

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
COMMERCIAL LIST**

**CORPORATIONS LIST
SCI 2014 04712**

BETWEEN

JOANNE WALSH

Plaintiff

AND

**WORLEYPARSONS LIMITED
(ACN 096 090 158)**

Defendant

FURTHER AMENDED STATEMENT OF CLAIM

Date of document: 20 February 2015
Filed on behalf of: The Plaintiff
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1. The plaintiff brings this group proceeding pursuant to Part 4A of the *Supreme Court Act* 1986 (Vic).
2. This proceeding is brought by the plaintiff on her own behalf and on behalf of all persons who purchased ordinary shares in the defendant on or after 1 August 2013 and held any of those shares at the commencement of trading on 20 November 2013 (**Group Members**).
3. The defendant is, and at all material times was:
 - a. a company incorporated pursuant to the *Corporations Act 2001* (Cth) (**the Act**) and is capable of being sued;

- b. a listed disclosing entity within the meaning of section 111AL(1) of the Act;
 - c. subject to and bound by the Listing Rules (**Listing Rules**) of the Australian Securities Exchange Limited (**ASX**) and is included in the official list of the ASX; and
 - d. engaged in Australia and internationally in providing a range of services to the resources and energy sectors and complex process industries.
4. The provision of professional services, including the performance of construction and fabrication work, for minerals, metals and energy projects in Australia, Canada, Latin America and the Middle East forms a part of the defendant's business.

Plaintiff's shareholding

5. The plaintiff purchased 453 ordinary fully paid shares in the defendant (**WOR ED securities**) on 1 August 2013, with settlement on 7 August 2013.

Particulars

The plaintiff's purchase is recorded in a Commonwealth Securities Limited Confirmation Contract Note of 1 August 2013.

The plaintiff's holding is recorded in a CHES Holding statement issued by ASX Settlement Pty Limited.

Both documents are available for inspection.

6. The plaintiff paid \$22.03 for each WOR ED security which she acquired on-market on 1 August 2013.
7. The plaintiff held those 453 WOR ED securities at the opening of the market on 20 November 2013 and is accordingly a Group Member. The plaintiff continues to hold her WOR ED securities.

The defendant's internal reporting systems

8. At all material times, the defendant had internal reporting systems that, according to the defendant's public claims, ensured adequate and timely reporting of all material or significant developments concerning the defendant's performance and expected performance that a reasonable person would expect to have a material effect on the price or value of the defendant's securities.

Particulars

The defendant's internal reporting systems are described in:

- i. the Board Charter of the defendant's board referred to in the defendant's 2012 Annual Report (the **2012 Annual Report**) (pages 21, 22 and 25) and 2013 Annual Report (the **2013 Annual Report**) (pages 29 and 32), including oversight by the defendant's board of the defendant's internal control and reporting procedures to ensure that they are adequate, effective and ethical;
- ii. the Audit and Risk Committee Charter referred to in the 2012 Annual Report (page 25) and 2013 Annual Report (page 32), including oversight of financial reporting, risk management and compliance; and
- iii. the defendant's Continuous Disclosure Policy referred to in the 2012 Annual Report (pages 22, 24, 26) and 2013 Annual Report (pages 29, 32, 33).

The defendant's disclosure of expected earnings

Disclosed position concerning expected 2013 and future earnings

9. On 17 May 2013 the defendant revised its earnings guidance down to a range of \$320 million to \$340 million for the 2013 financial year and informed the market that it had confidence in the business' growth thereafter.

Particulars

The forecasts and statements of confidence were made in the defendant's announcement to the ASX published on 17 May 2013 entitled "Trading update".

10. On 17 May 2013, the defendant informed the market that its earnings in the second half of the 2013 financial year had been reduced because the performance of parts of its Australian and Canadian businesses had been affected by reduced demand.

Particulars

This information was also contained in the defendant's announcement to the ASX published on 17 May 2013 entitled "Trading update".

Disclosed position concerning expected 2014 earnings

11. On each of 14 August 2013, 9 October 2013, 10 October 2013 and 15 October 2013 the defendant published forecasts of increased earnings in the 2014 financial year.

Particulars

The forecasts were made in:

- i. The defendant's 2013 Annual Report, published on 14 August 2013, at page 15;

- ii. The address to the defendant's Annual General Meeting made by the defendant's Chief Executive Officer, published on 9 October 2013 at page 10 of the defendant's announcement to ASX entitled "WORLEYPARSONS LIMITED (WOR) ANNUAL GENERAL MEETING 2013";
- iii. Page 3 (entitled "Group Outlook") and page 14 (entitled "In summary") of the "Investor Day Presentation" released to ASX by the defendant on 10 October 2013; and
- iv. Page 21 of the presentation made by the defendant's Chief Executive Officer to the Macquarie WA Forum on 15 October 2013, and published to ASX on that day.

12. The defendant's earnings, referred to as net profit after tax, in the 2013 financial year were A\$322.1 million.

Particulars

The defendant's 2013 net profit after tax is disclosed in the 2013 Annual Report at page 60.

Disclosed position concerning the defendant's expected 2014 business performance

13. On 14 August 2013, in the defendant's 2013 Annual Report, the defendant informed the market that:
- a. its 2014 earnings forecast was made with awareness of "the uncertainties in world markets";
 - b. geographic and sector diversification would provide a solid foundation to deliver increased earnings in the 2014 financial year;

- c. global diversification had been important in the defendant offsetting challenging conditions in key markets, including South Africa and Western Australia, in the 2013 financial year; and
- d. there was potential for market slowdown in Australia in the defendant's hydrocarbons business, but the slowdown would be offset by continued global growth.

Particulars

The matters are disclosed at pages 2, 6, 14 and 15 of the 2013 Annual Report.

14. On 9 October 2013, in the address to the defendant's Annual General Meeting made by the Chief Executive Officer, the defendant informed the market that:
- a. its 2014 earnings forecast was made with awareness of "the uncertainties in world markets";
 - b. geographic and sector diversification would provide a solid foundation to deliver increased earnings in the 2014 financial year; and
 - c. that earnings in the first half of the 2014 financial year would be lower than those in the corresponding period.

Particulars

The statements are included in the address to the defendant's Annual General Meeting made by the Chief Executive Officer, published on 9 October 2013 at page 10 of the defendant's announcement to ASX entitled "WORLEYPARSONS LIMITED (WOR) ANNUAL GENERAL MEETING 2013".

15. On page 3 (entitled “Group Outlook”) and page 14 (entitled “In summary”) of the “Investor Day Presentation” released to ASX by the defendant on 10 October 2013, the defendant informed the market that:

- a. its 2014 earnings forecast was made with awareness of “the uncertainties in world markets”;
- b. geographic and sector diversification would provide a solid foundation to deliver increased earnings in the 2014 financial year;
- c. [the defendant was] “confident that our medium and long term prospects remain positive”.

Particulars

Pages 3 and 14, Investor Day Presentation, 10 October 2013

Disclosed position concerning 2014 restructuring costs

16. Prior to 20 November 2013, the defendant did not disclose any expectation of future restructuring costs, despite:

- a. stating that restructuring costs had affected the defendant’s earnings in the 2013 financial year; and
- b. disclosing a policy for making provisions in its financial accounts where it was probable that there would be a future sacrifice of economic benefits, including where the defendant had developed a detailed formal plan for restructuring and had raised a valid expectation in those affected that it would carry out a restructuring by starting to implement a plan or announcing its main features to those affected by it.

Particulars

The matters are disclosed at pages 11, 70, 77 and 78 of the 2013 Annual Report.

20 November 2013 correcting disclosure

17. The defendant corrected its disclosures concerning its expected 2014 earnings forecast, its expected 2014 business performance and its expected 2014 restructuring costs in an announcement to ASX entitled “Trading Update” on 20 November 2013, in which it stated that:

- a. the defendant’s earnings in the 2014 financial year would be in the range of A\$260 million to A\$300 million;
- b. the defendant’s first half earnings for the 2014 financial year would be in the range of A\$90 million to A\$110 million;
- c. the defendant expected reduced professional services revenue in the 2014 financial year compared to the 2013 financial year, particularly in its Australian and Canadian businesses, but also in Latin America and the Middle East;
- d. the defendant’s geographic diversification, particularly in the United States, Southern Africa and Europe, would not offset the extent of the anticipated decline in the Australian and Canadian businesses; and
- e. the defendant would implement a rigorous cost reduction program across the entire group, which would include restructuring costs.

18. The defendant’s disclosure to the ASX on 20 November 2013 alleged in paragraph 17 above advised the market of the following information:

- a. the defendant’s business would experience reduced professional services revenue in the 2014 financial year;
- b. the defendant would incur restructuring costs in the 2014 financial year; and

- c. the consequence of the matters referred to in paragraphs (a) and (b) was that the defendant's business would generate lower earnings in the 2014 financial year than in the 2013 financial year.

(together the **information about the 2014 earnings forecast matters**).

Continuous disclosure breaches

19. A reasonable person would have expected the information about the 2014 earnings forecast matters to have a material effect on the price or value of the defendant's ED securities if that information was made generally available.

Particulars

When information about the 2014 earnings forecast matters was released by the defendant to the ASX on 20 November 2013, there was an immediate and sharp drop in the defendant's share price, reflecting the fact that information about those matters was price sensitive.

20. On or before 1 August 2013 the defendant was aware of the information about the 2014 earnings forecast matters.

Particulars

It is reasonable to infer that the defendant was aware of the information about the 2014 earnings forecast matters on or before 1 August 2013 because:

- i. The defendant's 2013 Annual Report and ASX announcements disclosed that the defendant's business consisted largely of long-term contracts for the provision of consulting engineering services;

- ii. It is reasonable to infer that such contracts have long lead-times, specifically contracted scopes of work, specifically contracted revenues, and budgeted expenses;
- iii. Pursuant to the defendant's Board Charter, the defendant's board was *inter alia* required to:
 1. protect shareholders' interests by seeking to ensure that WorleyParsons' strategic direction provides value for its shareholders;
 2. establish goals for management and monitor the achievement of those goals;
 3. authorise policies and oversee the strategic implementation of these policies;
 4. seek to ensure that WorleyParsons' internal control and reporting procedures are adequate, effective and ethical;
 5. approve budgets and the strategic plan;
 6. monitor the performance of the company against strategies and business plans;
 7. monitor communications with members and the ASX;
 8. approve annual and interim accounts and directors' reports;
 9. approve accounting policies;
 10. approve internal and external audit plans;
 11. accept audit reports including management letters;

12. be accurate, diligent and professional in all activities and in preparing all documents;

all of which required board oversight of the actual and anticipated future performance of the defendant's business operations, being matters that it is reasonable to infer were considered by the defendant's board with care prior to the release of the 2013 Annual Report;

- iv. It is reasonable to infer that the matters concerning the defendant's business disclosed in the 2013 Annual Report were known to the defendant on or before 1 August 2013, given the need for the defendant and its auditors to produce draft audit, annual and directors' reports with sufficient time to allow for the defendant's board to exercise diligence in reviewing, accepting and approving those documents prior to the publication of the 2013 Annual Report on 14 August 2013;
- v. Pursuant to the defendant's Continuous Disclosure Policy the board was responsible for the dissemination of material information (information concerning the defendant's business that a reasonable person would expect to have a material effect on the price or value of the defendant's securities) related to the defendant's periodic disclosure including the Annual Report and the defendant's general meetings and the defendant's board was therefore obliged to consider any statement of expectations as to forecast earnings published in the Annual Report;
- vi. Pursuant to the defendant's Continuous Disclosure Policy, the Disclosure Committee (comprising at least one of the defendant's non-executive directors and any two of the defendant's Chief Executive Officer, Group Managing Director Development, Chief Financial Officer, and Company Secretary or Deputy Company Secretary) was otherwise delegated responsibility for making decisions associated with compliance with the defendant's continuous disclosure obligations;
- vii. Pursuant to the defendant's Audit and Risk Committee Charter, the defendant's Audit and Risk Committee was *inter alia* required to:

1. review financial reports and make recommendations to the Board for adoption, taking into account the statements by the Chief Executive Officer and the Chief Financial Officer as to the truth and fairness of the financial statements and their compliance with relevant accounting standards and secondly, as to whether the statements are founded on a reliable system of risk management and internal control; and
 2. review the financial statements to take into account decisions requiring a major element of judgement and the extent to which the financial statements are affected by any unusual transactions;
- viii. The defendant's revenue recognition for its major contracts relies upon it having a thorough understanding of its work in progress, as note 1(G)(i) to the defendant's 2013 accounts (2013 Annual Report), in relation to engineering design and project services revenue, states that "[c]ontract revenue and expenses are recognized in accordance with the percentage of completion method unless the outcome of the contract cannot be reliably estimated";
- ix. The Board's approval of this accounting policy, monitoring of the defendant's performance against budget, approval of the 2013 Annual Report (which reported revenue and expenses based on this accounting policy), the acceptance of the audit report, the obligation to be accurate, diligent and professional in preparing all documents intended for release to the market, and the obligation to review with care the disclosure of material information disclosed to the market in the 2013 Annual Report required that the defendant have sophisticated models to allow it to track contract revenues and expenses in accordance with the percentage of completion method of accounting in respect of works performed for its major contracts;

- x. Between 1 July 2013 and 20 November 2013, the defendant informed the ASX of the following contracts awarded to it which were said to be price sensitive announcements:
1. contract to provide Integrated Program Management Team services for the front-end engineering and design phase for the Sasol Integrated Gas-to-Liquid (GTL) and Ethane Cracker Complex Contract, as announced on 12 July 2013;
 2. contract extension for the defendant to complete the detailed design scope for the modular ore processing facilities and commence provision of field engineering and early construction support activities for the Vale S11D project, as announced on 24 July 2013;
 3. receipt of a letter of intent from Imperial Oil to renew the Engineering and Procurement Agreement for the Syncrude CoSyn and imperial Oil Upstream Alliances for 5 years commencing 1 July 2014, as announced on 2 September 2013;¹
 4. project management contract for the Nacala Rail Corridor Project, as announced on 5 September 2013;
 5. engineering, procurement, fabrication and construction contract for the field facilities for the MacKay Operation Corporation – MacKay River Commercial Project Field Facility Phase 1, as announced on 18 September 2013; and
 6. global enterprise frame agreement with Shell covering surface facilities capital projects for unconventional oil and gas assets for a five year period, as announced on 20 September 2013; and

¹ This renewal could have no effect on earnings in the 2014 financial year.

7. project management consultancy services contract extension for the Esmeraldas Refinery Rehabilitation Project, as announced on 24 September 2013;
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- x. It is reasonable to infer, given the lead time for the commencement of work on major contracts, that few, if any, of the long-term projects announced between 1 July 2013 and 20 November 2013 would materially affect the defendant's earnings in the 2014 financial year;
 - xii. The defendant did not, between 1 July 2013 and 20 November 2013, inform the ASX of any matter which was likely to have a negative effect on the defendant's earnings in the 2014 financial year. Given the statutory obligation to disclose material information, the obligation pursuant to the ASX listing rules, and the disclosure committee's obligation to disclose Material Information to the ASX, it is therefore reasonable to infer that the defendant's business was not affected by any sudden or unexpected events, including loss of contracted works or postponement of contracted works, which would have a material adverse effect on the defendant's share price between 1 July 2013 and 20 November 2013;
 - xiii. The divisions of the defendant's business that the defendant said were underperforming in the 20 November 2013 announcement were materially the same as those that were said to be underperforming on 17 May 2013, being:
 1. The Australian business; and
 2. The Canadian WorleyParsonsCord business,indicating that the weakness in demand affecting those divisions of the defendant's business was known to the defendant prior to 1 August 2013;

- xiv. Given the defendant's knowledge of its percentage of work completed on major contracts as at 30 June 2013 and other contracted work-in-hand, the limited new contracted work, and that the defendant's business was not affected by any sudden or unexpected event which the Disclosure Committee considered could have a negative effect upon the defendant's share price at any time between 1 July 2013 and 20 November 2013 (which it is reasonable to infer would otherwise have been disclosed to the market), it is reasonable to infer that the defendant knew or should have known by 1 August 2013 that its contracted work would deliver reduced professional services revenue in the 2014 financial year;
 - xv. The defendant knew on or before 17 May 2013 which parts of its business were underperforming, and as a result of the matters referred to in paragraph (xiv) above concerning the underperformance of the defendant's professional services business in the 2014 financial year, it is reasonable to infer that the defendant knew or should have known by 1 August 2013 that it would be necessary to incur restructuring costs in the 2014 financial year; and
 - xvi. As a result of the defendant's knowledge of reduced revenue (paragraph (xiv) above) and increased expenses (paragraph (xv) above) in the 2014 financial year, each of which may be inferred as of 1 August 2014, it is reasonable to infer that the defendant knew or should have known by 1 August 2013 that it would have lower earnings in the 2014 financial year than it achieved in the 2013 financial year.
21. The defendant did not make generally available and did not disclose to the ASX the information about the 2014 earnings forecast matters until 20 November 2013.

Particulars

It is reasonable to infer that the defendant did not immediately disclose to the ASX the information about the 2014 earnings forecast matters because:

- i. It is reasonable to infer that the defendant was aware of the information about the 2014 earnings forecast matters on or before 1 August 2013 (the plaintiff refers to the particulars to paragraph 20 above);
 - ii. The information about the 2014 earnings forecast matters concerned the fact that the defendant's earnings would be materially lower than market expectations and prior to 20 November 2013 the defendant, by its announcements of 17 May 2013, 14 August 2013, 9 October 2013, 10 October 2013 and 15 October 2013, had established a contrary expectation in the market (namely of increased 2014 earnings) which was not corrected prior to 20 November 2013; and
 - iii. The defendant did not release to the market any information about the 2014 earnings forecast matters until 20 November 2013 (as alleged in paragraphs 16 to 18 above).
22. The defendant's failure to disclose the information about the 2014 earnings forecast matters to the ASX immediately upon becoming aware of the information constituted a breach of Listing Rule 3.1 of the ASX Listing Rules (**Listing Rules**).
23. The defendant's failure to disclose the information about the 2014 earnings forecast matters to the ASX immediately upon becoming aware of the information constituted a breach of s 674(2) of the *Corporations Act 2001* (Cth) (**the Act**).

Loss and damage

24. The plaintiff and Group Members held their interests in WOR ED securities in a market:
- a. regulated by, inter alia, the Listing Rules and the Act; and

- b. where the price or value of WOR ED securities would reasonably be expected to be informed and affected by information disclosed in accordance with the Listing Rules and the Act.

25. The plaintiff had no knowledge of the information about the 2014 earnings forecast matters when she purchased the 453 WOR ED securities on 1 August 2013.

Inflated price prior to the commencement of trading on 20 November 2013

26. The plaintiff and the Group Members acquired their WOR ED securities in a market:
- a. in which the defendant had failed to disclose the information about the 2014 earnings forecast matters, being information that a reasonable person would expect to have a material effect on the price or value of WOR ED securities; and
 - b. in which the significant falls in the price of WOR ED securities on and after 20 November 2013 were caused by and were a result of the disclosure of the information about the 2014 earnings forecast matters.
27. The failure to disclose the information about the 2014 earnings forecast matters caused the market price for WOR ED securities prior to 20 November 2013 to be substantially greater than:
- a. their true value; further or alternatively
 - b. the market price for WOR ED securities that would have prevailed but for the defendant's failure to disclose the information about the 2014 earnings forecast matters at any time prior to 20 November 2013.
28. The plaintiff and the Group Members have each suffered loss and damage because of and resulting from the failure to disclose the information about the 2014 earnings forecast matters to the market and are entitled to compensation pursuant to sections 1317HA and 1325 of the Act.

Particulars

The defendant's failure to disclose the information about the 2014 earnings forecast matters caused the plaintiff and the Group Members to suffer loss and damage because the failure to disclose caused the market price for WOR ED securities prior to 20 November 2013 to be substantially greater than their true value, further or alternatively the market price for WOR ED securities that would have prevailed but for the defendant's failure to disclose the information about the 2014 earnings forecast matters. Accordingly the plaintiff and the Group Members overpaid for their WOR ED securities.

The losses will be the subject of expert evidence in due course. They are comprised of the difference between the prices at which the WOR ED securities were acquired by the plaintiff and the Group Members and the prices that would have prevailed at the times of those acquisitions had the information about the 2014 earnings forecast matters been disclosed at those times.

AND THE PLAINTIFF SEEKS:

- A. A declaration that the defendant has contravened s 674(2) of the Act.
- B. Compensation pursuant to s 1317HA and s 1325 in respect of the defendant's contravention of s 674(2) of the Act.
- C. Interest pursuant to statute.
- D. Costs.
- E. Such further or other relief as the Court considers just.

NORMAN J. O'BRYAN

MICHAEL SYMONS

STEWART PETERS

Solicitor for the plaintiff