

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

No. VID 2008

BETWEEN

IMOBILARI PTY LIMITED
(ACN 091 464 729)

Applicant

AND

OPES PRIME STOCKBROKING LIMITED
(Receivers & Managers Appointed) (Administrators Appointed)
(ACN 086 294 028)

First Respondent

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522)

Second Respondent

ANZ NOMINEES LIMITED
(ACN 005 357 568)

Third Respondent

MERRILL LYNCH INTERNATIONAL (AUSTRALIA) LTD
(ACN 002 892 846)

Fourth Respondent

STATEMENT OF CLAIM
(Form 7, Order 4 rule 6 and Order 11)

Parties

1. The Applicant has commenced this proceeding as a representative party pursuant to Pt IVA of the *Federal Court of Australia Act 1977* (Cth).
2. This proceeding is commenced by the Applicant on its own behalf and on behalf of those persons who:
 - (a) were a Client (as defined below) of the First Respondent ("**Opes Prime**").
 - (b) entered into a Facility Agreement with Opes Prime in the terms set out below.
 - (c) received the Representation (as defined below) at some time prior to entering into the Facility Agreement:
 - (i) directly from Opes Prime; and /or
 - (ii) indirectly from Opes Prime, through the group member's stockbroker.

Filed on behalf of the Applicant

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- (d) relied upon the Representation in entering into the Facility Agreement.
- (e) deposited shares with Opes Prime under the Facility Agreement in exchange for cash advances or drawdown facilities.
- (f) since around 27 March 2008:
 - (i) has had shares which it deposited sold by the Second Respondent ("**ANZ**"), or ANZ has authorised the sale of such shares, under the terms of an Australian Master Securities Lending Agreement between ANZ and Opes Prime ("**AMSLA**"); and/or
 - (ii) has had shares which it deposited sold by the Fourth Respondent ("**Merrill Lynch**"), or Merrill Lynch has authorised the sale of such shares, under the terms of a Global Master Securities Lending Agreement ("**GMSLA**") or an International Prime Brokerage Agreement including Australian addendum ("**IPBA**") between Merrill Lynch and Opes Prime.
- (g) has as at the commencement of this proceeding entered into a funding agreement with Commonwealth Legal Funding LLC.

("Group Members")

3. As at the date of commencement of this proceeding, seven or more persons had claims against the Respondents.
4. Opes Prime:
 - (a) is and was at all material times duly incorporated according to law;
 - (b) was at all material times the holder of an Australian Financial Services Licence number 247408 granted under section 913B of the *Corporations Act 2001 (Cth)* ("**Corporations Act**");
 - (c) was at all material times a provider of financial services within the meaning of section 766A of the *Corporations Act* and section 12BAB of the *Australian Securities and Investments Commission Act 2001 (Cth)* (the "**ASIC Act**"); and
 - (d) has been since 27 March 2008 in voluntary administration.
5. ANZ is and was at all material times:
 - (a) duly incorporated according to law and carried on business as a trading bank;
 - (b) is and was at all material times the holder of an Australian Financial Services Licence number 234527 granted under section 913B of the *Corporations Act*.
6. The Third Respondent ("**ANZ Nominees**"):
 - (a) is and has been at all material times duly incorporated according to law;

- (b) is and was at all material times a wholly owned subsidiary of ANZ;
 - (c) is and was at all material times an authorised representative of ANZ and held representative number 253799; and
 - (d) at all material times was in the business of holding securities as nominee, custodian and bare trustee on behalf of others.
7. Merrill Lynch is and was at all material times:
- (a) duly incorporated according to law and carried on business as a bank;
 - (b) is and was at all material times the holder of an Australian Financial Services Licence number 247408 granted under section 913B of the *Corporations Act*.

Facility Agreement

8. At various times Opes Prime undertook to act for each of the Group Members in relation to a loan to be obtained on the security of shares.
9. By entering a Facility Agreement (as defined below) with Opes Prime each of the Group Members thereby became a client of Opes Prime ("**Client**").
10. At all material times, Opes Prime had an interest in structuring the Facility Agreement so as to ensure that it could obtain clear title to any shares deposited by a Client so as to enable Opes Prime to obtain financing for its own purposes from ANZ or Merrill Lynch and to enable it or ANZ or Merrill Lynch to transfer or "lend" shares to third parties for a fee for purposes including short selling shares contrary to the interest of the Client.
11. The Facility Agreement was in writing and was contained in:
- (a) an application form signed by the Client ("**the Application Form**");
 - (b) the Opes' Services and Financial Services Guide ("**the FSG**");
 - (c) Facility Terms which were attached to the Application Form and the FSG and titled "Securities Lending and Borrowing Agreement" ("**the SLBA**").
12. At material times the logo of the ANZ and the description "Bankers and Custodian Bank" was printed on the back of the FSG.

The terms of the SLBA

13. The terms of the SLBA, are incorporated herein and referred to for their full terms and effect.
14. The SLBA contained the following express terms:

- (a) The Client ("as Lender") lends Securities to Opes Prime, and Opes Prime will borrow Securities from the Client, in accordance with the terms of the Agreement and on receipt by Opes Prime of a Borrowing Request (clause 1.1);
- (b) The Parties must execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in any Securities borrowed pursuant to clause 1; any Equivalent Securities redelivered pursuant to clause 6; any Collateral delivered pursuant to clause 5; any Equivalent Collateral redelivered pursuant to clause 5 or 6 will pass absolutely from one Party to the other, free from all liens, charges, equities, and encumbrances (clause 3.1);
- (c) Notwithstanding the use of the expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" etc which are used to reflect the terminology used in the market for transactions of the kind provided for in this Agreement, all right title and interest in and to Securities "borrowed" or "lent" and "Collateral" which one Party transfers to the other in accordance with this Agreement will pass absolutely from one Party to the other free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferring Party or of any third party (other than a lien routinely imposed on all securities in a relevant clearance system) without the transferor retaining any interest or right to the transferred property, the Party obtaining such title being obliged only to redeliver Equivalent Securities or Equivalent Collateral, as the case may be. Each Transfer under this Agreement must be made so as to constitute or result in a valid and legally effective transfer of the Transferring Party's legal and beneficial title to the recipient (clause 3.4);
- (d) The Borrower undertakes to redeliver Equivalent Securities, in accordance with this Agreement and the terms of the relevant Borrowing Request (clause 6.1);
- (e) The Lender may call for the redelivery of all or any of the Equivalent Securities, at any time by giving notice on any Business Day (clause 6.2);
- (f) "Collateral" means cash, ASX Traded Shares, and such other securities or financial instruments or deposits of currency as agreed between the Parties from time to time, or any combination of them which are delivered by the Borrower to the Lender in accordance with this Agreement and includes the certificates or other documents of title (if any) and transfer in respect of the foregoing (as appropriate) and Alternative Collateral (clause 22);
- (g) "Equivalent Collateral" in relation to any Collateral provided under this Agreement, means securities, cash or other property, as the case may be, of an identical type, nominal value, description and amount to particular Collateral so provided (clause 22); and

- (h) "Equivalent Securities" means securities of an identical type, nominal value, description and amount to particular Securities borrowed (clause 22).
15. The legal effect of the provisions set out in paragraphs 14 hereof was to effect a sale of the securities the subject of the Facility Agreement.

Particulars

- 15.1 The legal effect of the SLBA in all material respects was described by Finkelstein J in *Beaconwood Securities Pty Limited v Australian and New Zealand Banking Group Limited* [2008] FCA 594, namely, that title to the securities on loan, as well as to any collateral that is received by the lender, passes from one party to the other.

Transfer of Shares

16. At various times pursuant to the Facility Agreement then in place between Opes Prime and each Client, Opes Prime made a cash drawdown facility available to the Client and the Client in turn deposited shares with
- (a) Opes Prime ("**the Shares deposited with Opes Prime**") and/or
 - (b) ANZ Nominees ("**the Shares deposited with ANZ Nominees**").
- collectively "**the Shares**".
17. The Shares deposited with ANZ Nominees were registered in the name of ANZ Nominees as custodian.

Representation

18. Opes Prime had statutory obligations as a financial services licensee under section 912A(1) of the *Corporations Act*:
- (a) to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly; and
 - (b) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services business of the licensee or the representative.
19. By signing the Application Form, the Client acknowledged that:

- (a) He, she, or it, had read and understood the FSG and accepted the risks of securities lending under the facility.
 - (b) a Facility with an account would be established on the terms set out in the FSG.
20. Prior to a Client entering into a Facility Agreement, Opes Prime made representations (the "**Representation**") to the Client to the following effect:
- (a) the facility was a margin lending facility pursuant to which the Client would retain beneficial ownership of all shares deposited by him with Opes Prime as security for any cash advances provided by Opes Prime to the Client; and/or
 - (b) any shares deposited with ANZ Nominees would be held by ANZ Nominees as custodian for the Client.

Particulars

20.1 The Representation was made in writing by:

- (a) The FSG, or alternatively, the overview to the Facility Agreement, which contained the words:

"The investor retains beneficial and economic ownership of the lent stock, including full exposure to dividends and corporate actions, and exposure to market risk. The transaction can be reversed at any time".

- (b) The Opes Prime website ("**the Website**") which, at the material time, contained the words:

"[e]quity financing at Opes Prime works somewhat like a margin loan. Under an equity financing arrangement an investor lends listed equities against cash, with the listed equities used as collateral. The cash may then be reinvested by the investor to leverage exposure to the market. The investor retains the beneficial and economic ownership of the lent stock, including full exposure to dividends and corporate actions, as well as to market risk. The transaction may be reversed at any time."

- (c) Correspondence prior to or upon entry into the Facility Agreement which used language referable to a loan on the security of the shares including "available margin", "loan value ratio LvR", "loan".
- (d) The fact that the amount paid to the Client was referable to the "LvR", and that the Client was only paid the "LvR" of the shares and not the full market value of the shares at the time the transaction was entered into meant that the transaction was structured and explained in writing prior to the entry into the Facility Agreement so as to induce in the mind of the Client a belief that the transaction was by way of security in which the Client retained the beneficial ownership.
- (e) The description of ANZ Nominees as the custodian of the shares.

21 The Representation was made by Opes Prime with reckless indifference as to its truth.

Particulars

- 21.1 The Representation that a Client would retain the beneficial ownership was at material times placed in a prominent part of the overview or FSG.
- 21.2 The Applicant refers to relies upon 20.1(c), (d) and (e).
- 21.3 Further particulars will be provided following interrogatories and discovery.

22 The Representation was intended to induce and did in fact induce Clients including each of the Group Members to form the belief that they retained the beneficial ownership or equitable interest in the Shares contrary to the terms of the SLBA.

23 Further, or alternatively to paragraphs 21 and 22, prior to a Client entering into a Facility Agreement and at all times up to and including 27 March 2008, Opes Prime failed to inform, or fully inform, Clients including each of the Group Members that the true effect of the transaction was one in which ANZ Nominees, or Merrill Lynch, obtained legal title of the Shares and ANZ or Merrill Lynch would also claim the beneficial ownership of the Shares with the effect that the Client became an unsecured creditor of Opes Prime.

24 Further, or alternatively to paragraphs 21, 22, and 23, Opes Prime failed to inform, or fully inform, Clients including each of the Group Members that the true nature of the Facility Agreement was as set out in paragraph 23 and that Opes Prime had an interest in so

structuring the Facility Agreement so as to ensure that it could obtain or provide clear title to the Shares as to enable Opes Prime to obtain financing for its own purposes from ANZ or Merrill Lynch and to enable it or ANZ or Merrill Lynch to transfer or "lend" the Shares to third parties for a fee for purposes including short selling the Shares contrary to the interests of the Client.

- 25 Further, or alternatively to paragraph 21, the failure of Opes Prime to inform, or fully inform Clients including each of the Group Members of the matters referred to in paragraphs 23 and 24 arose because Opes Prime was recklessly indifferent to the truth of the Representation or to the understanding Clients had of the Facility Agreement or the risks associated with it.
- 26 Further, or alternatively to paragraph 21 to 25, Clients including each of the Group Members entered into the Facility Agreement under a serious mistake about its contents in relation to fundamental terms.
- 27 Opes Prime was aware that Clients were entering into Facility Agreements under a serious mistake or misapprehension and Opes Prime deliberately set out to ensure that Clients including each of the Group Members did not become aware of the mistake before entering into the Facility Agreement and at all times up to and including 27 March 2008.

Particulars

- 27.1 Opes Prime made the Representation.
 - 27.2 The matters referred to in paragraphs 20.1(a) and (b).
 - 27.3 Further particulars will be provided following interrogatories and discovery.
- 28 Further or alternatively to paragraph 21 to 27, the making of the Representation and/or the failure to inform or sufficiently inform set out in paragraphs 23 and 24:
- (a) was conduct by Opes Prime, in relation to a financial service which was misleading or deceptive within the meaning of section 12DA of the *ASIC Act*;
 - (b) further or alternatively, was conduct by Opes Prime, in relation to a financial product or financial service, which was misleading or deceptive within the meaning of section 1041H(1) of the *Corporations Act*;
 - (c) further or alternatively, was conduct by Opes Prime, in trade or commerce, which was misleading and deceptive within the meaning of section 52 of the *Trade Practices Act 1974 (Cth)* ("**Trade Practices Act**").

Particulars

- 28.1 The financial service was a dealing in a financial product within the meaning of section 12BAB(1)(b) and 12BAB(7) of the *ASIC Act* or section 766A(1)(b) and 766C(1)(b) of the *Corporations Act*.
- 28.2 The financial product was the issuing by Opes Prime of a facility whereby Clients deposited the Shares in exchange for cash collateral advanced by Opes Prime which could be redeemed by payment of monies owed in exchange for the Shares or Equivalent Securities.
- 28.3 The Representation was false in that:
- i) the legal effect of the provisions of the Facility Agreement was as set out in paragraph 15 hereof;
 - ii) ANZ Nominees was holding the Shares deposited with ANZ Nominees for the benefit of ANZ; and
 - iii) Merrill Lynch was holding the Shares deposited with Opes Prime for its own benefit.
- 28.4 The making of the Representation and/or the failure of Opes Prime to inform, or fully inform, Clients as pleaded in paragraphs 20 and 23 to 24 above, misrepresented to Clients including each of the Group Members or failed to inform, or fully inform, them as to the true nature and effect of the Facility Agreement, and/or of the basis on which ANZ Nominees was holding the Shares deposited with ANZ Nominees as custodian, namely as custodian for ANZ, and/or the interest which Merrill Lynch had in the Shares deposited with Opes Prime.
- 28.5 The making of the Representation and/or the failure to inform, or fully inform, meant that Clients including each of the Group Members were unaware or not sufficiently aware of the credit risks associated with the transaction including the ability of Opes Prime and/or ANZ Nominees and/or ANZ and/or Merrill Lynch to transfer or "lend" the Shares to third parties for a fee for purposes including short selling the Shares contrary to the interests of the Client.

29 Each of the Group Members relied on the Representation in entering into a Facility Agreement.

30 If Opes Prime had disclosed to each of the Group Members that:

- (a) the true nature of the relationship was a transaction in which Opes Prime or ANZ Nominees or Merrill Lynch obtained legal ownership of the Shares; and/or
- (b) ANZ would claim the beneficial ownership of the Shares deposited with ANZ Nominees with the effect that each of the Group Members became unsecured creditors of Opes Prime; and/or
- (c) Merrill Lynch would claim the beneficial ownership of the Shares deposited with Opes Prime with the effect that each of the Group Members became unsecured creditors of Opes Prime;
- (d) the Shares could be short sold contrary to the interests of each of the Group Members;

then each of the Group Members would not have entered into a Facility Agreement and would not have suffered loss or damage.

- 31 Further, or alternatively to paragraphs 21 to 30, the nature of the relationship between each of the Group Members and Opes Prime was such that Opes Prime was proscribed from entering into a Facility Agreement with each of the Group Members unless the Group Member was fully informed of the matters referred to in paragraphs 23 and 24.
- 32 Further, or alternatively to paragraphs 21 to 31, in the circumstances of the case, equity would construe each Facility Agreement as a mortgage of the relevant securities consistently with the decision in *Kreglinger v New Patagonia Meat and Coal Storage Co Ltd* [1914] AC 25 and *Gurfinkel v Bentley Pty Ltd* (1966) 116 CLR 98.
- 33 By reason of the matters pleaded at paragraphs 21 to 32, each of the Group Members is entitled pursuant to, section 12GM(1) and 12GM(7) of the *ASIC Act*, section 1101B(1)(d) and 1041I of the *Corporations Act*, section 82 and 87 of the *Trade Practices Act* and at law to:
- (a) recover any loss or damage against Opes Prime;
 - (b) an order rescinding the Facility Agreement and the SLBA or declaring the Facility Agreement and the SLBA void;
 - (c) redeem at his, her or its election any of the Shares deposited with ANZ Nominees still held by ANZ Nominees;
 - (d) redeem at his, her or its election any of the Shares deposited with Opes Prime still held by Merrill Lynch;
 - (e) equitable compensation.

ANZ, ANZ Nominees and Merrill Lynch

34 In reporting to companies following service of notices served under section 672A of the *Corporations Act*, ANZ Nominees in respect of shares in companies in which ANZ Nominees held legal title under an AMSLA with Opes Prime has in the past, responded pursuant to its obligations under section 672B to the effect that it was not beneficially entitled to the shares.

Particulars

- 34.1 A letter from ANZ Nominees to Gindalbie Metals Ltd dated 15 May 2006.
- 34.2 Further particulars will be provided after discovery and interrogatories herein.

35 ANZ and ANZ Nominees have claimed (and continue to claim) that:

- (a) the Shares deposited with ANZ Nominees were held by ANZ Nominees as bare trustee for ANZ, and were transferred by Opes Prime to ANZ under an AMSLA;
- (b) ANZ and ANZ Nominees received the Shares deposited with ANZ Nominees from Opes Prime as a bona fide purchaser for value without notice of any prior equitable interest of the Group Members; and
- (c) accordingly, at the material time, on default by Opes Prime under the AMSLA, ANZ and ANZ Nominees were entitled to dispose of the Shares deposited with ANZ Nominees unencumbered to third parties.

36 Opes Prime purported to transfer the Shares deposited with Opes Prime to Merrill Lynch under an GMSLA or IPBA.

37 At the time that Opes Prime purported to transfer the Shares to ANZ or Merrill Lynch as the case may be, ANZ Nominees or ANZ or Merrill Lynch, were on notice (actual or constructive) of the interests claimed by the Group Members in the Shares.

Particulars

37.1 That ANZ Nominees and/or ANZ and/or Merrill Lynch had actual or constructive notice of the Group Members' interests in the Shares follows from, or is to be inferred from the following facts and matters:

- i) As at 27 March 2008, ANZ's and Merrill Lynch's respective businesses of lending and borrowing stock with Opes Prime and its subsidiary, Leveraged Capital, were significant.

- ii) ANZ were aware and Merrill Lynch should have been aware that there were principal to principal contracts between Opes Prime and its Clients.
- iii) ANZ were aware that shares were transferred directly from a third party to the ANZ Nominees account at the direction of Opes Prime.
- iv) The scale of the lending and borrowing activities between ANZ, Merrill Lynch and Opes Prime was such that each of ANZ and Merrill Lynch should have conducted appropriate due diligence on the Opes Prime business in order to determine that they were receiving clear title to the Shares, including, but not limited to, consideration of the overview and the FSG, the Website and the SLBA. Such due diligence would have disclosed amongst other things that the annual accounts of Opes Prime disclosed that Group Members were debtors of Opes Prime which could only be so if the interest of Opes Prime was by way of security.
- v) ANZ and Merrill Lynch each have (and continues to have) obligations under section 671B of the *Corporations Act* to declare information about substantial holdings and relevant interests they held (or hold) in any listed companies to the ASX.
- vi) ANZ and Merrill Lynch each were from time to time contacted on behalf of listed companies to disclose information under subsection 672A(1) of the *Corporations Act*.
- vii) Prior to 27 March 2008, ANZ and Merrill Lynch each took the position that they did not hold relevant interests and they were not required to disclose substantial holdings in the shares to which they each claimed a respective interest under the AMSLA, GMSLA or IPBA.
- viii) In reporting to companies following service of section 672A(1) notices, ANZ Nominees reported to the effect that it was not the beneficial holder of the shares deposited with ANZ Nominees, and it was not aware whether the client Opes Prime or other persons were beneficially entitled to the shares in question.
- ix) The fact that ANZ did not file section 671B notices and ANZ Nominees responses to section 671B and 672A(1) notices did not assert any relevant interest in the shares deposited with ANZ Nominees is consistent with the belief being held by ANZ that

Opes Prime, or clients of Opes Prime were beneficially entitled to and otherwise relevantly interested in the shares deposited with ANZ Nominees and a belief on its part that customers of Opes Prime had the same belief.

- x) The fact that Merrill Lynch did not file section 671B notices is consistent with the belief being held by Merrill Lynch that Opes Prime, or clients of Opes Prime were beneficially entitled to and otherwise relevantly interested in the shares and belief on its part that customers of Opes Prime had the same belief.
- xi) The corporate logo of ANZ as "Bankers and Custodian Bank" was at material times printed on the back of the FSG with ANZ's knowledge and approval which document contained both the terms of the Facility Agreement and a representation that the client of Opes Prime retained beneficial ownership of the shares and at all material times the Website included the words set out at paragraph 20B.
- xii) Further particulars will be provided following interrogatories and discovery.

38 In the premises from the dates that each of the Group Members transferred the Shares, ANZ Nominees held the Shares deposited with ANZ Nominees, and Merrill Lynch held the Shares deposited with Opes Prime, as legal owner subject to the equitable interests which the Applicant and Group Members held in the Shares.

Particulars

38.1 The Group Members have (and at all times since depositing the Shares have had) an equitable interest in the Shares, arising from their right to have the transactions rescinded or set aside and/or their equity of redemption.

39 In the premises, ANZ and/or ANZ Nominees and/or Merrill Lynch have been involved in misleading and/or deceptive conduct of Opes Prime pleaded in paragraph 28 above within the meaning of section 75B of the *Trade Practices Act* and section 79 of the *Corporations Act*.

Particulars

39.1 The Particulars at paragraph 37 above are repeated

- 40 In the premises, from the dates that each of the Group Members transferred the Shares, ANZ Nominees has been the recipient of trust property, namely the Shares deposited with ANZ Nominees and the proceeds of the sale of the said shares, within the first limb of *Barnes v Addy* (1874) LR 9 Ch App 244.

Particulars

40.1 The Particulars at paragraph 37 above are repeated

- 41 In the premises, from the dates that each of the Group Members transferred the Shares deposited with Opes Prime, Merrill Lynch have been the recipient of trust property, namely the Shares deposited with Opes Prime and the proceeds of the sale of the said shares, within the first limb of *Barnes v Addy* (1874) LR 9 Ch App 244.

Particulars

41.1 The Particulars at paragraph 37 above are repeated

- 42 Since around 28 March 2008:
- (a) ANZ has sold or authorised the sale of the Shares deposited with ANZ Nominees to which the Group Members claim an interest in these proceedings; and
 - (b) Merrill Lynch has sold or authorised the sale of the Shares deposited with Opes Prime to which the Group Members claim an interest in these proceedings.
- 43 ANZ wrongfully sold or authorised the sale of the Shares deposited with ANZ Nominees, without authority and without taking into account the prior equitable interests of the Group Members.
- 44 Merrill Lynch wrongfully sold or authorised the sale of the Shares deposited with Opes Prime, without authority and without taking into account the prior equitable interests of the Group Members.
- 45 From at least 2 April 2008, ANZ has been aware and Merrill Lynch should have been aware of the claims made by Clients in relation to interests in shares deposited under a Facility Agreement. Any sale of the Shares since that date was made by each of ANZ or Merrill Lynch with actual notice of the equitable interests of the Group Members.

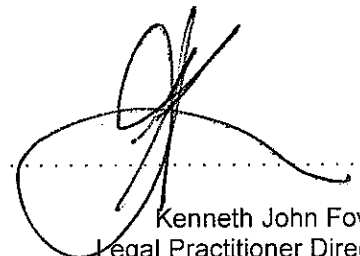
46 In the premises by reason of paragraphs 34 to 45, on election by any Group Member and on repayment by those Group Members of any monies owing to Opes Prime under the Facility Agreement or the SLBA, the said Group Member is entitled to:

- (a) the return by ANZ or ANZ Nominees of the Shares deposited with ANZ Nominees or Equivalent Securities;
- (b) the return by Merrill Lynch of the Shares deposited with Opes Prime or Equivalent Securities;
- (c) equitable compensation or damages from ANZ or ANZ Nominees or Merrill Lynch.

AND the Applicant claims the relief set out in the Application.

This statement of claim was prepared by Ventry Gray and David Sulan of Counsel and Francis Douglas QC.

DATED: 30 May 2008



Kenneth John Fowle
Legal Practitioner Director
Slater & Gordon Lawyers
Solicitor for the Applicant

FORM 15B CERTIFICATION (Order 11 Rule 1B)

I, **KENNETH JOHN FOWLIE**, certify to the Court that in relation to the pleading dated 30 May 2008 filed on behalf of the Applicant the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Dated: 30 May 2008


Solicitor for the Applicant