Kieren Chidgey (Deutsche Bank);*
- *Ryan Fisher (Goldman Sachs);*
- *Siddharth Parameswaran (JPMorgan);*
- *Jan van der Schalk (CLFA);*
- *Daniel P. Toohey (Morgan Stanley);*
- *Toby Langley (Nomura).*

22. On 20 August 2013, QBE said:

- (a) in respect of its North American Program Business, that:
  - (i) a further US\$64 million provision was required and directly booked against its North American Operations for 'prior year development';
  - (ii) a further US\$27 million provision was required and booked against 'Equator Re' for 'prior year development'; and
  - (iii) the total provision since 12 November 2012 was therefore US\$407 million;
  - (iv) it otherwise did not 'see a significant prior year issue in the U.S.';

- (b) in respect of its FPS Business, that:
- (i) there was a US\$40 million 'spike';
  - (ii) the 'spike' included a further US\$26 million booked against Equator Re;
  - (iii) the 'spike' was because 'Bank of America began the process of selling some of their loan portfolio' in 'the first four months of the year';
  - (iv) the sell-off did not continue 'through the latter part of the first half of the year'; and
  - (v) investors would not 'see a repeat' of the 'spike';
- (c) in respect of its Crop Business, that 'the early indications for the crop portfolio are very good and we're certainly looking at what we believe to be a better than average year';
- (d) in respect of its 2013 financial results, that:
- (i) it was 'on track' to deliver a QBE Group-wide 'full year target for COR 92% and insurance profit margin 11%'; and
  - (ii) QBE Group-wide goodwill of US\$4,558 million was appropriate;

(together, **August 2013 Statements**).

## PARTICULARS

*The August 2013 Statements were partly express and partly implied, and made in the 20 August Call [SOC.001.007.0001] and/or in the 2013 Half Year Report [SOC.001.009.0001] and/or the 20 August Announcement [SOC.001.008.0001]:*

- *Statements (a)(i) and (a)(ii) were express; refer to page 21 of the 20 August Announcement at [.0021].*
- *Statement (a)(iii) was implied in that the US\$407 million being the sum of the figures in the statements pleaded in paragraphs 19(a)(i) and 22(a)(i)-(ii).*
- *Statement (a)(iv) was express; refer to the 20 August Call at [.0010].*
- *Statements (b)(i) was express; refer to the 20 August Call at [.0003-4].*
- *Statement (b)(ii) was express; refer to page 8 of the 20 August Announcement at [.0008].*

- *Statements (b)(iii)-(iv) were express; refer to the 20 August Call at [.0003-4].*
- *Statement (b)(v) was express; refer to the 20 August Call at [.0006].*
- *Statement (c) was express; refer to the 20 August Call at [.0003].*
- *Statement (d)(i) was express; refer to page 3 of the 20 August Announcement at [.0003].*
- *Statement (d)(ii) was express; refer to the 20 August Call at [.0005].*

#### **C.4 December 2013 Conduct**

23. On 9 December 2013, QBE published and released to the ASX an announcement entitled 'QBE increases North American claims provision and writes down North American goodwill, identifiable intangibles and other assets' (**9 December Announcement**) [SOC.001.011.0001].
24. On 9 December 2013, QBE said:
- (a) in respect of its North American Program Business, that it was:
    - (i) making an additional provision of US\$300 million for prior year claims development; and
    - (ii) making an additional provision of US\$200 million to strengthen risk margins;
  - (b) in respect of its FPS Business, that it was:
    - (i) making a charge of US\$150 million for impaired assets; and
    - (ii) writing down US\$330 million in intangibles for its FPS Business;
  - (c) in respect of its Crop Business, that it was:
    - (i) reporting 'higher than expected claims' in its Crop Business;
    - (ii) increasing crop COR to 'an estimated 99%'; and
    - (iii) expecting lower profit by US\$125 million; and

- (d) that in respect of its 2013 financial results, it was:
- (i) expecting a COR for 2013 of '97-98%';
  - (ii) expecting 'an insurance profit margin of around 6%'; and
  - (iii) making an impairment charge of US\$600 million against goodwill 'primarily' for its North American Operations.

#### **PARTICULARS**

*The statements were expressly made in the 9 December Announcement.*

### **C.5 Price effect of the 9 December Announcement**

25. Following the release of the 9 December Announcement:

- (a) the price of QBE Shares fell from a closing price of \$15.45 on 6 December 2013 to a closing price of \$12.00 on 9 December 2013 (being a decline of approximately 22.3%);
- (b) the price of QBE Shares fell from a closing price of \$12.00 on 9 December 2013 to a closing price of \$10.82 on 10 December 2013 (being a further decline of approximately 9.8%).

## **D REPRESENTATIONS MADE BY QBE**

### **D.1 Systemic Representations**

26. At all material times, QBE represented to the market of investors and potential investors in QBE Shares that it would and did comply with its Continuous Disclosure Obligations (**Compliance Representations**).

#### **PARTICULARS**

*The provisions were partly express and partly implied.*

- *Insofar as they were express, the Applicant refers to:*
  - 1. *note 1(a) to, and page 173 of, the 2012 Annual Report [SOC.001.005.0001 at .0114, .0175]; and*
  - 2. *note 1 to, and page 47 of, the 2013 Half Year Report [SOC.001.009.0001 at .0038, .0049].*

- *Insofar as they were implied, the Applicant refers to:*
  3. *QBE's listing on the ASX which required adherence to ASX Listing Rule 3.1;*
  4. *the publication by QBE of financial reports prepared under Chapter 2M of the Corporations Act; and*
  5. *the obligations imposed on QBE by section 296 and section 674 of the Corporations Act.*

27. At all material times, QBE represented to the market of investors and potential investors in QBE Shares that it operated a sound system of risk management and internal control and that the system operated effectively in all material respects in relation to financial reporting risks (**Risk Management Representations**).

### **PARTICULARS**

*The representation is implied, and the Applicant refers to:*

- *QBE being bound by ASX Listing Rule 4.10.3, which require it to disclose in its annual reports the extent to which it followed recommendation 7.3 of the ASX Corporate Governance Council, or, if it did not follow that recommendation, disclose that fact and the reasons for not doing so.*
- *Recommendation 7.3 provided that the Board should disclose whether the declaration it has received under section 295A of the Corporations Act is founded on a sound system of risk management and internal control and that the system is operating effectively in all material respects in relation to financial reporting risks.*
- *QBE disclosed on pages 16 of its 2011 Annual Report, and page 173 of its 2012 Annual Report that it received the declarations required by section 295A of the Corporations Act, and did not disclose that it did not follow recommendation 7.3.*

## **D.2 Provisioning Representations**

28. By reason of the matters pleaded in paragraphs 15 and 16, on 12 November 2012, QBE represented to the market of investors and potential investors in QBE Shares that:

- (a) US\$388 million of provisions were sufficient for its North American Program Business; and

- (b) no further provision would be required;

**(November 2012 NA Program Provision Representations).**

**PARTICULARS**

*The representation was partly express and partly implied:*

- *To the extent it was express, the Applicant refers to the November 2012 Statements;*
- *To the extent it was implied, the Applicant refers to the making of the November 2012 Statements in the context of the Compliance Representations.*

29. From 13 November 2012 until 25 February 2013 inclusive, QBE continued to make the November 2012 NA Program Provision Representations.

**PARTICULARS**

*The continuing representation is implied from QBE not saying anything during that period to modify or contradict the November 2012 NA Program Provision Representation.*

30. By reason of the matters pleaded in paragraphs 17 to 19, on 26 February 2013, QBE represented to the market of investors and potential investors in QBE Shares that:
- (a) in relation to its North American Program Business a further US\$53 million provision on the program and prior-year development provisions would be sufficient, and no further provision would be required (**February 2013 NA Program Provision Representation**);
  - (b) that its Crop Business would achieve a COR of 88% or better for 2013 (**February 2013 Crop Guidance**); and
  - (c) that QBE would achieve a group-wide COR of 92% or better, and an insurance margin of 11% for 2013 (**February 2013 Group Guidance**).

**PARTICULARS**

*The February 2013 NA Program Provision Representation was partly express and partly implied:*

- *To the extent it was express, the Applicant refers to the February 2013 Statements;*
- *To the extent it was implied, the Applicant refers to the making of the February 2013 Statements in the context of the Compliance Representations.*

*The February 2013 Crop Guidance was express and contained in the February 2013 Statements.*



*The February 2013 Group Guidance was express and contained in the February 2013 Statements.*

31. Each of the February 2013 NA Program Provision Representation, February 2013 Crop Guidance and February 2013 Group Guidance were continuing representations in the period between 27 February 2013 and 19 August 2013.

#### **PARTICULARS**

*The continuing representations are implied from QBE not saying anything during that period to modify or contradict any of the corresponding representations and guidances.*

32. By reason of the matters pleaded in paragraphs 20 to 22, on 20 August 2013, QBE represented to the market of investors and potential investors in QBE Shares that:
- (a) a further US\$91 million provision would be sufficient for its North American Program Business and that no further provision would be required (**August 2013 NA Program Provision Representation**);
  - (b) in relation to the FPS Business, that QBE would incur a one-off downgrade against its FPS Business of US\$66 million, but was 'confident' it could 'win new banking clients' (**August 2013 FPS Representation**);
  - (c) its Crop Business would achieve a COR of 88% or better for 2013 (**August 2013 Crop Guidance**), being a repetition of the February 2013 Crop Guidance;
  - (d) in relation to the financial performance and position of the QBE Group:
    - (i) QBE expected to achieve a group-wide COR of 92% or better, and an insurance margin of 11% for 2013 (being a repetition of the February 2013 Group Guidance) (**August 2013 Group Guidance**); and
    - (ii) that its goodwill of US\$4,558 million was appropriate (**August 2013 Goodwill Representation**);

(together, **August 2013 Express Representations**).

#### **PARTICULARS**

*Each of the August 2013 NA Program Provision Representation, August 2013 FPS Representation, August 2013 Group Guidance and August 2013 Goodwill Representation was contained in the August 2013 Statements*

*The August 2013 Crop Guidance is implied from the statements set out in subparagraphs 19(b) and 22(c), and the absence of any disclosure to the contrary.*

33. By reason of the matters pleaded in paragraphs 20 to 22 and 32, QBE represented to the market of investors and potential investors in QBE Shares that:

- (a) QBE was able, from the information available to it, to provide a reasonably reliable guide as to:
  - (i) the provisioning the North American Program Business would require in 2013;
  - (ii) the profitability of the FPS Business in 2013;
  - (iii) the COR that would be achieved by the Crop Business in 2013;
  - (iv) the COR and insurance margin that would be achieved by the QBE group in 2013; and
  - (v) the value of the goodwill of the QBE group;

**(August 2013 Guidance Reliability Representation);**

- (b) QBE had reasonable grounds for making the August 2013 Express Representations **(August 2013 Reasonable Grounds Representation);**
- (c) there was no information known to QBE which created a material risk that the August 2013 Express Statements were unreliable **(August 2013 No Material Risk Representation);**

(together, **August 2013 Implied Representations**).

## PARTICULARS

*The representations were implied in circumstances in which QBE was subject to the obligations pleaded in paragraphs 11 to 14.*

*The representation in sub-paragraph (a) is also to be implied from the making of the February 2013 Group Guidance and its repetition in the August 2013 Group Guidance, together with, in the case of:*

- *sub-paragraph (a)(i), the making of the August 2013 NA Program Provision Representation (in the context where the February 2013 NA Program Provision Representation and the November 2012 NA Program Provision Representation had been made);*

- *sub-paragraph (a)(ii), the making of the August 2013 FPS Representation;*
- *sub-paragraph (a)(iii), the making of the August 2013 Crop Guidance (being a repetition of the February 2013 Crop Guidance).*

*The representation in sub-paragraph (b) is also to be implied from the making of the implied representations in sub-paragraph (a), in a context where the November 2012 Statements and February 2013 Statements had already been made.*

*The representation in sub-paragraph (c) is also to be implied from the making of the implied representations in sub-paragraphs (a) and (b).*

34. Each of:

- (a) the August 2013 NA Program Provision Representation;
- (b) the August 2013 Crop Guidance;
- (c) the August 2013 Goodwill Representation; and
- (d) the August 2013 Group Guidance;

were continuing representations in the period between 21 August 2013 and 8 December 2013 inclusive.

#### **PARTICULARS**

*The continuing representations are implied from QBE not saying anything during that period to modify or contradict any of the August 2013 Express Representations and August 2013 Implied Representations.*

### **E WHAT QBE KNEW OR OUGHT TO HAVE KNOWN**

#### **E.1 The North American Operations generally**

*'Remediation' work*

35. In late 2012 or early 2013, QBE commenced work in respect of its North American Operations which it described as 'remediation'.

#### **PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to:*

1. Mr Neal's comments about 'remediation plans' made in the 26 February Call [SOC.001.003.0001 at .0002];
2. Mr Neal's comments about 'significant remedial action in relation to underperforming businesses' made in a 'Business Update Call' convened by QBE on 9 December 2013 (**9 December Call**), published on Bloomberg [SOC.001.010.0001 at .0004].

*Further particulars may be provided after discovery.*

*The internal review*

36. In or around April 2013, Mr Duclos (the new Chief Executive Officer of North American Operations who was appointed in around February 2013, with effect from 2 April 2013) commenced a review of the North American Operations (**Internal Review**).
37. Before QBE made the August 2013 Express Representations and August 2013 Implied Representations, Mr Neal had asked Mr Duclos to 'give a very detailed update' regarding the Internal Review to the QBE Group board in October 2013.

**PARTICULARS**

*The Applicant refers to Mr Neal's answer to a question from Nigel Pittaway in the 20 August Call [SOC.001.007.0001 at .0010].*

38. Throughout the period from late 2012 to the end of the Relevant Period:
  - (a) QBE had data and claims files relating to its North American Program Business;
  - (b) QBE did not operate a sound system of risk management and internal control; and
  - (c) QBE's system of risk management and internal control did not operate effectively in all material respects in relation to financial reporting risks.

**PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant:*

1. repeats the particulars to paragraphs 35;
2. refers to QBE's statement on page 21 of QBE's 2013 Annual Report published on 25 February 2014 (**2013 Annual Report**) that:

*[t]he recently appointed North American management team completely overhauled the claims management practices and undertook an extensive claim-by-claim file review during the second half of 2013 which supported the carrying value of reported claims. Regrettably, a re-evaluation of the appropriate*

*level of IBNR reserves by the new management team, relying on more accurate and more timely data, aggregated on a class of business basis rather than program-by-program basis, led to a very substantial increase in IBNR reserves [SOC.001.014.0001 at .0023].*

3. refers to QBE's statement on page 36 of its 2013 Annual Report that:

*[d]espite strengthening prior accident year claims provisions in the program portfolios in 2012, we again required substantial IBNR claims upgrades in 2013 mainly to cover expected deterioration in longer tail classes after a thorough review of the program portfolio. Strengthened actuarial resources and the introduction of a new and highly experienced claims team to clean up data and claims files and introduce appropriate processes have provided the necessary confidence in the ongoing management of this portfolio [SOC.001.014.0001 at .0038].*

4. refer to Mr Duclos's comments made in the 9 December Call that:

*Our culture is changing. There is increased transparency, more data-driven decision-making, and a focus on finishing and delivering projects, actions and tactics [SOC.001.010.0001 at .0003].*

5. refer to Mr Neal's statement made in a presentation to investors on 25 February 2014 that:

*the very complexity of our business points to improving control over our data and our metrics to be able to call as accurately as we did line by line on the numbers on December 9 [SOC.001.012.0001 at .0002].*

*Further particulars may be provided after discovery.*

## **E.2 The North American Program Business**

39. In late 2012, Mr Neal instigated an assessment by QBE's internal and external actuaries of underperforming and run-off portfolios in the North American Program Business.

### **PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to the statement appearing in the box on page 4 of the 2013 Annual Report headed '2013 result and North American Operations review' [SOC.001.014.0001 at .0006].*

*Further particulars may be provided after discovery.*

40. The assessment which Mr Neal instigated 'identified a number of issues' in relation to the adequacy of provisions for the North American Program Business.

**PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant repeats the particulars to paragraph 39.*

*Further particulars may be provided after discovery.*

41. At around the time QBE made the August 2013 NA Program Provision Representation, QBE began or was still conducting 'a more detailed analysis' of the North American Program Business, including its reserves.

**PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to Mr Neal's comments about the 'more detailed analysis' made in the 9 December Call.*

*Further particulars may be provided after discovery.*

**E.3 The FPS Business****E.3.1 Introduction**

42. The FPS Business included operations of the following QBE subsidiaries:

- (a) Praetorian Insurance Company (**Praetorian**);
- (b) QBE Insurance Corporation;
- (c) QBE First Insurance Agency Inc; and
- (d) QBE Specialty Insurance Company;

(together, the **Relevant FPS Subsidiaries**).

43. At all material times, QBE Group together with Assurant Inc and its subsidiaries had more than 90% share of the force-placed insurance market in the United States.

**E.3.2 New York investigates QBE's FPS Business**

44. By about 3 October 2011, the New York Department of Financial Services (**NYDFS**) began investigating the force-placed insurance industry, including QBE (**New York Investigation**).

**PARTICULARS**

*The Applicant refers to the consent orders between the NYDFS and QBE First Insurance Agency Inc, QBE Insurance Corporation and others on or around 18 April 2013.*

### *E.3.3 Proposal by Fannie Mae puts pressure on FPS premiums*

45. On or about 6 March 2012, the Federal National Mortgage Association (**Fannie Mae**) issued a 'request for proposals' inviting insurance companies to compete for force-placed insurance that Fannie Mae would purchase.
46. By reason of the fact that at all material times Fannie Mae had an estimated share of at least 39% of the market of single-family mortgages in the United States, the Fannie Mae proposal created a material risk that premiums or commissions in the force-placed insurance industry or both, including those earned by QBE, would fall.

#### **PARTICULARS**

*The Applicant refers to the statement on page 39 of Fannie Mae's 'Annual Report on Form 10-K' for the year ended 31 December 2013' in which Fannie Mae said:*

*[w]e estimate that our single-family market share was 40% in 2013, compared with 39% in 2012. These amounts represent our single-family mortgage acquisitions for each year.*

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to QBE's written statement that it was '[w]orking with Government Sponsored Enterprises (e.g. Fannie Mae) on potential mortgage servicing guideline changes', made in a presentation to investors on 12 October 2012 [SOC.001.031.0001 at .0021].*

*Further particulars may be provided after discovery.*

### *E3.4 California investigates QBE's FPS Business*

47. On or about 14 March 2012, the California Department of Insurance commenced an investigation into the force-placed insurance industry (**California Investigation**), including the level of premiums.

#### **PARTICULARS**

*The Applicant refers to the press release of the California Department of Insurance dated 14 March 2012 and titled 'Insurance Commissioner Dave Jones Calls on "Forced-Placed" Mortgage Insurers to Reduce Rates'.*

48. At all material times, California accounted for around 12% of the gross written premium of QBE's FPS Business.

#### **PARTICULARS**

*The Applicant refers to page 5 of a presentation given to the Citi Australian Investment Conference on 24 October 2012.*

49. By reason of the matters pleaded in paragraphs 47 and 48, there was at all material times after 14 March 2012 and/or alternatively 22 October 2012 a material risk that:
- (a) the California Investigation would result in QBE materially reducing its force-placed insurance premiums in California; and
  - (b) this would have a material impact on the gross written premium of QBE's FPS Business.

#### PARTICULARS

*The Applicant refers to the matters pleaded in paragraph 43, and 47 of this statement of claim, and/or the press release of the California Department of Insurance dated 22 October 2012 and titled 'Insurance Commissioner Dave Jones Announces \$42.7 Million Rate Reduction For Policyholders Of "Force-Placed" Mortgage Insurer'.*

#### *E3.5 Other investigations into the force-placed insurance industry*

50. On or about 27 June 2012, the National Association of Insurance Commissioners commenced an investigation into the force-placed insurance industry, covering force-placed insurance premiums, loss ratios, and related rating and pricing information (**NAIC Investigation**).

#### PARTICULARS

*The Applicant refers to the press release of the National Association of Insurance Commissioners dated 27 June 2012 and titled 'Insurance Regulators to Hold Hearing on Lender-Placed Insurance'.*

#### *E.3.6 Florida investigation into FPS*

51. On 2 July 2012, the Florida Office of Insurance Regulation (**FLOIR**) announced a public hearing into the force-placed insurance premiums proposed to be charged by Praetorian (**Florida Investigation**).

#### PARTICULARS

*The Applicant refers to the press release of the Florida Office of Insurance Regulation dated 2 July 2012 and titled 'Office Announces Public Rate Hearing for Praetorian Insurance Company to Address Lender-Placed Insurance'.*

52. On or about 10 August 2012, as part of the Florida Investigation, FLOIR sent a letter to QBE stating that Praetorian's proposed force-placed insurance premiums were 'excessive' by '35-36%'.



53. At all material times, Florida accounted for around '35% to 40%' of the gross written premium of QBE's FPS Business.

#### **PARTICULARS**

*The Applicant refers to page 5 of a presentation given to the Citi Australian Investment Conference on 24 October 2012.*

54. By reason of the matters pleaded in paragraphs 51 to 53, there was at all material times after 2 July 2012 a material risk that:
- (a) the Florida Investigation would result in QBE materially reducing its force-placed insurance premiums in Florida; and
  - (b) this would have a material impact on the gross written premium of QBE's FPS Business.

#### *E3.7 Pressure on premiums*

55. By October 2012, and by reason of the California Investigation, NAIC Investigation, and Florida Investigation, QBE was anticipating insurance regulators would require its FPS Subsidiaries to reduce their premiums.

#### **PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to QBE's written statements made in a presentation to investors on 12 October 2012 that:*

1. *'[m]oderate price reductions in the lender-placed business are expected as consultations with regulators are on-going' [SOC.001.031.0001 at .0010];*
2. *it was having '[r]egular interaction with state insurance regulatory community regarding rates and business practices' [SOC.001.031.0001 at .0021].*

*Further particulars may be provided after discovery.*

56. By November 2012, Relevant FPS Subsidiaries were defendants in class actions concerning force-placed insurance they issued.

#### **PARTICULARS**

*The class actions included:*

1. *Williams et al v Wells Fargo Financial, Inc. et al 11-cv-21233 which had been filed in the United States District Court, Southern District of Florida on or about 7 April 2011 and in which QBE Insurance Corporation and QBE First Insurance Agency Inc were defendants.*

2. *Hall v Bank of America et al 12-cv-22700 which had been filed in the United States District Court, Southern District of Florida on or about 24 July 2012 and in which QBE Specialty Insurance Company and QBE First Insurance Agency Inc were defendants.*

*Insofar as the Applicant is otherwise able to say prior to discovery, the Applicant refers to QBE's written statement made in a presentation to investors on 12 October 2012 '[I]itigation activity being managed constructively' [SOC.001.031.0001 at .0021].*

*Further particulars may be provided after discovery.*

#### **E3.8 FPS Insurance premium reductions**

57. On 31 January 2013, following or as part of the California Investigation, the California Department of Insurance approved proposals by QBE to decrease premiums by an average of 35.0%.

#### **PARTICULARS**

*The Applicant refers to the press release of the California Department of Insurance dated 31 January 2013 and titled 'California Department of Insurance announces \$20.6m rate reduction for homeowners'.*

58. On 11 February 2013, following or as part of the Florida Investigation, FLOIR approved proposals by Praetorian to decrease premiums by an average of 18.8%.

#### **PARTICULARS**

*The Applicant refers to the press release of the Florida Office of Insurance Regulation dated 11 February 2013 and titled 'Office Approves Praetorian Insurance Company's Second Rate Filing for Lender-Placed Insurance'.*

59. On or about 18 April 2013, QBE reached a settlement with the NYDFS regarding the New York Investigation, in which QBE agreed to, inter alia:
  - (a) pay a US\$10 million penalty;
  - (b) lower premiums on its force-placed insurance;
  - (c) not reinsure force-placed insurance policies with a person or entity affiliated with the banks or servicer that obtained the policies; and

- (d) compensate homeowners who were adversely affected by the conduct the subject of the New York investigation.

### PARTICULARS

*The Applicant refers to the consent orders between the NYDFS and QBE First Insurance Agency Inc, QBE Insurance Corporation and others on or around 18 April 2013.*

#### *E3.9 Investigation by Federal Housing Finance Agency*

- 60. At all material times, the Federal Housing Finance Agency (**FHFA**) in the United States of America was the conservator and had oversight of Fannie Mae and the Federal Home Loan Mortgage Corporation (**Freddie Mac**).
  - 61. On or about 25 March 2013, the FHFA:
    - (a) began an investigation into force-placed insurance (**FHFA Investigation**);
    - (b) proposed that Fannie Mae and Freddie Mac prohibit, in relation to mortgages purchased or guaranteed by them:
      - (i) commissions for the placement of force-placed insurance;
      - (ii) commissions where the writers of force-placed insurance re-insured such insurance with a related party;
- (FHFA Proposal).**

### PARTICULARS

*The Applicant refers to the notice dated 25 March 2013 from Edward DeMarco, Acting Director of the FHFA, published in the Federal Register of the government of the United States of America, vol. 78, no. 61 on 29 March 2013.*

- 62. At all material times, Fannie Mae and Freddie Mac had an estimated share of at least 62% of the market of single-family mortgages in the United States.

### PARTICULARS

*The Applicant:*

1. repeats the particulars to paragraph 46; and
2. refers to the statements on page 59 of Freddie Mac's 'Annual Report on Form 10-K' for the year ended 31 December 2013 and page 85 of Freddie Mac's 'Annual Report on Form 10-K' for the year ended 31 December 2012 in which Freddie Mac estimated that it had '23% of the single-family mortgages outstanding in the U.S.'

63. By reason of the matters pleaded in paragraph 62, the FHFA investigation and FHFA proposal created a material risk of a material fall in:
- (a) commissions in the force-placed insurance industry, including those earned by QBE's FPS Business;
  - (b) demand for force-placed insurance, including for insurance written by QBE's FPS Business.

*E3.10 Lowered demand for force-placed insurance*

64. Throughout the second half of 2012 and the first half of 2013, the FPS Business had lost a material number of clients.

### **PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to:*

- 1. the statement in QBE's 2012 Annual Report about 'the loss of some accounts' [SOC.001.005.0001 at .0035];*
- 2. the statement in QBE's 1H13 Report about 'client losses (largely through mortgage industry consolidation) including Wells Fargo, Aurora, Homeward and part of GMAC' [SOC.001.009.0001 at .0017];*
- 3. the statement in QBE's 1H13 Report:*

*the wholesale disposal of mortgage loan portfolios by our main distributor, Bank of America. Whilst we have known for some time about likely portfolio disposals, estimating the implications for premium volumes has been extremely challenging, exacerbated by a lack of transparency around timing and the loan quality of the portfolios being sold, the latter having a significant bearing on estimating lost premium production.*

*Even more challenging, some portfolio disposals are being undertaken with immediate effect resulting in the need to refund an element of the unearned premium reserve to the new LPI service provider (rather than retaining the run-off of in-force policies). [SOC.001.009.0001 at .0017];*

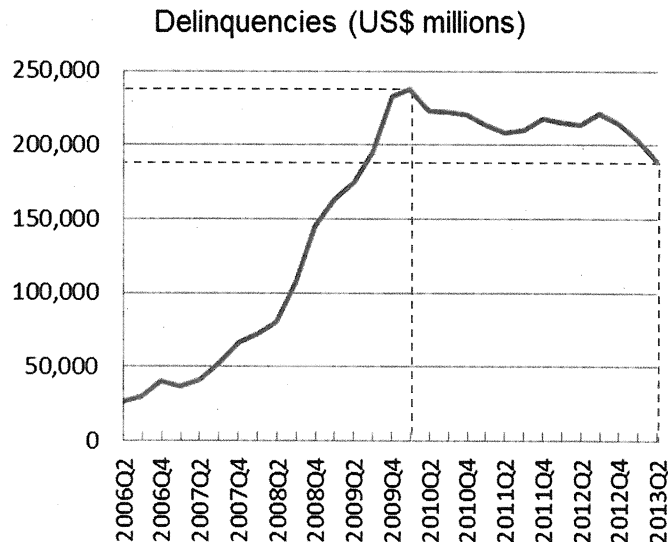
*Further particulars may be provided after discovery.*

65. By the start of the Relevant Period, demand in the force-placed insurance industry had been declining.

### PARTICULARS

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to:*

1. *the statement in QBE's 2012 Annual Report that force-placed insurance 'volumes were impacted by improving economic conditions' [SOC.001.05.0001 at .0035];*
2. *the statement in QBE's 1H13 Report about 'consolidation in the mortgage industry' [SOC.001.009.0001 at .0016];*
3. *the statement in QBE's 1H13 Report about 'reduced [force-placed insurance] placement rates due to an improving US housing market' [SOC.001.009.0001 at .0017];*
4. *statistics collected by the United States Federal Reserve and which were publicly available at all times, showing the delinquencies for single-family residential mortgages materially falling from US\$237,824 million in the first quarter of 2010 to US\$188,864 million in the second quarter of 2013, and which are presented in the chart below.*



*Further particulars may be provided after discovery and receipt of expert evidence.*

### E.4 The Crop Business

66. The composition of the premium of the Crop Business for 2013, by commodity, was:
- (a) 44% from corn;
  - (b) 23% from soybean;

- (c) 17% from wheat; and
- (d) 16% from other crops.

#### PARTICULARS

*The Applicant refers to page 55 of QBE's presentation on 17 October 2014 and titled 'QBE North American Operations Investor and Analyst Day presentation' [SOC.001.030.0001 at .0056].*

67. The states in which the Crop Business had a material exposure for 2013 were:

- (a) Minnesota;
- (b) Iowa;
- (c) North Dakota; and
- (d) Nebraska.

#### PARTICULARS

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to:*

1. the references to Minnesota and Iowa on page 35 of QBE's 2013 Annual Report [SOC.001.014.0001 at .0037]; and
2. page 28 of QBE's presentation dated 12 October 2012 and titled 'QBE North America Investor and Analyst Day presentation' [SOC.001.031.0001 at .0029].

*Further particulars may be provided after discovery.*

68. On or about 1 March 2013, the Federal Crop Insurance Corporation set the projected prices which were to be used in the calculation of QBE's Crop Insurance policy guarantee levels and premiums for the crops and states to which the Crop Business had a material exposure for 2013 (**Projected Prices**).

#### PARTICULARS

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to:*

1. the 'Informational Memorandum' PM-13-014 dated 1 March 2013 and issued by the Risk Management Agency of the United States Department of Agriculture, which specified the Projected Prices for various crops for the Yield Protection, Revenue Protection and Revenue Protection with Harvest Price Exclusion plans of insurance [SOC.001.032.0001], including as follows (for Minnesota, Iowa, Nebraska and North Dakota):

- a. \$5.65/bushel (Chicago Board of Trade (**CBOT**)) for December corn with a volatility factor of 0.20;
  - b. \$12.87/bushel (CBOT) for November soybeans with a volatility factor of 0.17;
  - c. \$8.44/bushel for September non-Durum type wheat and \$9.64/bushel for September Durum type wheat (Minnesota Grain Exchange (**MGE**)) with a volatility factor of 0.15.
2. the definition of and references to 'projected price' in the Common Crop Insurance Policy which formed part of the crop insurance contracts written by QBE or its subsidiaries, particularly cl 3(c) [SOC.001.033.0001].

*Further particulars may be provided after discovery.*

69. By the start of the Relevant Period:

- (a) the forward prices for the 2013 harvest seasons of the crops and states to which the Crop Business had a material exposure were materially lower than the Projected Prices; and
- (b) there was a material risk that the harvest price of the crops in the states to which the Crop Business had a material exposure would be materially lower than the Projected Prices; and
- (c) by reason thereof, QBE and its subsidiaries would be required to make material payments on the revenue protection guarantee in the Crop Insurance policies.

### **PARTICULARS**

1. *Forward curves which were publicly available at all relevant times (see, e.g., [www.marketqview.com](http://www.marketqview.com)) showed forward prices for each of the harvest seasons of crops to which the Crop Business had a material exposure were falling during the year.*
2. *The forward curves showed that on 1 August 2013, the forward prices were approximately:*
  - a. *\$4.84/bushel for December corn (being 14.3% lower than the Projected Price);*
  - b. *\$11.93/bushel for November soybeans (being 7.3% lower than the Projected Price);*
  - c. *\$6.58/bushel for September wheat (being 22% lower than the Projected Price).*

70. Further, or alternatively, by a time or times presently unknown to the Applicant but no later than the start of the Relevant Period, the Crop Business had incurred material prevented planting claims for 2013.

### **PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery, the Applicant refers to:*

1. *clause 14(b)(3) of the Common Crop Insurance Policy which formed part of the crop insurance contracts written by QBE or its subsidiaries. That clause required insureds to make prevented planting claims before certain dates, such dates being before the start of the Relevant Period [SOC.001.033.0001 at .0028] and see [www.rma.usda.gov](http://www.rma.usda.gov), where the final planting dates were:*
  - a. *for corn, by no later than 5 June in each of Minnesota, Iowa, Nebraska and North Dakota;*
  - b. *for soybeans, by no later than 10 June 2013 in each of Iowa, Minnesota, Nebraska and North Dakota;*
  - c. *for wheat, by no later than 5 June 2013 in each of Iowa, Minnesota, Nebraska and North Dakota*
2. *the statement from Mr Neal that 'some early preventative [sic] planting claims will give rise to a number of revenue claims under the insurances we provide to farmers', made in a presentation to investors on 9 December 2013 [SOC.001.010.0001 at .0002];*

*Further particulars may be provided after discovery.*

## **F CONTINUOUS DISCLOSURE CONTRAVENTIONS**

### **F.1 Information concerning the North American Operations**

71. By the start of the Relevant Period, QBE had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that by reason of the matters in paragraph 35 that there was a material risk that:
- (a) QBE's financial performance and financial results for 2013 would be adversely affected by the performance of its North American Operations; and/or



- (b) earnings guidance given by QBE in respect of its financial performance and financial results for 2013 was unreliable;

**(North American Operations Performance Risk Information).**

**PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery:*

- *officers of QBE ought reasonably to have come into possession of the information pleaded in paragraphs 35 to 41 and/or 42 to 65 and/or 66 to 70 in the course of the performance of their duties as an officer of that entity; and*
- *officers of QBE ought reasonably to have come into possession of this information by reason of the systems referred to in the Risk Management Representations.*

*Further particulars may be provided after discovery.*

**F.2 Information concerning the North American Program Business**

72. By the start of the Relevant Period, and by reason of the matters in paragraphs 35 to 37 and 39 to 41, QBE had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that there was a material risk, that:

- (a) QBE would need to make provisions for the North American Program Business materially in excess of each of the provisions the subject of:
- (i) the November 2012 NA Program Provision Representation;
  - (ii) the February 2013 NA Program Provision Representation; and
  - (iii) the August 2013 NA Program Provision Representation;
- (b) earnings guidance given by QBE in respect of its financial performance and financial results for 2013 was unreliable to the extent it incorporated guidance based on the financial performance of the North American Program Business;

**(North American Program Increased Provisioning Risk Information).**

**PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery:*

- *officers of QBE ought reasonably to have come into possession of the information pleaded in paragraphs 35 to 41 in the course of the performance of their duties as an officer of that entity; and*

- *officers of QBE ought reasonably to have come into possession of this information by reason of the systems referred to in the Risk Management Representations.*

*Further particulars may be provided after discovery.*

### **F.3 Information concerning the FPS Business**

73. By the start of the Relevant Period, and by reason of the matters in paragraphs 42 to 65, QBE had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that it was likely, or alternatively, that there was a material risk, that:

- (a) QBE would recognise a charge materially in excess of the US\$66 million the subject of the August 2013 FPS Representation, and a material impairment to its goodwill;
- (b) earnings guidance given by QBE in respect of its financial performance and financial results for 2013 was unreliable to the extent it incorporated guidance based on financial performance and position of the FPS Business (and the achievement of the August 2013 FPS Representation);

**(FPS Business Performance Risk Information).**

#### **PARTICULARS**

*Insofar as the Applicant is able to say prior to discovery:*

- *officers of QBE ought reasonably to have come into possession of the information pleaded in paragraphs 42 to 65 in the course of the performance of their duties as an officer of that entity; and*
- *officers of QBE ought reasonably to have come into possession of this information by reason of the systems referred to in the Risk Management Representations.*

*Further, in respect of the allegations in paragraph 73(b), the Applicant repeats the particulars to paragraph 64.*

*Further particulars may be provided after discovery.*

#### F.4 Information concerning the Crop Business

74. By the start of the Relevant Period, and by reason of the matters in paragraphs 66 to 70, QBE had (within the meaning of s 674(2) of the Corporations Act) and was aware of (within the meaning of ASX Listing Rule 19.12) information that there was a material risk, that each of the February 2013 Crop Guidance and the August 2013 Crop Guidance was unreliable (**Crop Business Performance Risk Information**).

#### PARTICULARS

*Insofar as the Applicant is able to say prior to discovery:*

- *officers of QBE ought reasonably to have come into possession of the information pleaded in paragraphs 66 to 70 in the course of the performance of their duties as an officer of that entity; and*
- *officers of QBE ought reasonably to have come into possession of this information by reason of the systems referred to in the Risk Management Representations.*

*Further particulars may be provided after discovery.*

#### F.5 Continuous Disclosure Contraventions

75. Each of:

- (a) the North American Operations Performance Risk Information;
- (b) the North American Program Increased Provisioning Risk Information;
- (c) the FPS Business Performance Risk Information; and
- (d) the Crop Business Performance Risk Information;

(each being **Material Information**), was information:

- (e) that, until 9 December 2013, was not generally available within the meaning of s 674(2)(c)(i) of the Corporations Act; and
- (f) that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of QBE Shares within the meaning of s 674(2)(c)(ii) of the Corporations Act.

76. Pursuant to ASX Listing Rule 3.1, QBE became obliged to tell the ASX the Material Information by the start of the Relevant Period.

77. QBE did not communicate any of the Material Information to the ASX before 9 December 2013.
78. In the circumstances set out in paragraphs 75 to 77, QBE contravened subsection 674(2) of the Corporations Act (**Continuous Disclosure Contraventions**).

## **G MISLEADING OR DECEPTIVE CONDUCT AND MATERIALLY MISLEADING STATEMENTS**

### **G.1 Misleading Conduct Contraventions**

79. The making of each of the Compliance Representations, Risk Management Representations, August 2013 Express Representations and August 2013 Implied Representations was conduct engaged in by QBE:
  - (a) in trade or commerce; and
  - (b) in relation to QBE Shares.
80. By making and/or failing to correct or qualify each of the Compliance Representations in the circumstances set out in paragraphs 35 to 70 and/or 78, QBE engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
81. By making and/or failing to correct or qualify each of the Risk Management Representations in the circumstances set out in paragraphs 35 to 70, QBE engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.
82. QBE made each of the August 2013 Express Representations without reasonable grounds, by reason of, in the case of:
  - (a) the August 2013 NA Program Provision Representation, the circumstances set out in paragraphs 35 to 41;
  - (b) the August 2013 FPS Representation, the circumstances set out in paragraphs 35 to 38 and 42 to 65;
  - (c) the August 2013 Crop Guidance, the circumstances set out in paragraphs 35 to 38 and 66 to 70;
  - (d) the August 2013 Group Guidance, the circumstances set out in paragraphs 35 to 70; and/or

- (e) the August 2013 Goodwill Representation, the circumstances set out in paragraphs 35 to 70.

### **PARTICULARS**

*Each of the Express Representations was a representation as to future matters, and s 12BB of the ASIC Act, s 769C of the Corporations Act and/or s 4 of the Australian Consumer Law are relied upon.*

83. By making and/or failing to correct or qualify each of:
- (a) the August 2013 NA Program Provision Representation, in the circumstances set out in paragraphs 35 to 41, 72 and 82;
  - (b) the August 2013 FPS Representation, in the circumstances set out in paragraphs 35 to 38, 42 to 65, 73 and 82;
  - (c) the August 2013 Crop Guidance, in the circumstances set out in paragraphs 35 to 38, 66 to 70, 74 and 82;
  - (d) the August 2013 Group Guidance, in the circumstances set out in paragraphs 35 to 70, 71 to 78 and 82; and
  - (e) the August 2013 Goodwill Representation, in the circumstances set out in paragraphs 35 to 70, 71 to 78 and 82;

QBE engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

84. QBE made each of the August 2013 Implied Representations without reasonable grounds, by reason of, in the case of:
- (a) the August 2013 Guidance Reliability Representation, the circumstances set out in paragraphs 35 to 70 and 82;
  - (b) the August 2013 Reasonable Grounds Representation, the circumstances set out in paragraph 82;
  - (c) the August 2013 No Material Risk Representation, the circumstances set out in paragraphs 35 to 70 and/or 71 to 74.

85. By making and/or failing to correct or qualify each of:

- (a) the August 2013 Guidance Reliability Representation, in the circumstances set out in paragraphs 35 to 70 and 84;
- (b) the August 2013 Reasonable Grounds Representation, in the circumstances set out in paragraph 84;
- (c) the August 2013 No Material Risk Representation, in the circumstances set out in paragraphs 35 to 70, 71 to 74 and 84;

QBE engaged in conduct which was misleading or deceptive or was likely to mislead or deceive.

86. By reason of the matters pleaded in:

- (a) paragraph 80, in relation to the Compliance Representations;
- (b) paragraph 81, in relation to the Risk Management Representations;
- (c) paragraph 83, in relation to the August 2013 Express Representations;
- (d) paragraph 85, in relation to the August 2013 Implied Representations;

QBE contravened section 1041H of the Corporations Act and/or s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law (each a **Misleading Conduct Contravention**).

## **G.2 Misleading Statements Contraventions**

87. By reason of the matters pleaded in paragraphs 35 to 70 and/or 78, the Compliance Representations were materially misleading.

88. By reason of the matters pleaded in paragraphs 35 to 70, the Risk Management Representations were materially misleading.

89. By reason of the matters pleaded in paragraphs 35 to 70, 82 and/or 83, each of the August 2013 Express Representations was materially misleading.

90. By reason of the matters pleaded in paragraphs 35 to 70, and/or 84, each of the August 2013 Implied Representations was materially misleading.

91. Each of the Compliance Representations, Risk Management Representations, August 2013 Express Representations and August 2013 Implied Representations was likely:
- (a) to induce persons in this jurisdiction to dispose of or acquire QBE Shares; and/or
  - (b) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in QBE Shares.
92. Each of the Compliance Representations, Risk Management Representations, August 2013 Express Representations and August 2013 Implied Representations was made by QBE when QBE ought reasonably to have known that the representation was materially misleading, in the case of:
- (a) the Compliance Representations, in the circumstances set out in paragraphs 35 to 70;
  - (b) the Risk Management Representations, in the circumstances set out in paragraphs 35 to 70;
  - (c) the August 2013 Express Representations being the:
    - (i) the August 2013 NA Program Provision Representation, in the circumstances set out in paragraphs 35 to 41;
    - (ii) the August 2013 FPS Representation, in the circumstances set out in paragraphs 35 to 38 and 42 to 65;
    - (iii) the August 2013 Crop Guidance, in the circumstances set out in paragraphs 35 to 38 and 66 to 70;
    - (iv) the August 2013 Group Guidance, in the circumstances set out in paragraphs 35 to 70; and/or
    - (v) the August 2013 Goodwill Representation, in the circumstances set out in paragraphs 35 to 70;
  - (d) the August 2013 Implied Representations being the:
    - (i) the August 2013 Guidance Reliability Representation, in the circumstances set out in paragraphs 35 to 70 and 84;

- (ii) the August 2013 Reasonable Grounds Representation, in the circumstances set out in paragraph 84;
- (iii) the August 2013 No Material Risk Representation, in the circumstances set out in paragraphs 35 to 70, 71 to 74 and 84.

93. By reason of the matters pleaded in:

- (a) paragraph 87, 91 and 92(a), by making the Compliance Representations;
- (b) paragraph 88, 91 and 92(b), by making the Risk Management Representations;
- (c) paragraph 89, 91 and 92(c) by making each of the August 2013 Express Representations; and
- (d) paragraph 90, 91 and 92(d) by making each of the August 2013 Implied Representations;

QBE contravened section 1041E of the Corporations Act (each a **Misleading Statements Contravention**).

## H CONTRAVENING CONDUCT CAUSED GROUP MEMBERS' LOSS

### H.1 Acquisition of QBE Shares

94. During the Relevant Period, the Applicant and the Group Members acquired interests in QBE Shares.

#### PARTICULARS

*The Applicant acquired 1,300 QBE Shares on 3 October 2013 at an average of \$14.67 per share.*

*Particulars of acquisitions by Group Members will be provided after the trial of the Applicant's claim.*

### H.2 Market-based causation

95. The Applicant and the Group Members acquired their interests in QBE Shares in a market of investors or potential investors in QBE 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 QBE had the obligations pleaded in paragraphs 11 to 14;
- (d) where the price or value of QBE 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, which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of QBE Shares (namely the Material Information);
  - (ii) misleading or deceptive conduct had been engaged in (namely the conduct the subject of the Misleading Conduct Contraventions and/or Misleading Statements Contraventions) that a reasonable person would expect to have a material effect on the price or value of QBE Shares, in that if they had not been made no investors or potential investors in QBE Shares would have been in a position to read or rely upon them.

96. In the Relevant Period, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions and/or the Misleading Statements Contraventions (and each of them) (**Market Contraventions**) caused the market price of QBE Shares to be, or materially contributed to the market price of QBE Shares 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 Statement of Claim.

### PARTICULARS

*The extent to which the Market Contraventions caused the market price for QBE Shares to be substantially greater than their true value and/or the market price that would otherwise had prevailed (that is, inflated) during the Relevant Period is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence in the proceeding.*

97. The decline in the price of QBE Shares pleaded in paragraph 25 above was caused or materially contributed to by:
- (a) the market's reaction to the information released to the ASX in the 9 December Announcement; and
  - (b) the Market Contraventions.

#### **PARTICULARS**

*The extent to which the decline in price of QBE Shares was caused or materially contributed to by these matters is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence as referred to in the particulars to paragraph 96.*

98. Further, or alternatively, if QBE 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 and/or Misleading Statements Contraventions;

the price of QBE Shares would have fallen substantially.

#### **PARTICULARS**

*The extent to which the price of QBE Shares would have fallen at earlier points in time during the Relevant Period, and when it would have so fallen, is a matter for evidence, particulars of which will be served immediately following the Applicant filing opinion evidence as referred to in the particulars to paragraph 96.*

### **H.3 Reliance**

99. Further, or in the alternative, in the decision to acquire QBE Shares:
- (a) the Applicant and some Group Members would not have acquired QBE Shares at the prices and in the volumes they were acquired, if the Material Information had been disclosed to them and/or the ASX, the non-disclosure of which for the reasons pleaded in paragraphs 75 to 78 constituted contravening conduct;
  - (b) the Applicant and some Group Members acquired QBE Shares at the prices and in the volumes they were acquired in reliance upon some or all of the following representations (and/or QBE not having corrected or qualified such representations):

- (i) the Compliance Representations (or any of them);
- (ii) the Risk Management Representations (or any of them);
- (iii) the August 2013 Express Representations (or any of them);
- (iv) the August 2013 Implied Representations (or any of them),

which, for the reasons pleaded in paragraphs 79 to 93 constituted contravening conduct.

#### **PARTICULARS**

*The Applicant would not have acquired QBE Shares at the price and volume referred to in paragraph 94 had the Material Information been disclosed to the ASX and it relied directly on the Compliance Representations and the Risk Management Representations, and the fact that they were not corrected or qualified prior to the Applicant acquiring QBE Shares.*

*The identity of all those Group Members which or who relied directly on any or all of the representations referred to in sub-paragraph 99(b) are not known with 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 claim and identification of common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

#### **H.4 Loss and damage**

100. The Applicant and the Group Members suffered loss and damage resulting from the Market Contraventions and/or the contraventions referred to in paragraph 99.

#### **PARTICULARS**

*The loss suffered by the Applicant is:*

- 1. the difference between the price at which it acquired its interest in the shares and the true value of that interest;*
- 2. alternatively, the difference between the price at which it acquired its interest in the shares and whatever is 'left in hand', or has been realised upon a sale;*
- 3. alternatively, the difference between the price at which it acquired its interest in the 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;*

- 4. alternatively, the difference between the price at which it acquired its interest in the shares and the price that would have prevailed but for the Market Contraventions and/or contraventions referred to in paragraph 99;*
- 5. in addition to the loss in 1, 2, 3 and 4, the loss of the opportunity to achieve a reasonable rate of return on the monies used to purchase the interest in the shares. Particulars in relation to Group Members will be provided after the trial of the Applicant's claim.*

*Further particulars in relation to the Applicant's losses will be provided after the service of opinion evidence in chief.*

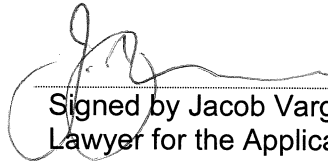
*Particulars of the losses of Group Members are not known with the current state of the Applicant's knowledge and cannot be ascertained unless and until those advising the Applicant take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Member's 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: 9 September 2015



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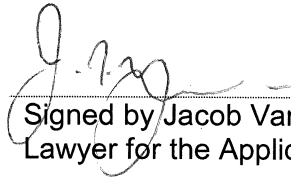
Signed by Jacob Varghese  
Lawyer for the Applicant

This pleading was prepared by Min Guo, lawyer, and settled by W.A.D. Edwards of counsel and M. B. J. Lee of senior counsel.

**Certificate of lawyer**

I, Jacob Isaac Noozhumurry Varghese, certify to the Court that, in relation to the 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: 9 September 2015



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Signed by Jacob Varghese  
Lawyer for the Applicant