

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/10/2018 4:23:02 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: VID1390/2017  
File Title: CLIME CAPITAL LIMITED v UGL PTY LIMITED  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 24/10/2018 4:58:01 PM AEDT

A handwritten signature in blue ink that reads 'Warwick Soden'.

Registrar

### Important Information

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

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17, Rule 8.05(1)(a)

No. VID 1390 of 2017

## **AMENDED STATEMENT OF CLAIM**

**(filed pursuant to orders made by Murphy J on 23 October 2018)**

Federal Court of Australia

District Registry: Victoria

Division: General

**CLIME CAPITAL LIMITED (ACN 106 282 777)**

Applicant

**UGL PTY LIMITED (ACN 009 180 287)**

Respondent

### **A. PARTIES**

1. Clime Capital Limited (the Applicant), commences this proceeding as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on its own behalf and on behalf of the Group Members.
2. The Applicant at all material times was and is:
  - (a) a corporation registered pursuant to the *Corporations Act 2001* (Cth);
  - (b) listed on the Australian Stock Exchange (**ASX**); and
  - (c) an investment company which invested predominantly in ASX listed securities.
3. The Applicant and the persons it represents (**Group Members**) are persons who:
  - (a) acquired an interest in ordinary shares in the Respondent (**UGL**) during the period from 8

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Filed on behalf of	Clime Capital Limited (ACN 106 282 777), Applicant
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~~August~~ 16 April 2014 until the close of trading on 5 November 2014 inclusive (**Relevant Period**);

### Particulars

Particulars of the Applicant's shareholdings are set out in Annexure A to this Amended Statement of Claim.

Particulars of the shareholdings of the Group Members will be provided following the trial of the common questions.

- (b) suffered loss and damage by or resulting from the conduct of the Respondent alleged below; and
  - (c) are not:
    - (i) directors or officers or a close associate (as defined in s 9 of the *Corporations Act*) of UGL; or
    - (ii) a related party (as defined in s 228 of the *Corporations Act*) of UGL; or
    - (iii) a related body corporate (as defined in s 50 of the *Corporations Act*) of UGL; or
    - (iv) an associated entity (as defined in s 50AAA of the *Corporations Act*) of UGL; or
    - (v) a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.
4. As at the date of the commencement of this proceeding, there are seven or more persons who have claims against the Respondent.
5. The Respondent at all material times was and is a corporation registered pursuant to the *Corporations Act* and, until 3 January 2017:
- (a) was a corporation listed on a financial market, the ASX, operated by ASX Limited;
  - (b) had on issue ordinary shares (**UGL Securities**) that were:
    - (i) traded on the ASX under the designation "UGL";
    - (ii) ED Securities within the meaning of s 111AE of the *Corporations Act*; and
    - (iii) quoted ED Securities within the meaning of s 111AM of the *Corporations Act*.
  - (c) as the issuer of the UGL Securities:

- (i) was subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
  - (ii) was a listed disclosing entity within the meaning of s 111AL of the *Corporations Act*; and
  - (iii) was subject to the requirements of s 674 of the *Corporations Act*.
- (d) was and is engaged in the business of providing engineering, asset management and end-to-end project delivery services including in the mining and mineral and oil and gas processing industries.

## **B. APPLICATION OF SECTION 674(2) OF THE CORPORATIONS ACT**

6. At all material times, ASX Limited was a market operator of a listing market (the ASX) in relation to UGL for the purposes of s 674(1) of the *Corporations Act*.
7. At all material times, Rule 3.1 of the ASX Listing Rules provided that once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must, unless the exceptions in ASX Listing Rule 3.1A apply, immediately tell the ASX that information.
8. At all material times, Rule 19.3 of the ASX Listing Rules and s 677 of the *Corporations Act* had the effect that, for the purposes of Rule 3.1 of the ASX Listing Rules, a reasonable person would be taken to expect information to have a material effect on the price or value of an entity's securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to acquire or dispose of the entity's securities.
9. At all material times, Rule 19.12 of the ASX Listing Rules provided that an entity becomes aware of information if an officer has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.
10. At all material times, there existed a market of investors and potential investors in UGL Securities on the ASX.

## **C. THE ICHTHYS PROJECT**

11. On 30 April 2012, UGL published and lodged with the ASX a news release in which it stated that a consortium comprising a 50:50 joint venture between UGL Infrastructure Pty Limited (UGL Infrastructure) and CH2M Hill Australia Pty Limited (CH2M Australia) (**Joint Venture**) and a third company, GE (the **Consortium**) had been awarded an AUD\$900 million contract by JKC Australia LNG Pty Ltd (JKC) for the construction and commissioning of a

combined cycle power plant for the Ichthys liquefied natural gas (**LNG**) project in the Northern Territory (**Ichthys Project**).

### Particulars

A Consortium Agreement was entered into by the following parties:

1. GE Electrical Company;
2. General Electric International Inc; and
3. the CH2M Australia – UGL Infrastructure Joint Venture (an unincorporated joint venture).

The Consortium Agreement was dated 15 April 2011 and contained terms agreed between the parties for the performance of the Ichthys Project (the **Consortium Agreement**).

12. In relation to the Ichthys Project, at all relevant times:

- (aa) UGL Infrastructure was a wholly owned subsidiary of UGL;
- (bb) UGL Infrastructure was a party to a Joint Venture Agreement with CH2M Australia dated 15 June 2011 (the **Joint Venture Agreement**);
- (a) UGL Infrastructure and CH2M Australia were equal partners in the Joint Venture;
- (cc) CH2M Australia was the Managing Party under the Joint Venture Agreement, subject to the superior authority and control of the Management Committee;
- (dd) the Joint Venture Agreement created a Management Committee, comprised of two members from CH2M Australia, two members from UGL Infrastructure and one alternate representative appointed by each of them, and that Management Committee was required to meet monthly or otherwise as agreed by the Management Committee, but no less than quarterly;
- (ee) the Management Committee was the primary decision maker under the Joint Venture Agreement with responsibility for all matters concerning the operation of the Joint Venture;
- (ff) the Joint Venture Agreement required the appointment of a Project Manager and a Finance Manager, who were at all relevant times employees of CH2M Australia seconded to the Joint Venture positions;

- (gg) the Finance Manager was required by clause 20.3 of the Joint Venture Agreement to deliver to the Joint Venture parties a monthly report which demonstrated the “financial condition of the Joint Venture and expenses incurred by the Joint Venture, together with a copy of the Joint Venture bank statements,” such report to be delivered on or before the 20<sup>th</sup> day of the month following the month to which the report relates (the **Joint Venture Finance Manager monthly reports**):
- (hh) the Project Manager was required by Schedule F of the Joint Venture Agreement (with support from the Managing Party) to produce a Project Status Report for the Joint Venture, which was required to include matters including:
- (i) an executive overview and a single page report covering in summary totals format the original cost, the fee and revenue, the changes in each due to approved change orders and quantity variations, and the forecasted final position;
  - (ii) a graphic illustration of current revenue and fee variation over time;
  - (iii) a monthly financial statement calculated on the percentage completion basis;
  - (iv) a progress payment summary, including the revenue received to date and the retention (if any);
  - (v) a construction schedule;
  - (vi) a project cost and forecast detail report, detailing original, to date and projected final quantities and costs;
  - (vii) a subcontract status report, listing all subcontracts entered into by the Joint Venture and the current status of each;
  - (viii) a change order status report listing all approved, unapproved and pending change orders on the project;
  - (ix) a risk report detailing significant risks and an update on any overdue actions.
- (ii) such Project Status Report to be provided to all members of the Management Committee each month, no later than the 15<sup>th</sup> day of the month following the month to which the Project Status Report relates (the **Joint Venture Project Status reports**):

- (b) CH2M Australia was a wholly owned subsidiary of the CH2M Hill Companies Ltd (**CH2M Hill Co United States**) which was registered in the state of Delaware in the United States of America;
- (c) the contract for the Ichthys Project (**Ichthys Contract**) was a lump sum contract for a total value of in or about AUD\$900 million, of which approximately AUD\$550 million related to work to be undertaken by the Joint Venture;
- (d) pursuant to the Ichthys Contract:
  - (i) the Consortium was to engineer, procure, construct and start up a combined cycle power ~~cycle~~ plant that was to supply power to a natural gas facility near Darwin;
  - (ii) GE was to engineer gas and steam turbines and heat recovery steam generators;
  - (iii) the Joint Venture was to design and supply the balance of the plant and undertake and complete the construction of the project;
  - (iv) work by the Consortium was to commence immediately upon the announcement of the Ichthys Contract (that is, in or about April 2012) and was expected to be concluded by the end of 2016; and
  - (v) each member of the Consortium guaranteed the full and timely performance of all obligations under the Ichthys Contract;
- (e) the Ichthys Project was itself part of a larger project for the construction of offshore facilities for the extraction of natural gas from the Browse Basin off the north-west coast of Western Australia and an onshore processing plant near Darwin.

**D. ANNOUNCEMENTS MADE BY UGL AND CH2M-HILL CO UNITED STATES IN 2013 AND 2014**

- 13. On 27 February 2013, UGL published and lodged with the ASX a document entitled “UGL Limited: Half Year 2013 Results Presentation” (**FY2013 Half Year Results Presentation**), which stated that the Ichthys LNG power station was on track and would contribute from the second half of FY2013.

**Particulars**

FY2013 Half Year Results Presentation, page 9.

- 13A. On 12 August 2013, UGL published and lodged with the ASX a document entitled “ASX Release – 2013 Full Year Results” (FY2013 Full Year Results), which stated that within UGL’s major projects operations, “the Ichthys LNG power station is ramping up and will be a key contributor to major projects earnings in FY2014.”

**Particulars**

FY2013 Full Year Results, page 4.

14. On 12 August 2013, UGL held a telephone conference with analysts from Deutsche Bank, CIMB Equities, CLSA, Citigroup, Ord Minnett, Goldman Sachs, Credit Suisse, Macquarie, Commonwealth Bank of Australia, Bank of America Merrill Lynch, UBS and RBC Capital Markets, during which UGL’s managing director and CEO:
- (a) said that “the Ichthys LNG power station ramping up in Darwin will be a big contributor to earnings this year”; and
  - (b) in response to a question inquiring whether there would be any residual impact in the first half of the 2014 financial year from “problem projects” and what lessons had been learned, said words to the effect that UGL had learned that “you don’t screw up projects”, by having good project management systems, good auditing systems, good bidding review systems and competent people to deliver.

**Particulars**

UGL Earnings Call to the FY13 Results, edited transcript dated 12 August 2013, pages 4 and 21.

15. On 29 October 2013, UGL published and lodged with the ASX a document entitled “Chairman’s and Managing Director’s addresses and presentation to 2013 AGM” (**2013 AGM Presentation**), which stated that “the Ichthys LNG power station was ramping up and would be a key contributor to major projects earnings in FY14.”

**Particulars**

2013 AGM Presentation, page 12.

16. On 9 May 2014, CH2M-Hill Co United States, the parent company of UGL Infrastructure’s Joint Venture partner CH2M Australia, filed its first quarter 2014 report with the US Securities and Exchange Commission for the period ended 31 March 2014 (**May 2014 SEC Form 10-Q**) in which it reported that:



- (a) a power project located in its Asia-Pacific region had, in the first quarter of 2014, experienced significant growth in estimated costs at completion totalling USD\$56 million compared to the previous estimate at completion; and
- (b) if additional cost growth was identified in future periods, ~~CH2M-Hill Co~~ United States could incur a loss on the contract for the power project.

#### **Particulars**

The statements which describe the power project were made at page 17 of the May 2014 SEC Form 10-Q for the quarterly period ended 31 March 2014.

17. On 8 August 2014, ~~CH2M-Hill Co~~ United States filed its second quarter 2014 report with the US Securities and Exchange Commission for the period ended 30 June 2014 (**August 2014 SEC Form 10-Q**) in which it reported that:
- (a) a wholly-owned subsidiary of ~~CH2M-Hill Co~~ United States was involved in a power project in Australia through a joint venture partnership which was a party to a consortium;
  - (b) due to a variety of project and client related issues relating to the joint venture scope of works for the power project, it had been unable to reliably estimate revenues, costs and schedule impacts;
  - (c) ~~CH2M-Hill Co~~ United States had accordingly recorded revenues equal to costs incurred for the power project;
  - (d) management was assessing and pursuing cost and schedule recovery, but if recovery steps were not successful, it was possible that estimated costs at completion could continue to grow without reimbursement from the client and that liquidated damages could be assessed against the joint venture and the consortium; and
  - (e) the potential changes in estimated costs at completion could be materially adverse to the results of operations of ~~CH2M-Hill Co~~ United States.

#### **Particulars**

The statements were made at page 10 of the August 2014 SEC Form 10-Q for the quarterly period ended 30 June 2014.

18. The statements in the May 2014 SEC Form 10-Q and the August 2014 SEC Form 10-Q described at paragraphs 16 and 17 above did not name the Ichthys Project, but in fact concerned it.
19. On 25 August 2014, UGL published and lodged with the ASX its Annual Financial Report for

the year ended 30 June 2014 (**2014 Annual Financial Report**), in which it stated that:

- (a) the managing director and CEO is primarily responsible for ensuring compliance with the continuous disclosure obligations under the ASX Listing Rules and the *Corporations Act*;
- (b) the group has written policies and procedures requiring disclosure of any information concerning the group that a reasonable person would expect to have a material effect on the price of UGL Securities;
- (c) the risk and audit committee assists the board in discharging its obligations for financial reporting, risk management and internal control. The principal functions of the committee [include] assist[ing] the board in reviewing and monitoring the keeping and reporting of financial information in accordance with accounting standards and the law;
- (d) when considering the financial statements for UGL for each reporting period, particular consideration is given to [matters including] compliance with accounting standards; and
- (e) the general purpose financial statements in the 2014 Annual Financial Report had been prepared in accordance with Australian Accounting Standards (**AASBs**) adopted by the Australian Accounting Standards Board (**AASB**), and the *Corporations Act*.

#### **Particulars**

The statements at (a) to (d) were made at page 32 of the 2014 Annual Financial Report, under the headings, “Principle 4: Safeguard Integrity in Financial Reporting”, and “Principle 5: Make Timely and Balanced Disclosure”. The statement at (e) was made at page 40 of the 2014 Annual Financial Report, under the heading “(b) Statement of compliance”.

20. On 25 August 2014, UGL held a telephone conference with analysts from CIMB Equities, CLSA, Goldman Sachs, Macquarie, and Commonwealth Bank of Australia during which UGL’s managing director and CEO stated that:
- (a) the construction of the Ichthys Project was about 25 – 30 per cent complete;
  - (b) UGL had taken all of the costs into account and forecasts to date; and
  - (c) he was not aware of any issues in any of UGL’s power projects, including the Ichthys Project, that should unduly concern anyone.

#### **Particulars**

UGL Earnings Call to the FY14 Results, edited transcript dated 25 August

2014, page 15.

21. On 18 September 2014, UGL published and lodged with the ASX its 2014 Annual Report (**2014 Annual Report**), in which it stated that:
- (a) the managing director and CEO is primarily responsible for ensuring compliance with the continuous disclosure obligations under the ASX Listing Rules and the *Corporations Act*;
  - (b) the group has written policies and procedures requiring disclosure of any information concerning the group that a reasonable person would expect to have a material effect on the price of UGL Securities;
  - (c) the risk and audit committee assists the board in discharging its obligations for financial reporting, risk management and internal control. The principal functions of the committee [include] assist[ing] the board in reviewing and monitoring the keeping and reporting of financial information in accordance with accounting standards and the law;
  - (d) when considering the financial statements for UGL for each reporting period, particular consideration is given to [matters including] compliance with accounting standards; and
  - (e) the general purpose financial statements in the 2014 Annual Financial Report had been prepared in accordance with AASBs adopted by the AASB and the *Corporations Act*.

#### **Particulars**

The statements in paragraphs (a) and (b) were made at page 54 of the 2014 Annual Report under the heading “Principle 5: Make Timely and Balanced Disclosure”. The statements in paragraphs (c) and (d) were made at page 53 of the 2014 Annual Report under the headings, “Principle 4: Safeguard Integrity in Financial Reporting”. The statement at paragraph (e) was made at page 62 under the heading “(b) Statement of compliance”.

- 21A. On 26 September 2014, UGL published and lodged with the ASX its Notice of Annual General Meeting which stated: “No other material information: Other than as set out in this document, and other than information previously disclosed to the shareholders of the Company, there is no other information that is known to the Company’s directors which may reasonably be expected to be material to the making of a decision by the Company’s shareholders whether or not to vote in favour of the capital reduction.”

#### **Particulars**

The statement was made at page 10 of the 26 September 2014 AGM Notice.

**E. PROJECT ISSUES INFORMATION AND APRIL, JUNE AND AUGUST 2014  
DISCLOSURE CONTRAVENTIONS**

**April Project Issues Information**

21B. A Risk Management Report was prepared by UGL’s Chief Legal Officer (Murray McArdle) and UGL’s Group Manager – Risk (William Sare), and was provided to the Risk and Audit Committee of UGL by 12 February 2014 (February 2014 Risk Management Report).

21C. The February 2014 Risk Management Report said the following in relation to the Ichthys Project:

- (a) the Ichthys Project had moved from the UGL “watch list” and was now included on the “Top Risk list” of UGL projects;
- (b) there were delays to Engineering, Procurement and Construction;
- (c) Engineering was behind schedule and overspent on budget by \$8.9 million;
- (d) the Ichthys Project was 14.6% complete, compared with planned progress of 25.7%;
- (e) the Contingency of \$38.8 million had fallen to a balance of \$1.1 million;
- (f) the Float was “completely eroded”, the Contingency was “completely consumed” and the Management Reserve was “fully committed”; and
- (g) there was both a detailed estimate and risk review, and a review of Project Management underway.

21D. There were Joint Venture Management Accounts prepared in relation to the Ichthys Project dated 28 March 2014 for the month ended 28 March 2014 (March 2014 Joint Venture Management Accounts).

21E. The March 2014 JV Management Accounts stated in relation to the Ichthys Project that:

- (a) the billings “in excess” of costs and estimated earnings were AUD\$52,7438,986; and
- (b) the gross margin profit was negative; and
- (c) the estimated or projected gross profit was zero.

21F. By 16 April 2014, UGL Infrastructure had been provided with the March 2014 Joint Venture Management Accounts and/or the information in the March 2014 Joint Venture Management

Accounts which is set out in paragraph 21E above.

**Particulars**

On 16 April 2014, the March 2014 Joint Venture Management Accounts was provided by email to the Management Committee by Jeanine Klevens, Finance Manager of the Joint Venture (UGL.026.001.0025). Mr Mark Scorer, chief operating officer of UGL Infrastructure and a member of the Management Committee at that time, was a recipient of the email.

22. By 31 March 2014, estimated costs to complete the Ichthys Project had grown to an extent that CH2M-Hill Co United States determined was “significant”, and to an amount which was USD\$56 million more than previous estimates.

**Particulars**

Those facts were reported by CH2M-Hill Co United States on page 17 of its May 2014 SEC Form 10-Q.

23. At all material times from ~~April~~ February 2014 until the end of the Relevant Period, the Ichthys Project was in fact significantly behind schedule.

**Particulars**

In its 2015 half year results presentation published to the ASX and dated 23 February 2015, UGL stated (on pages 8 and 9 of the presentation) that the design of the Ichthys Project was to be completed by April 2014 with construction ramping up in 2015 and 2016, and that as at February 2015 design was 95 per cent complete.

It can be inferred from those statements that as at April 2014, and at all times thereafter until the end of the Relevant Period, the design phase of the Ichthys Project was significantly behind schedule.

The Ichthys Project was also significantly behind the original Ichthys Project schedule during the Relevant Period:

1. In February 2014, the February 2014 Risk Management Report said that: “scheduled progress is 14.6% vs plan of 25.7%”.
2. In April 2014, the Operations and Major Projects section of the UGL CEO Report said that the Ichthys Project percentage completion was “Plan 40.9%; Actual 20%”.
3. In June 2014, a Group Risk Management Report prepared by Mr McArdle and Mr Sare, which was provided to the Risk and Audit Committee of UGL by 18 June 2014, said that the Ichthys Project was at “scheduled progress is 38% vs plan of 57.2%”.
4. In August 2014, a Group Risk Management Report prepared by Mr McArdle and Mr Sare, which was provided to the Risk and Audit

Committee of UGL by 20 August 2014 said that the Ichthys Project “scheduled progress is 45.2% vs plan of 66.6%”.

5. In September 2014, the actual progress of the Ichthys Project was 49.2% compared to the scheduled progress which was 71.2%, see the particulars to paragraph 23(a) of the Amended Defence.
6. In November 2014, a Group Risk Management Report prepared by Mr McArdle and Mr Sare, which was provided to the Risk and Audit Committee of UGL by 26 November 2014 said that the Ichthys Project “schedule progress is 59.1% vs plan of 77.6%”.

~~Further particulars may be provided after the completion of discovery~~

23A. As at 16 April 2014, it was the fact that:

- (a) the Ichthys Project had been since February 2014 and remained significantly behind schedule;
- (b) the billings for the Ichthys Project “in excess” of costs and estimated earnings were over AUD\$52 million by 28 March 2014;
- (c) the gross margin profit for the Ichthys Project was negative by 28 March 2014;
- (d) the estimated or projected gross profit for the Ichthys Project was zero;
- (e) UGL attributed a high level of risk to the Ichthys Project;
- (f) the Ichthys Project Float, Contingency and Reserve were each already significantly consumed or encumbered by 28 March 2014.

#### **April 2014 Disclosure Contraventions**

23B. At all material times from 16 April 2014 until the end of the Relevant Period, UGL was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) the Ichthys Project had been since February 2014 and remained significantly behind schedule;
- (b) the billings for the Ichthys Project “in excess” of costs and estimated earnings were over AUD\$52 million by 28 March 2014;
- (c) the gross margin profit for the Ichthys Project was negative by 28 March 2014;
- (d) the estimated or projected gross profit for the Ichthys Project was zero;

- (e) UGL attributed a high level of risk to the Ichthys Project;
- (f) the Ichthys Project Float, Contingency and Reserve were each already significantly consumed or encumbered by 28 March 2014.
- (separately, or together in any combination, the **April Project Issues Information**).

### **Particulars**

Each of the items comprising the April Project Issues Information was information which by 16 April 2014 had, or ought reasonably to have, come into the possession of an officer of UGL and was therefore information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further, UGL's awareness of those matters is to be inferred from:

1. the fact that at all material times its wholly owned subsidiary UGL Infrastructure was engaged in the Ichthys Project for the purposes of discharging the performance required of it by the Ichthys Contract;
2. the fact that UGL had joint control of the Ichthys Project, which fact can be inferred from UGL's classification of its interest in the Ichthys Project in its 2014 Annual Financial Report, as an interest in a joint venture;
3. the fact that CH2M Australia was an equal partner with UGL Infrastructure, jointly conducting the Ichthys Project with UGL Infrastructure;
4. UGL's statement in the course of its conference with analysts held on 12 August 2013 (as alleged at paragraph 14 above), that it had in place good project management and audit systems;
5. the fact that the Joint Venture Agreement required provision of monthly reports to the Joint Venture Management Committee and to the Joint Venture parties in relation to Joint Venture finances and project status; and
6. the fact that, as UGL knew, the Ichthys Contract was a fixed price contract which meant that cost overruns would negatively impact the profit margin achieved on the Ichthys Project by the Joint Venture.

23C. The April Project Issues Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of UGL Securities; and
- (b) not generally available.

23D. By reason of the matters alleged in paragraphs 5(a) to (c) and 23C, UGL was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX

of the April Project Issues Information from 16 April 2014.

23E. Notwithstanding the matters alleged in paragraphs 23C and 23D, UGL did not notify the ASX of the April Project Issues Information at any time during the Relevant Period.

23F. By reason of the matters alleged in paragraphs 23B to 23E, UGL contravened s 674(2) of the Corporations Act (April 2014 Disclosure Contravention).

### **June Project Issues Information**

23G. By 9 May 2014, UGL Infrastructure's Joint Venture Partner CH2M Australia had formed the view and reported to the US Securities and Exchange Commission (through its parent company CH2M United States) the matters pleaded at paragraph 16 above.

23H. A Risk Management Report was prepared by Mr McArdle and Mr Sare and was provided to the Risk & Audit Committee of UGL by 18 June 2014 (June 2014 Risk Management Report).

23I. The June 2014 Risk Management Report said the following in relation to the Ichthys Project:

- (a) the scheduling progress was 38% compared with planned progress of 57.2%;
- (b) the procurement progress was 32.2% compared with planned progress of 74.6%;
- (c) the engineering progress was 81.5% compared with planned progress of 97.8%;
- (d) the contingency had been completely consumed;
- (e) the management reserve had been fully committed;
- (f) the risk rating had increased from High to Severe "following further delays and potential claim issues";
- (g) the anticipated gross margin had reduced to zero; and
- (h) the 1HFY14 Ichthys Project profit recognition was written back to zero by UGL.

### **Particulars**

The June 2014 Risk Management Report was included in the Risk & Audit Committee Papers dated 18 June 2014 for the Risk & Audit Committee Minutes of Meeting held 18 June 2014.

23J. An audit plan update was prepared by KPMG and provided to the Risk & Audit Committee of UGL by 18 June 2014 (Audit Plan Update). The Audit Plan Update described the Ichthys



Project as a “problem project” and assessed it as a High risk (the highest level of risk assignable by KPMG).

### **Particulars**

The Audit Plan Update was included in the Risk & Audit Committee Papers dated 18 June 2014.

23K. As at 18 June 2014, it was the fact that:

- (a) the Ichthys Project had been and remained, since February 2014, significantly behind schedule;
- (b) the billings for the Ichthys Project “in excess” of costs and estimated earnings were over AUD\$52 million by 28 March 2014;
- (c) the Ichthys Project contingency had been fully consumed and the management reserve fully committed by 18 June 2014;
- (d) the gross margin profit for the Ichthys Project was forecast to be zero;
- (e) UGL attributed a severe risk rating to the Ichthys Project;
- (f) The 1HFY14 Ichthys Project profit recognition had been written back to zero by UGL;
- (g) the Ichthys Project had been assessed by KPMG as a problem project requiring a high risk rating;
- (h) UGL Infrastructure’s Joint Venture Partner CH2M Australia had formed the view and reported to the US Securities and Exchange Commission through its parent company CH2M United States the matters pleaded at paragraph 16 above.

### **June 2014 Disclosure Contraventions**

23L. At all material times from 18 June 2014 until the end of the Relevant Period, UGL was aware, for the purposes of ASX Listing Rule 19.12, that:

- (a) the Ichthys Project had been and remained, since February 2014, significantly behind schedule;
- (b) the billings for the Ichthys Project “in excess” of costs and estimated earnings were over AUD\$52 million by 28 March 2014;

- (c) the Ichthys Project contingency had been fully consumed and the management reserve fully committed by 18 June 2014;
- (d) the gross margin profit for the Ichthys Project was forecast to be zero;
- (e) UGL attributed a severe risk rating to the Ichthys Project;
- (f) the 1HFY14 Ichthys Project profit recognition had been written back to zero by UGL;
- (g) the Ichthys Project had been assessed by KPMG as a problem project requiring a high risk rating;
- (h) UGL Infrastructure's Joint Venture Partner CH2M Australia had formed the view and reported to the US Securities and Exchange Commission through its parent company CH2M United States the matters pleaded at paragraph 16 above  
(separately, or together in any combination, the **June Project Issues Information**).

### **Particulars**

Each of the items comprising the June Project Issues Information was information which by 18 June 2014 had, or ought reasonably to have, come into the possession of an officer of UGL and was therefore information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further, UGL's awareness of those matters is to be inferred from:

1. the fact that at all material times its wholly owned subsidiary UGL Infrastructure was engaged in the Ichthys Project for the purposes of discharging the performance required of it by the Ichthys Contract;
2. the fact that UGL had joint control of the Ichthys Project, which fact can be inferred from UGL's classification of its interest in the Ichthys Project in its 2014 Annual Financial Report, as an interest in a joint venture;
3. the fact that CH2M Australia was an equal partner with UGL Infrastructure, jointly conducting the Ichthys Project with UGL Infrastructure;
4. UGL's statement in the course of its conference with analysts held on 12 August 2013 (as alleged at paragraph 14 above), that it had in place good project management and audit systems;
5. the fact that the Joint Venture Agreement required provision of monthly reports to the Joint Venture Management Committee and to the Joint Venture parties in relation to Joint Venture finances and project status; and

6. the fact that, as UGL knew, the Ichthys Contract was a fixed price contract which meant that cost overruns would negatively impact the profit margin achieved on the Ichthys Project by the Joint Venture.

23M. The June Project Issues Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of UGL Securities; and
- (b) not generally available.

23N. By reason of the matters alleged in paragraphs 5(a) to (c) and 23M, UGL was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act to immediately notify the ASX of the June Project Issues Information from 18 June 2014.

23O. Notwithstanding the matters alleged in paragraphs 23M and 23N UGL did not notify the ASX of the June Project Issues Information at any time during the Relevant Period.

23P. By reason of the matters alleged in paragraphs 23L to 23O, UGL contravened s 674(2) of the Corporations Act (June 2014 Disclosure Contravention).

#### August Project Issues Information

23Q. By 8 August 2014, UGL Infrastructure's Joint Venture Partner CH2M Australia had formed the view and reported to the US Securities and Exchange Commission (through its parent company CH2M United States) the matters pleaded at paragraph 17 above.

24. ~~As at 30 June 2014, alternatively as at 8 August 2014, it was the fact that:~~

- (a) ~~the Ichthys Project was and had been since February 2014 significantly behind schedule;~~
- (b) ~~the estimated costs to complete the Ichthys Project had grown to an extent that CH2M Hill Co determined was "significant", and to an amount that was at least USD\$56 million more than estimates made before March 2014;~~
- (c) ~~the scheduling and costs position of the Ichthys Project had deteriorated between March February and June 2014, alternatively between May and August 2014;~~
- (d) ~~revenues, costs and timing of the Ichthys Project could not be reliably estimated;~~
- (e) ~~CH2M Hill Co had assessed revenues for the project as equal to costs incurred;~~
- (f) ~~unless recovery steps were successful, there was a risk that that the costs to complete the~~

- ~~Ichthys Contract would continue to grow without reimbursement from the customer; and~~
- ~~(g) unless recovery steps were successful, there was a risk that liquidated damages would be assessed against the Joint Venture;~~

### **Particulars**

~~Particulars of the fact alleged at sub-paragraph (a) are given under paragraph 23.~~

~~The existence of the facts alleged at sub-paragraphs (b) to (g) can be inferred from the statements made by CH2M Hill Co in the May 2014 and August 2014 SEC Form 10-Qs, as alleged at paragraphs 16 and 17.~~

~~Further particulars may be provided after the completion of discovery.~~

- ~~(h) the billings for the Ichthys Project “in excess” of costs and estimated earnings were over AUD\$52 million by 28 March 2014;~~
- ~~(i) the 1HFY14 Ichthys Project profit recognition had been written back to zero by UGL by 18 June 2014;~~
- ~~(j) the gross profit margin for the Ichthys Project was forecast to be zero;~~
- ~~(k) the Ichthys Project contingency had been fully consumed and the management reserve fully committed by 18 June 2014;~~
- ~~(l) UGL attributed a severe level of risk to the Ichthys Project;~~
- ~~(m) the Ichthys Project had been assessed by KPMG as a problem project requiring a high risk rating;~~
- ~~(n) UGL Infrastructure’s Joint Venture Partner CH2M Australia had by 9 May 2014 formed the view and reported to the US Securities and Exchange Commission (through its parent company CH2M United States) the matters pleaded at paragraph 16 above; and~~
- ~~(o) UGL Infrastructure’s Joint Venture Partner CH2M Australia had by 8 August 2014 formed the view and reported to the US Securities and Exchange Commission (through its parent company CH2M United States) the matters pleaded at paragraph 17 above.~~

### ***August 2014 Disclosure Contraventions***

25. At all material times from 8 August 2014 until the end of the Relevant Period, UGL was aware, for the purposes of ASX Listing Rule 19.12, that:

- ~~(a) — the Ichthys Project was significantly behind schedule;~~
- ~~(b) — the estimated costs to complete the Ichthys Project had grown to an extent that CH2M Hill Co determined was “significant”, and to an amount that was at least USD\$56 million greater than estimates made before March 2014;~~
- ~~(c) — the scheduling and costs position of the Ichthys Project had deteriorated between March and June 2014, alternatively between May and August 2014;~~
- ~~(d) — revenues, costs and timing of the Ichthys Project could not be reliably estimated;~~
- ~~(e) — CH2M Hill Co had recorded revenues for the project as equal to costs incurred;~~
- ~~(f) — unless recovery steps were successful, there was a risk that that the costs to complete the Ichthys Contract would continue to grow without reimbursement from the customer; and~~
- ~~(g) — unless recovery steps were successful there was risk that liquidated damages would be assessed against the Joint Venture.~~
  
- (aa) the Ichthys Project was and had been since February 2014 significantly behind schedule;
- (bb) the scheduling and costs position of the Ichthys Project had deteriorated between February and August 2014;
- (cc) the billings for the Ichthys Project “in excess” of costs and estimated earnings were over AUD\$52 million by 28 March 2014;
- (dd) the 1HFY14 Ichthys Project profit recognition had been written back to zero by UGL by 18 June 2014;
- (ee) the gross profit margin for the Ichthys Project was forecast to be zero;
- (ff) the Ichthys Project contingency had been fully consumed and the management reserve fully committed by 18 June 2014;
- (gg) UGL attributed a severe level of risk to the Ichthys Project;
- (hh) the Ichthys Project had been assessed by KPMG as a problem project requiring a high risk rating;
- (ii) UGL Infrastructure’s Joint Venture Partner CH2M Australia had by 9 May 2014 formed the view and reported to the US Securities and Exchange Commission (through its parent

company CH2M United States) the matters pleaded at paragraph 16 above:

- (jj) UGL Infrastructure's Joint Venture Partner CH2M Australia had by 8 August 2014 formed the view and reported to the US Securities and Exchange Commission (through its parent company CH2M United States) the matters pleaded at paragraph 17 above

(separately, or together in any combination, the **August Project Issues Information**).

### Particulars

Each of the items comprising the August Project Issues Information was information which ~~as at~~ by 8 August 2014 had, or ought reasonably to have, come into the possession of an officer of UGL and was therefore information of which it was aware within the meaning of ASX Listing Rule 19.12.

Further, UGL's awareness of those matters is to be inferred from:

1. the fact that at all material times its wholly owned subsidiary UGL Infrastructure ~~it~~ was engaged in the Ichthys Project for the purposes of discharging the performance required of it by the Ichthys Contract;
2. The fact that UGL had joint control of the Ichthys Project, which fact can be inferred from UGL's classification of its interest in the Ichthys Project in its 2014 Annual Financial Report, as an interest in a joint venture;
3. the fact that CH2M Australia, ~~which~~ was an equal partner with UGL Infrastructure, jointly conducting the Ichthys Project with UGL Infrastructure, ~~had, through its parent company, reported the matters alleged at paragraphs 16 and 17;~~
4. UGL's statement in the course of its conference with analysts held on 12 August 2013 (as alleged at paragraph 14 above), that it had in place good project management and audit systems; ~~and~~
5. the fact that the Joint Venture Agreement required provision of monthly reports to the Joint Venture Management Committee and to the Joint Venture parties in relation to Joint Venture finances and project status; and
56. the fact that, as UGL knew, the Ichthys Contract was a fixed price contract which meant that cost overruns would negatively impact the profit margin achieved on the Ichthys Project by the Joint Venture.

~~Further particulars may be provided after the completion of discovery.~~

26. The August Project Issues Information was:

- (a) information that a reasonable person would expect to have a material effect on the price or value of UGL Securities; and

- (b) not generally available.
27. By reason of the matters alleged in paragraphs 5(a) to (c) and 26, UGL was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to immediately notify the ASX of the August Project Issues Information from 8 August 2014.
28. Notwithstanding the matters alleged in paragraphs 26 and 27 UGL did not notify the ASX of the August Project Issues Information at any time during the Relevant Period.
29. By reason of the matters alleged in paragraphs 25 to 28, UGL contravened s 674(2) of the *Corporations Act* (**August 2014 Disclosure Contravention**).

#### **F. COMPLIANCE REPRESENTATIONS**

30. By the statements alleged at paragraph 19 and 21 and 21A, UGL represented that:
- (a) UGL had disclosed to the ASX all information concerning UGL that a reasonable person would expect to have a material effect on the price of UGL Securities;
  - (b) further or alternatively, UGL had complied with its continuous disclosure obligations under the ASX Listing Rules and the *Corporations Act*;
  - (c) further or alternatively, UGL had taken reasonable steps to comply with its continuous disclosure obligations under the ASX Listing Rules and the *Corporations Act*;
  - (d) further, UGL's financial reports complied with accounting standards and with its financial reporting obligations under the *Corporations Act*;
  - (e) further or alternatively, UGL had taken reasonable steps to ensure that its financial reports complied with accounting standards and with its financial reporting obligations under the *Corporations Act*.

(individually or together, the **Compliance Representations**).

31. On and after 25 August 2014 until the end of the Relevant Period:
- (a) UGL did not at any time amend, qualify or withdraw the Compliance Representations;
  - (b) accordingly, the Compliance Representations were continuing representations that were maintained by UGL from 25 August 2014 until the end of the Relevant Period.
32. Contrary to the Compliance Representations, at all material times between 16 April 2014,

alternatively 18 June 2014, alternatively 8 ~~25~~ August 2014 and the end of the Relevant Period:

- (a) UGL had not in fact disclosed to the ASX all information concerning UGL that a reasonable person would expect to have a material effect on the price of UGL Securities;
- (b) UGL had not in fact complied with its continuous disclosure obligations under the ASX Listing Rules and the *Corporations Act*;

#### **Particulars**

The facts alleged at sub-paragraphs (a) and (b) are to be inferred from the matters alleged at paragraphs 23B to 23F, alternatively 23L to 23P, alternatively 25 to 29.

- (c) UGL had not in fact taken reasonable steps to comply with its continuous disclosure and financial reporting obligations under the *Corporations Act*;

#### **Particulars**

UGL's failure to take reasonable steps is to be inferred from:

1. the existence of the facts alleged at paragraphs 21B to 23A, alternatively 23G to 23K, alternatively ~~22~~ 23Q to 24;
  2. UGL's knowledge of those facts alleged at paragraph 23B, alternatively 23L, alternatively 25;
  3. the obligation to disclose alleged at paragraph 23D, alternatively 23N, alternatively 27;
  4. UGL's disclosure policies described at paragraph 19; and
  5. UGL's failure to disclose alleged at paragraph 23E, alternatively 23O, alternatively 28.
- (d) further, the 2014 Annual Financial Report and the 2014 Annual Report did not in fact comply with accounting standards or with UGL's financial reporting obligations under the *Corporations Act*; and
  - (e) UGL had not in fact taken reasonable steps to ensure that its 2014 Annual Financial Report or its 2014 Annual Report complied with accounting standards.

#### **Particulars**

##### **In relation to sub-paragraph (d):**

1. Each of the 2014 Annual Financial Report, and the 2014 Annual Report are 'financial reports' within the meaning of s 295 of the *Corporations Act*. Section 296 of the *Corporations Act* provided at all relevant times that the financial report for a financial year must comply with accounting



standards.

2. Accounting Standard AASB 101 [125] provided at all relevant times that an entity shall disclose information about the assumptions it makes about the future and other major sources of estimation uncertainty at the end of the reporting period, that have a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year. In respect of those assets and liabilities, the notes shall include details of their nature and their carrying amount as at the end of the reporting period.
3. AASB 110 [1], [2], [3], [7], [8], [19] and [21] provided at all relevant times in substance that:
  - (a) information arising after the reporting period, up to the date on which financial statements are authorised for issue, should be accounted for and/or disclosed in the financial statements;
  - (b) if an entity receives information about conditions that existed at the end of the reporting period it shall adjust the amounts recognised in the financial statements and/or update disclosures that relate to those conditions, in light of the new information; and
  - (c) if events that are indicative of conditions that arose after the reporting period that are material, non-disclosure could influence the economic decisions that users make on the basis of the financial statements and accordingly, an entity shall disclose the nature of such events and an estimate of their financial effect or a statement that such an estimate cannot be made.
4. Materiality, for the purposes of AASB 101 [125] and AASB 110 [21]:
  - (a) is a matter of professional judgment influenced by, among other things, the information needs of the users of financial statements; and
  - (b) includes the consideration that omissions or mis-statements are material if they could, individually or collectively, influence the economic decisions that users make on the basis of the financial statements and that the size or nature of the item, or a combination of both, judged in the surrounding circumstances, could determine materiality.
5. UGL's 2014 Annual Financial Report was published and lodged with the ASX on 25 August 2014, and UGL's 2014 Annual Report was published and lodged with the ASX on 18 September 2014. In the financial statements contained in both reports, UGL's interest in the Ichthys Project was included in the consolidated statement of financial position as an investment accounted for using the equity method. There was no disclosure of any kind about risks or uncertainties concerning the Ichthys Project.
6. From the matters set out at paragraphs (7) to (15) below, it may be inferred

that:

- (a) at end of the reporting period (that is, at 30 June 2014), there was a significant risk that a material adjustment would be required in the following financial year in respect of UGL's investment in the Ichthys Project as recorded in its financial statements; alternatively,
  - (b) by 8 August 2014, UGL had information in respect of the Ichthys Project that indicated conditions arising after the reporting period that were material.
7. As alleged at paragraphs 21B to 24 of this Amended Statement of Claim, as at 30 June 2014, alternatively as at 8 August 2014, it was the fact that:
- (a) the Ichthys Project was significantly behind schedule, and had been significantly behind schedule since ~~April~~ February 2014;
  - (b) the estimated costs to complete the Ichthys Project had grown to an extent that CH2M ~~Hill Co~~ United States determined was "significant", and to an amount that was at least USD\$56 million greater than estimates made before March 2014;
  - (c) the scheduling and costs position of the Ichthys Project had deteriorated between ~~March~~ February and June 2014, alternatively between February-May and August 2014;
  - (d) revenues, costs and timing of the Ichthys Project could not be reliably estimated;
  - (e) CH2M ~~Hill Co~~ United States had assessed revenues for the project as equal to costs incurred;
  - (f) cost and schedule recovery steps were being undertaken but unless recovery steps were successful, there was a risk that the costs to complete the Ichthys Contract would continue to grow without reimbursement from the customer; and
  - (g) unless recovery steps were successful there was a risk that liquidated damages would be assessed against the Joint Venture.
8. UGL was aware of the matters set out in paragraph (7) above, as alleged at paragraphs 23L and 25 of this Amended Statement of Claim.
9. The facts at paragraph (7) above:
- (a) in respect of sub-paragraph (a), was contained in the February 2014 Risk Management Report, the Operations and Major Projects section of the UGL CEO Report prepared in April 2014 and the Group Risk Management Report prepared in June 2014;
  - (b) in respect of sub-paragraphs (b) to (g), were disclosed by CH2M Hill Co United States to the US Securities and Exchange Commission in its SEC Forms 10-Q, as alleged at paragraphs 16 and 17 of this Amended Statement of Claim.

10. The financial statements in the Forms 10-Q had been prepared in accordance with accounting principles generally accepted in the United States (May 2014 and August 2014 SEC Forms 10-Q, page 7). The disclosures by CH2M ~~Hill~~ Corporation United States were governed by, among other things, ASC 275-10-50, which was authorised by the US Financial Accounting Standards Board and which relevantly provided that reporting entities shall make disclosures in their financial statements about the risks and uncertainties existing as at the date of those statements. Information concerning risks and uncertainties was disclosable in accordance with ASC 275-10-50-8, which provided in substance that disclosure regarding an estimate shall be made when known information available before the financial statements are issued indicates that it is at least reasonably possible that the estimate of the effect on the financial statements of a condition, situation or set of circumstances that existed as at the date of the financial statements will change in the near term due to one or more future confirming events, and the effect of the change would be material to the financial statements.
11. It can be inferred from the matters set out in paragraphs (9) and (10) above that CH2M ~~Hill~~ Corporation United States considered that, as at 30 June 2014, alternatively 8 August 2014 and at all times until 25 August 2014, it was at least reasonably possible that the risks and uncertainties attending the Ichthys Project would, in the near term, cause a material change to its financial statements.
12. Prior to the publication of the 2014 Annual Financial Report, UGL had made the statements alleged at paragraphs 13, 13A 14 and 15 of the Amended Statement of Claim, which were to the effect that the Ichthys Project was on track, would be a key contributor to earnings for FY2014, that there were no issues of any concern regarding the project and that UGL had learned how not to “screw up projects”.
13. From the statements set out in paragraph (12) above it may be inferred that UGL considered that information about its major projects, including the Ichthys Project, was information that could influence the economic decisions that its investors or potential investors made.
14. Further, after the publication of UGL’s 2014 Annual Financial Report and UGL’s 2014 Annual Report the following events occurred:
  - (a) for the period ended 30 September 2014, CH2M ~~Hill~~ Corporation United States made a provision for a loss of USD\$85 million in respect of its 50 per cent share of the estimated losses at completion on the Ichthys Project. That estimated loss was reported in CH2M ~~Hill~~ Corporation United States’ Form 10-Q lodged with the United States Securities and Exchange Commission on 24 November 2014;
  - (b) On 14 October 2014, CH2M ~~Hill~~ Corporation United States notified UGL that it planned to review the Ichthys Project and on completion of that review CH2M ~~Hill~~ Corporation United States may book a provision in

relation to the project (as alleged at paragraph 35 of this Amended Statement of Claim);

- (c) by 5 November 2014, re-stated accounts for the Ichthys Joint Venture had been prepared, recording a USD\$170 million loss in respect of the Ichthys Project;
- (d) on 6 November 2014, UGL made the disclosure alleged at paragraph 41 of this Amended Statement of Claim; and
- (e) for the period ended 31 December 2014, UGL raised a provision for a loss on the Ichthys Project in the amount of AUD\$175 million.

15. From the facts set out in paragraph (14) above, it can be inferred that as at 30 June 2014, alternatively as at 8 August 2014 and at all times thereafter until 25 August 2014, there was a significant risk that an adjustment would be required in respect of UGL's interest in the Ichthys Project, that it would be material, and that it would be required within the next financial year.

16. By reason of the matters set out at paragraphs (1) to (15) above, UGL was required to make a disclosure in accordance with AASB 101 [125], alternatively in accordance with AASB 110 [21] in respect of the Ichthys Project, in the financial statements contained in its 2014 Annual Financial Report and its 2014 Annual Report.

17. UGL did not make any such disclosure and accordingly, its financial statements contained in its 2014 Annual Financial Report, and its financial statements contained in its 2014 Annual Report, did not comply with AASB 101 [125], alternatively did not comply with AASB 110 [21], and further, did not comply with s 296 of the *Corporations Act*.

**The facts alleged at sub-paragraph (e)** are to be inferred from the matters particularised under sub-paragraph (d).

Further particulars may be provided after discovery and after the provision of expert evidence.

33. By reason of the matters alleged at paragraphs 31 and 32, by making the Compliance Representations on 25 August 2014, UGL engaged in conduct:

- (a) in trade or commerce, in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA of the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**);
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the *Corporations Act*

**(August 2014 Misleading Conduct).**

34. Further, by reason of the matters alleged at paragraphs 31 and 32, by making the Compliance

Representations on 18 September 2014, and/or on 26 September 2014, UGL engaged in conduct:

- (a) in trade or commerce, in relation to a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 12DA of the *ASIC Act*; further or alternatively
- (b) in relation to a financial product or a financial service that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 1041H of the *Corporations Act*

**(September 2014 Misleading Conduct).**

**G. PROVISION INFORMATION AND OCTOBER 2014 DISCLOSURE  
CONTRAVENTIONS**

35. On 14 October 2014, CH2M-Hill Co United States notified UGL (as was the fact) that it planned to review the Ichthys Project and on completion of that review CH2M-Hill Co United States may book a provision in relation to the Ichthys Project (**Provision Information**).

**Particulars**

Letter from UGL to the ASX dated 10 November 2014, and letter sent by the ASX to UGL dated 7 November 2014, in which UGL stated CH2M-Hill Co United States told it the Provision Information.

36. At all material times from 14 October 2014 until the end of the Relevant Period, UGL was aware, for the purposes of ASX Listing Rule 19.12, of the Provision Information.

**Particulars**

UGL was aware of the Provision Information because it was told of the information by CH2M-Hill Co United States.

Further, the Provision Information was information which as at 14 October 2014 had, or ought reasonably to have, come into the possession of an officer of UGL and was therefore information of which it was aware within the meaning of ASX Listing Rule 19.12.

37. The Provision Information was:
- (a) information that a reasonable person would expect to have a material effect on the price or value of UGL Securities; and
  - (b) not generally available.
38. By reason of the matters alleged in paragraphs 5(a) to (c) and 35 to 37, UGL was obliged by Rule

3.1 of the ASX Listing Rules and s 674(2) of the *Corporations Act* to notify the ASX immediately of the Provision Information on and from 14 October 2014.

39. Notwithstanding the matters alleged in paragraphs 37 to 38, UGL did not notify the ASX of the Provision Information at any time during the Relevant Period.
40. By reason of the matters alleged in paragraphs 35 to 39, UGL contravened s 674(2) of the *Corporations Act* (**October 2014 Disclosure Contravention**).

## **H. CORRECTIVE DISCLOSURE**

41. On 6 November 2014, UGL published and lodged with the ASX a release in which it stated that:
  - (a) as a result of a range of project changes and events in the design and procurement phase of the Ichthys Project being undertaken in Atlanta, and subsequent delays to the project, the forecast project costs had increased, resulting in the Joint Venture led CH2M-Hill Co United States recognising a provision of USD\$170 million;
  - (b) the construction phase was “ramping up into 2015 and 2016”, which was the period in which much of those costs would be incurred;
  - (c) UGL had been advised by CH2M-Hill Co United States that as claims for the recovery of these increased costs were not yet sufficiently resolved to recognise as revenue to offset the increases, CH2M United States would book a USD\$85 million provision in their September quarter accounts pending resolution of those issues; and
  - (d) UGL was still reviewing the costs to complete estimate and given ongoing discussions with the client regarding claims position and project acceleration did not feel in a position to reliably measure the provision at that stage.

### **(Corrective Disclosure)**

42. The information contained in the Corrective Disclosure:
  - (a) operated to correct or partly correct the information available to the market concerning the subject matter of the April Project Issues Information, the June Project Issues Information, and the August Project Issues Information and the Provision Information;
  - (b) by correcting or partly correcting the said information, influenced persons who commonly invest in securities by causing:

- (i) persons who held UGL Securities to reduce the price at which they were willing to dispose of UGL Securities; and
- (ii) persons who were considering acquiring UGL Securities to reduce the price at which they were willing to purchase UGL Securities;

### **Particulars**

The said effect is to be inferred from the character of the market for UGL Securities as set out in paragraph 44 below and the change in the traded price following the release of the Corrective Disclosure.

Further particulars will be provided following the receipt of expert evidence.

- (c) consequently, caused the price at which UGL Securities traded to adjust downward toward the traded price which would have existed if the Contravening Conduct had not occurred.

## **I. MARKET EFFECTS**

- 43. During the Relevant Period, the Applicant and each of the Group Members acquired an interest in UGL Securities in the **UGL Securities Market**, being a market comprised of all then current investors and potential investors in UGL Securities.
- 44. During the Relevant Period, the UGL Securities Market was a market:
  - (a) regulated relevantly by the ASX Listing Rules and ss 674(2) and 1041H of the *Corporations Act*;
  - (b) where the price or value of UGL Securities would reasonably be expected to have been informed or affected by information disclosed in accordance with the ASX Listing Rules and ss 674(2) and 1041H of the *Corporations Act*;
  - (c) to which the representations alleged in this Amended Statement of Claim had been made that a reasonable person would expect to have a material effect on the price or value of UGL Securities; and/or
  - (d) further or alternatively to (c), was a market to which the material information alleged in this Amended Statement of Claim had not been disclosed, being information which a reasonable person would expect, had it been disclosed, would have had a material effect on the price or value of UGL Securities.
- 45. Further to paragraph 44, throughout the Relevant Period, the UGL Securities Market was a market for listed securities that was sufficiently efficient so that at all relevant times:

- (a) the traded price for UGL Securities on the ASX reflected all generally available information; and
- (b) the traded price for UGL Securities quickly adjusted to reflect any additional information that became generally available.

46. Further to paragraphs 44 and 45:

- (a) on 5 November 2014, the closing price of UGL Securities was \$6.90 per share;
- (b) on 6 November 2014, the price of UGL Securities fell to a low of \$5.78 and closed at \$5.89 per share;
- (c) on 7 November 2014, the price of UGL Securities fell to a low of \$5.25 and closed at \$5.46;
- (d) on 10 November 2014, the price of UGL Securities fell to a low of \$5.24 and closed at \$5.28;
- (e) on 11 November 2014, the price of UGL Securities fell to a low of \$5.14 and closed at \$5.15; and
- (f) on 12 November 2014, the price of UGL Securities fell to a low of \$5.08 and closed at \$5.14.

47. Each of:

(aa) the April 2014 Disclosure Contravention;

(bb) the June 2014 Disclosure Contravention;

- (a) the August 2014 Disclosure Contravention;
- (b) the October 2014 Disclosure Contravention;
- (c) the August 2014 Misleading Conduct; and
- (d) the September 2014 Misleading Conduct

**(Contravening Conduct)**

separately or together or in any combination, caused the market price for UGL Securities to be materially higher during the Relevant Period than:



- (e) their true value; and/or
- (f) alternatively, the traded price that would have prevailed if that Contravening Conduct had not occurred.

### **Particulars**

That the Contravening Conduct caused the price of UGL Securities to be higher during the Relevant Period than it would have been had it not occurred is to be inferred from the following matters:

1. the characteristics of the UGL Securities Market alleged at paragraphs 44 and 45;
  2. the changes to the price for UGL Securities on the ASX from the date on which the Corrective Disclosure was made, as set out in paragraph 46; and
  3. the fact that each of the April Project Issues Information, the June Project Issues Information, the August Project Issues Information and the Provision Information was information that, if disclosed, would reasonably be expected to have a negative impact on the price of UGL Securities.
48. By reason of the matters set out in paragraphs 43 to 47 above, at the times during the Relevant Period when the Applicant and all of the Group Members acquired interests in UGL Securities, the price of the UGL Securities they acquired had been artificially inflated by the Contravening Conduct.

### **Particulars**

Particulars of the Applicant's transactions involving UGL Securities are set out in **Annexure A** to this Amended Statement of Claim.

Particulars of the shareholdings of the Group Members will be provided following the trial of the common questions.

## **J. RELIANCE**

49. Further or alternatively, the Applicant and at least some of the Group Members acquired an interest in UGL Securities during the Relevant Period as a result of holding and acting upon the assumption (being also an assumption generally made by all participants in the market for UGL Securities) that:
- (a) the price at which they acquired that interest in UGL Securities represented the market price in a market that had been informed of all material information relating to UGL that was required to be disclosed by it in accordance with the ASX Listing Rules and s 674(2) of the *Corporations Act*; and

- (b) all such material information had been incorporated into the price of those UGL Securities as at the date of acquisition

**(Price Integrity Assumption).**

**Particulars**

1. Investors and potential investors in shares on the ASX, including UGL Securities, are generally aware that there is a complex and comprehensive regulatory regime including, relevantly, the ASX Listing Rules and s 674(2) of the *Corporations Act*, which has as one of its purposes to ensure that the market is promptly informed of all information which is relevant to the price at which shares are traded.
  2. If the Contravening Conduct had not occurred, the Applicant and the Group Members would either have acquired interests in UGL Securities at a price which had not been artificially inflated or they would have acquired interests in shares in another listed entity instead.
  3. Particulars for each of the Group Members who also held and relied upon the Price Integrity Assumption will be provided following resolution of the common questions.
50. Further, the Compliance Representations were a cause of the Applicant and some of the Group Members acquiring an interest in UGL Securities.

**Particulars**

The Applicant repeats the matters set out and particularised at paragraph 49.

51. The Applicant is and was at all material times a member of the Clime Group of companies.
52. The Applicant's fund manager, Clime Asset Management Pty Ltd (**CAMPL**):
- (a) is a funds management company which is and was responsible for managing funds on behalf of the Applicant and other members of the Clime group of companies; and
  - (b) acquired and sold securities in accordance with CAMPL's investment strategy, pursuant to which CAMPL sought to identify shares which it considered were undervalued by the market by making an assessment of the company's intrinsic value based on the company's financial performance and financial outlook, and investing in those companies whose trading price was lower than its assessment of the company's current or forecast intrinsic value (**CAMPL investment strategy**).

**Particulars**

The CAMPL investment strategy involved at least the following steps:

1. CAMPL would calculate the current and future value of each investment that it was considering for the Applicant and this process included an assessment of the risk for each investment. The risk rating was calculated predominantly by analysis of publicly available information;
  2. CAMPL's analysts could not be in a position to make an accurate assessment of a company's intrinsic value where publicly available information about the company was incomplete or insufficiently certain or wrong;
  3. Where CAMPL concluded that there were doubts about the company's governance or its compliance with disclosure obligations then it would regard the company as being unfit for investment by the Applicant. Therefore, CAMPL would not invest in a company where it perceived that the company was not complying with disclosure obligations;
  4. Consistent with its adherence to its valuation and risk assessment analysis and investment strategy, CAMPL would sell shares where it determined that market value materially exceeded the calculated intrinsic value; and
  5. CAMPL would typically acquire shares in a new investment with a time horizon of about 4 to 5 years. Over that time, CAMPL aimed to improve the average cost of investment in shares of each company by accumulating or selling ('trimming') shares at attractive price points in order to lower the average cost of the investment.
53. Pursuant to the CAMPL investment strategy, CAMPL acquired and sold UGL shares for and on behalf of the Applicant as set out in Annexure A.
54. At all relevant times until on or about 6 November 2014, CAMPL acted in reliance on its expectation that UGL was complying with its disclosure obligations.
55. On 6 November 2014, UGL made the Corrective Disclosure. On learning of the Corrective Disclosure:
- (a) CAMPL concluded that in view of what was disclosed it could not support its assessed valuation of UGL, could no longer reliably value UGL and could no longer conclude that UGL was complying with its disclosure obligations;
  - (b) accordingly, on or about 6 and 7 November 2014, CAMPL decided that the Applicant should sell down its entire UGL holdings; and
  - (c) CAMPL sold the Applicant's UGL shares on the dates and at the prices set out in Annexure A.

## K. CHANGE OF POSITION

56. Further to paragraphs 43 to 48 above, further or alternatively paragraphs 7 to 55 above, if UGL had not engaged in the Contravening Conduct, the Applicant and each of the Group Members:

- (a) would have acquired their interests in UGL Securities at a lower price; or
- (b) alternatively, would not have acquired some or any of their interests in the UGL Securities and would instead have retained or acquired other investments or assets for which the price was not inflated.

### Particulars

Particulars of any alternative investments or assets that the Applicant would have retained or acquired will be provided prior to trial.

Particulars of the Group Members who would have retained or acquired alternative investments will be provided following the determination of the common questions.

## L. LOSS AND DAMAGE

57. By reason of UGL's Contravening Conduct, the Applicant and each of the Group Members have suffered loss and damage.

### Particulars

The loss suffered by the Applicant and Group Members is either:

1. the difference between the price at which they acquired an interest in UGL's Securities during the Relevant Period and the price at which that interest would have been acquired at that time had the Contravening Conduct not occurred (**Price Inflation**). Particulars of the Price Inflation in relation to UGL Securities at the relevant times will be provided following the provision of expert evidence;
2. alternatively, the difference between the price at which they acquired an interest in UGL Securities during the Relevant Period and whatever is "left in hand" or was realised upon a sale of those shares following the Corrective Disclosure, modified to take into account so much, if any, of the movement in the traded price of UGL Securities which did not result from the Contravening Conduct;
3. alternatively, for days during the Relevant Period and thereafter where the traded price of UGL Securities fell as a result of the disclosure of information which had not previously been disclosed because of the Contravening Conduct, the quantum of that fall;

4. alternatively, for the Applicant and those Group Members who would have, but for the Contravening Conduct, not acquired an interest in UGL Securities and further or alternatively retained or acquired an alternative investment, the difference, at the date of hearing, between their actual position as a result of having acquired an interest in UGL Securities during the Relevant Period and the position in which they would have been had they not acquired that interest and further or alternatively made that alternative investment instead.

58. By reason of the matters alleged in paragraphs 43 to 57:

- (a) UGL is obliged pursuant to s 1317HA, alternatively s 1325, of the *Corporations Act* to compensate the Applicant and Group Members for the damage that resulted from its contravention of s 674(2) of the *Corporations Act*; and
- (b) the Applicant and Group Members may recover the amount of loss and damage suffered by them from UGL pursuant to s 1041I of the *Corporations Act* and s12GF of the *ASIC Act*;
- (c) alternatively, UGL is obliged pursuant to s 12GM of the *ASIC Act* to compensate the Applicant and Group Members for the damage that resulted from its contravention of s 12DA of the *ASIC Act*.

#### **M. COMMON QUESTIONS OF FACT OR LAW**

59. The questions of law or fact common to the claims of the Group Members are:

- (a) whether, during the period between ~~8 August 2014~~ 16 April 2014 and 5 November 2014, the April Project Issues Information, the June Project Issues Information and the August Project Issues Information was:
  - (i) information that a reasonable person would expect to have a material effect on the price or value of UGL Securities; and
  - (ii) not generally available;
- (b) whether UGL was or ought to have been aware of the April Project Issues Information, the June Project Issues Information and the August Project Issues Information and if so, at what time if any during the period ~~8 August 2014~~ 16 April 2014 to 5 November 2014;
- (c) whether, at any time during the period between 14 October 2014 and 5 November 2014 the Provision Information was:

- (i) information that a reasonable person would expect to have a material effect on the price or value of UGL Securities; and
- (ii) not generally available;
- (d) whether UGL was or ought to have been aware of the Provision Information and if so, at what time if any during the period 14 October 2014 and 5 November 2014;
- (e) whether UGL contravened s 674(2) of the *Corporations Act* by failing to disclose the April Project Issues Information, the June Project Issues Information and the August Project Issues Information as soon it was or ought to have been aware of that information;
- (f) whether UGL contravened s 674(2) of the *Corporations Act* by failing to disclose the Provision Information as soon it was or ought to have been aware of that information;
- (g) whether UGL made any or all of the Compliance Representations;
- (h) whether any or all of the Compliance Representations, if made, were misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA of the *ASIC Act*, s 1041H of the *Corporations Act*; and
- (i) whether any of the Contravening Conduct caused the price or value of UGL Securities to be higher during the Relevant Period than it would have been had UGL not engaged in that conduct and, if so, to what extent or by what amount.

Date: ~~18 December 2017~~ 24 October 2018



.....  
Signed by ~~Odetta Nigella Alaina McDonald~~ Timothy Michael Luke Finney

Lawyer for the Applicant

This pleading was prepared by Rachel Doyle SC, Lisa Nichols SC and Kate Burke of counsel, and amended by Rachel Doyle SC and Kate Burke of counsel

## ANNEXURE A

### Applicant's Trades in UGL Securities

Date	Trade type	Volume	Price per security	Transaction value
19 May 2014	Buy	30,000	\$6.64	\$199,299.00
20 May 2014	Buy	108,000	\$6.66	\$719,314.40
10 September 2014	Buy	95,000	\$6.36	\$604,501.00
17 September 2014	Buy	13,102	\$6.37	\$83,464.37
18 September 2014	Buy	52,845	\$6.37	\$336,667.82
19 September 2014	Buy	11,053	\$6.37	\$70,418.17
22 September 2014	Buy	25,000	\$6.25	\$156,315.50
26 September 2014	Buy	15,000	\$6.26	\$93,835.50
09 October 2014	Buy	35,000	\$6.15	\$215,101.00
10 October 2014	Buy	22,000	\$6.07	\$133,605.45
10 October 2014	Buy	58,000	\$6.05	\$350,738.90
13 October 2014	Buy	48,000	\$5.87	\$281,989.80
04 November 2014	Sell	16,000	\$6.94	\$111,091.80
05 November 2014	Sell	40,239	\$6.88	\$276,937.40
05 November 2014	Sell	20,000	\$6.90	\$138,051.00

<b>Date</b>	<b>Trade type</b>	<b>Volume</b>	<b>Price per security</b>	<b>Transaction value</b>
07 November 2014	Sell	18,000	\$5.41	\$97,447.96
07 November 2014	Sell	172,000	\$5.33	\$916,753.20
10 November 2014	Sell	49,352	\$5.28	\$260,382.70
11 November 2014	Sell	22,568	\$5.16	\$116,354.51
11 November 2014	Sell	26,785	\$5.22	\$139,907.91
12 November 2014	Sell	74,028	\$5.13	\$379,799.58
13 November 2014	Sell	56,910	\$5.03	\$286,180.50
13 November 2014	Sell	17,118	\$5.06	\$86,618.32



**Certificate of lawyer**

I, ~~Odette Nigella Alaina McDonald~~, Timothy Michael Luke Finney certify to the Court that, in relation to the amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~14 December 2017~~ 24 October 2018



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Signed by ~~Odette Nigella Alaina McDonald~~ Timothy Michael Luke Finney  
Lawyer for the Applicant