

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
File Number: NSD681/2021  
File Title: SMBC LEASING AND FINANCE, INC. ARBN 602 309 366 v FORUM  
ENVIRO (AUST) PTY LTD (VOLUNTARY ADMINISTRATORS  
APPOINTED) ACN 607 484 364 & ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



*Sia Lagos*

Dated: 6/08/2021 4:56:36 PM AEST

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)



## Statement of claim

No. NSD681/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**SMBC Leasing and Finance, Inc. Sydney Branch ARBN 602 309 366**  
Applicant

**Forum Enviro (Aust) Pty Ltd (in provisional liquidation) ACN 607 484 364 and others**  
**identified in the Schedule**  
Respondents

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## A. PARTIES

### (1) Applicant

#### 1. The Applicant (**SMBC L&F**):

- (a) is a company incorporated in the State of New York;
- (b) is a registered foreign company for the purposes of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (c) has, at all material times, carried on a financial services business which included the provision of financing for its clients' leasing arrangements in Australia; and
- (d) is able to sue in its corporate name.

### (2) Respondents

#### 2. The Second Respondent (**Mr Papas**):

- (a) was, at all material times, ordinarily resident in Australia;
- (b) is and was at all material times a person for the purposes of sections 18 and 29 of the ACL;
- (c) is and was at all material times a person for the purposes of sections 12DA and 12DB of the ASIC Act;
- (d) is and was at all material times a person for the purposes of section 1041H of the Corporations Act;
- (e) was, at all material times, the sole director and secretary of the Second Respondent, Forum Enviro (Aust) Pty Ltd (in prov liq) (ACN 607 484 364) (**FEA**);
- (f) was, at all material times, the sole director and secretary of the Third Respondent, Forum Enviro Pty Ltd (ACN 168 709 840) (in prov liq) (ACN 607 484 364) (**FE**);
- (g) was, at all material times, with Vincenzo Tesorerio, one of the two shareholders in and directors of Forum Group Financial Services Pty Ltd (in prov liq) (ACN 623 033 705) (**FGFS**);
- (h) in addition to FEA, FE and FGFS, at all material times, directly or indirectly owned or controlled the following companies incorporated in Australia:

- (i) Aramia Holdings Pty Ltd (ACN 114 958 717);
- (ii) Autonomus Energy Pty Ltd (ACN 113 593 383);
- (iii) Eros Management Pty Ltd (ACN 622 298 346);
- (iv) Forum Direct Pty Ltd (ACN 054 890 710);
- (v) Forum Fleet Pty Limited (ACN 155 440 994);
- (vi) Forum Finance Pty Limited (ACN 153 301 172);
- (vii) Forum Group (QLD) Pty Ltd (ACN 103 609 678);
- (viii) Forum Group (VIC) Pty Ltd (ACN 153 062 018);
- (ix) Forum Group Pty Ltd (ACN 153 336 997);
- (x) Imagetec Financial Services Pty Ltd (ACN 111 978 182);
- (xi) Imagetec Solutions Australia Pty Ltd (ACN 074 715 718);
- (xii) Intrashield Investment Group Pty Ltd (ACN 645 578 829);
- (xiii) Intrashield Financial Services Pty Ltd (ACN 650 501 321)
- (xiv) Intrashield Pty Ltd (ACN 133 426 534);
- (xv) Iugis Investments Pty Ltd (ACN 647 627 745);
- (xvi) Iugis Pty Ltd (ACN 632 882 243);
- (xvii) Iugis Waste Solutions Pty Ltd (ACN 647 212 299);
- (xviii) Onesource Australia Holdings Pty Limited (ACN 120 463 541);
- (xix) Orca Enviro Solutions Pty Ltd (ACN 626 552 645);
- (xx) Orca Enviro Systems Pty Ltd (ACN 627 597 782);
- (xxi) Smartprint Fleet Management Pty Ltd (ACN 132 807 080);
- (xxii) Palante Pty Ltd (ACN 135 344 151);
- (xxiii) ifish finance Pty Ltd (ACN 118 683 542);
- (xxiv) Spartan Consulting Group Pty Ltd (ACN 168 989 544); and
- (xxv) The Forum Group of Companies Pty Ltd (ACN 151 964 626) (**TFGC**).

(together, the **Papas Controlled Entities**).

- (i) at all material times directly or indirectly owned and controlled, with Mr Tesorerio, the following companies incorporated in Australia:

- (i) 64-66 Berkeley St, Hawthorn Pty Ltd (ACN 643 838 662);

- (ii) 14 James Street Pty Ltd (ACN 638 449 206);
- (iii) 26 Edmonstone Road Pty Ltd (ACN 622 944 129);
- (iv) 5 Bulkara Street Pty Ltd (ACN 630 982 160); and
- (v) 6 Bulkara Street Pty Ltd (ACN 639 734 473).

(together, the **Jointly Owned Entities**).

3. The First Respondent, FEA:

- (a) is a company incorporated within Australia;
- (b) is able to be sued;
- (c) was duly registered as a corporation under the Corporations Act on 5 August 2015;
- (d) has had Mr Papas as the sole director and secretary since 5 August 2015;
- (e) has 1 share on issue which has been held at all times by TFGC;
- (f) had Domenico Alessandro Calabretta, Grahame Robert Ward and Thyge Trafford-Jones (**Administrators**) as its voluntary administrators from their appointment by Mr Papas on 8 July 2021 until the termination of the voluntary administration of FEA by court order on 16 July 2021;
- (g) has Jason Preston and Jason Ireland of McGrathNicol (**Liquidators**) as its provisional liquidators, who were appointed jointly and severally by the Court on 16 July 2021 pursuant to s 472(2) of the Corporations Act.

4. The Third Respondent, FE:

- (a) is a company incorporated within Australia;
- (b) is able to be sued;
- (c) was duly registered as a corporation under the Corporations Act on 24 March 2014;
- (d) has had Mr Papas as the sole director and secretary since 24 March 2014;
- (e) has 10,000 shares on issue which have been held at all times by TFGC;
- (f) had the Administrators as its voluntary administrators from their appointment by Mr Papas on 8 July 2021 until the termination of the voluntary administration of FE by court order on 16 July 2021;

- (g) has the Liquidators as its provisional liquidators, who were appointed jointly and severally by the Court on 16 July 2021 pursuant to s 472(2) of the Corporations Act.

## B. THE MASTER AGREEMENTS

### (1) The 2018 Master Receivables Agreement

5. On 13 June 2018, FEA entered into a Principal and Agency Agreement with Flexirent Capital Pty Ltd (**Flexirent**), which set out the terms on which FEA would act as Flexirent's undisclosed agent in relation to certain rental, lease and technology licence agreements for wholesale and retail customers that Flexirent was in the business of providing (**Flexirent Agency Agreement**).
6. On 2 August 2018, SMBC L&F entered into a Master Receivables and Acquisition Servicing Agreement with Flexirent (**2018 MRASA**) and a Supplemental Deed, which together set out the terms on which SMBC L&F would purchase receivables and related assets from Flexirent that arose under contracts which had purportedly been entered into between FEA and Veolia Environmental Services (Australia) Pty Ltd (**Veolia**).
7. Under the terms of the 2018 MRASA and the Supplemental Deed:
  - (a) any purchase of receivables would be documented by way of separate "Offer Letters" sent by Flexirent and accepted by SMBC L&F, which would incorporate terms set out in the 2018 MRASA;
  - (b) each Offer Letter would specify the receivables and related assets being sold and the purchase price payable by SMBC L&F;
  - (c) any purchase of receivables would take effect by way of equitable assignment, although SMBC L&F had rights to obtain the legal title in certain circumstances (for example, by providing notice of the assignment to the relevant customer).
8. Also on 2 August 2018, SMBC L&F, Flexirent and FEA entered into an agent side letter, under which SMBC L&F appointed FEA as its collection agent in relation to the receivables from the various underlying leasing arrangements in respect of the equipment (**Agent Side Letter**).
9. Also on 2 August 2018, Flexirent executed a Title Perfection Power of Attorney Deed Poll (**TP Power of Attorney**), under which Flexirent appointed each director and other specified officers of SMBC L&F severally as its attorney to take steps to perfect SMBC's interest in the assigned receivables following a "Title Perfection Event" (as defined) under the 2018 MRASA.

(2) The 2020 Master Receivables Agreement

10. On 17 July 2020, FEA and SMBC L&F entered into a Master Receivables Acquisition and Servicing Agreement (**2020 MRASA**) and a Supplemental Deed which set out the terms on which SMBC L&F would purchase receivables from FEA that arose under contracts entered into between FEA and Veolia.
11. Under the terms of the 2020 MRASA and the Supplemental Deed:
- (a) any purchase of receivables would be documented by way of separate “Offer Letters” sent by FEA and accepted by SMBC L&F, which would incorporate terms set out in the 2020 MRASA;
  - (b) each Offer Letter would specify the receivables being sold and the purchase price payable by SMBC L&F;
  - (c) SMBC L&F would acquire the legal interest in any receivables.
  - (d) FEA would act as collection agent for SMBC L&F, collecting payments under the relevant contracts and forwarding those to SMBC L&F.

**C. THE FRAUDULENT SCHEME**

12. On a date not known to SMBC L&F but by no later than 6 August 2018, Mr Papas and either together with Mr Tesoriero or alone devised a scheme involving FEA and FE and other persons or entities related to one or both of them (including entities that they would later bring into existence) to obtain money dishonestly and fraudulently from SMBC L&F that they were not entitled to receive (**Scheme**).
13. In the period from 6 August 2018 to 21 May 2021, the Scheme operated as follows:
- (a) Mr Papas would create or cause to be created false and fraudulent documents to be provided to SMBC L&F under the 2018 MRASA and, subsequently, the 2020 MRASA including by forging signatures of the counterparties on the fraudulent documents (**Fraudulent Documents**) and falsely signing many of those documents as a witness;
  - (b) the Fraudulent Documents referred to in sub-paragraph (a) purported to record transactions which were a fiction and of which the purported counterparty, Veolia, was unaware and into which Veolia had not entered;
  - (c) in respect of the 2018 MRASA, Mr Papas would submit or cause to be submitted the Fraudulent Documents to Flexirent intending that Flexirent would pass the Fraudulent



Documents to SMBC L&F as part of the Scheme and that SMBC L&F would pay funds in accordance with the Fraudulent Documents to Flexirent;

- (d) in respect of the 2020 MRASA, Mr Papas would submit or cause to be submitted the Fraudulent Documents to SMBC L&F intending that SMBC L&F would pay funds in accordance with the Fraudulent Documents to FEA;
- (e) SMBC L&F did, in reliance upon the Fraudulent Documents and the representations made through them, pay funds to Flexirent (under the 2018 MRASA) and to FEA (under the 2020 MRASA);
- (f) in respect of the 2018 MRASA, Flexirent would then pay the funds received from SMBC L&F to FE and other entities controlled by Mr Papas (**2018 Recipients**);
- (g) the 2018 Recipients and FEA would then disperse the funds received from Flexirent and SMBC L&F to other companies related to Mr Papas or Mr Tesoriero, including the Papas Controlled Entities and the Jointly Owned Entities;
- (h) FEA would make periodic payments to the collections account of SMBC L&F as part of the concealment of the Scheme.

### ***Particulars***

*In the period from 6 August 2018 to 21 May 2021, 19 transactions using the Fraudulent Documents were carried out pursuant to the Scheme. The transactions carried out pursuant to the Scheme are set out in section D below.*

14. The dishonest and fraudulent purpose of Mr Papas and Mr Tesoriero, or Mr Papas, in devising and implementing the Scheme was:
- (a) to benefit themselves and people and entities related to them, to the detriment of SMBC L&F;
  - (b) to spend the funds on properties including the properties acquired by the Jointly Owned Entities and the Papas Controlled Entities;
  - (c) to spend the funds on businesses in Australia and overseas (including in Greece, the United Kingdom, Germany and the United Arab Emirates) for the benefit of themselves and people and entities related to them, to the detriment of SMBC L&F.

## D. THE FRAUDULENT TRANSACTIONS

### (1) The Offer Letters and payments by SMBC L&F under the 2018 MRASA

15. On 6 August 2018, SMBC L&F received an Offer Letter from Flexirent (**First 2018 Offer Letter**) which relied on and attached two underlying Technology Licence Agreements purportedly executed by Veolia Environmental Services (Australia) Pty Ltd (**Veolia**):
- (a) a Technology Licence Agreement – Waste Management commencing 5 July 2018; and
  - (b) a Technology Licence Agreement – Waste Management commencing 5 August 2018.
16. On 8 August 2018, pursuant to the First 2018 Offer Letter and the terms of the 2018 MRASA, SMBC L&F made a payment to Flexirent in the sum of \$14,411,503.49 (**First 2018 Payment**).
17. After receiving the First 2018 Payment, Flexirent transferred a substantial part of the First 2018 Payment to FE.

#### **Particulars**

*On 8 August 2018, Flexirent paid \$7,689,015.40 of the First 2018 Payment to FE.*

*On 17 September 2018, Flexirent paid \$3,844,507.70 to FE.*

*Further particulars will be provided after further investigations, and service of and production pursuant to subpoenas.*

18. On 28 September 2018, SMBC L&F received a second Offer Letter from Flexirent (**Second 2018 Offer Letter**), which relied on and attached an underlying Technology Licence Agreement – Waste Management commencing 1 September 2018 purportedly executed by Veolia.
19. On 2 October 2018, pursuant to the Second 2018 Offer Letter and the terms of the 2018 MRASA, SMBC L&F made a payment to Flexirent in the sum of \$3,829,312.30 (**Second 2018 Payment**).
20. SMBC L&F does not presently know whether and to whom Flexirent transferred the Second 2018 Payment.

#### **Particulars**

*Further particulars will be provided after further investigations, and service of and production pursuant to subpoenas.*

21. On 23 October 2018, SMBC L&F received a third Offer Letter from Flexirent (**Third 2018 Offer Letter**) which relied on and attached an underlying Technology Licence Agreement – Waste Management commencing 1 October 2018 purportedly executed by Veolia.
22. On 24 October 2018, pursuant to the Third 2018 Offer Letter and the terms of the 2018 MRASA, SMBC L&F made a payment to Flexirent in the sum of \$5,728,041 (**Third 2018 Payment**).
23. After receiving the Third 2018 Payment, Flexirent transferred substantially all of the Third 2018 Payment to FE.

**Particulars**

*On 25 October 2015, Flexirent paid \$5,649,073.10 of the Third 2018 Payment to FE.*

*Further particulars will be provided after further investigations, and service of and production pursuant to subpoenas.*

24. On 19 December 2018, SMBC L&F received a fourth Offer Letter from Flexirent (**Fourth 2018 Offer Letter**) which relied on and attached an underlying Technology Licence Agreement – Waste Management commencing 1 December 2018 (Usage Charge: \$119,130 per month) which was purportedly executed by Veolia.
25. On 20 December 2018, pursuant to the Fourth 2018 Offer Letter and the terms of the 2018 MRASA, SMBC L&F made a payment to Flexirent in the sum of \$5,740,857.35 (**Fourth 2018 Payment**).
26. After receiving the Fourth 2018 Payment, Flexirent transferred all of the Fourth 2018 Payment to FE.

**Particulars**

*On 20 December 2020, Flexirent paid \$5,901,264.60, including all of the Fourth 2018 Payment, to FE.*

*Further particulars will be provided after further investigations, and service of and production pursuant to subpoenas.*

27. For each of the four Offer Letters sent to SMBC L&F by Flexirent between 6 August 2018 and 19 December 2018 pursuant to the terms 2018 MRASA (described at paragraphs 15 to 24 above), Mr Papas prepared or caused to be prepared, and signed, false and fraudulent documents that purported to be:

(a) Technology License Agreements executed by Veolia when in fact they were not executed by Veolia and no such transaction existed (**2018 TLAs**); and

(b) the Offer Letters relying on the 2018 TLAs,

(together, the **2018 MRASA Transaction Documents**).

28. Mr Papas forged, or caused to be forged, purported signatures of employees or officers of Veolia on the 2018 TLAs

29. Mr Papas and FEA caused Flexirent to submit the 2018 TLAs to SMBC L&F.

30. By the conduct described in the preceding paragraphs, Mr Papas and FEA represented to SMBC L&F that:

- (a) the transactions set out in the 2018 Transaction Documents were genuine;
- (b) the 2018 TLAs had been executed by and were binding on Veolia;
- (c) the 2018 MRASA Transaction Documents, and the security contemplated by them, were valid, binding and enforceable;
- (d) the 2018 Transaction Documents were complete and accurate and not misleading;
- (e) there was no fraud, dishonesty, misrepresentation or negligence on the part of FEA in connection with the selection and offer of the 2018 MRASA Transaction Documents; and
- (f) the assets to be provided to Veolia to which the 2018 Transaction Documents related had been delivered to and duly accepted by Veolia on or before the payment of any money to Flexirent,

**(2018 Representations)**.

31. Each of the 2018 Representations was false because:

- (a) the transactions set out in the 2018 Transaction Documents were not genuine and were a fiction;
- (b) the 2018 TLAs had not been executed by and were not binding on Veolia, but rather forged by Mr Papas or at Mr Papas' direction;
- (c) the 2018 MRASA Transaction Documents, and the security contemplated by them, were not valid, binding and enforceable;

- (d) there was fraud, dishonesty, misrepresentation and negligence on the part of FEA as the 2018 Transaction Documents were false and fraudulent; and
- (e) the assets represented to be provided to Veolia to which the 2018 Transaction Documents related had not been delivered to and duly accepted by Veolia, but rather did not exist at all.

32. Mr Papas and FEA made each of the 2018 Representations with knowledge that they were false (both wilfully false and without an honest belief in their truth).
33. Mr Papas and FEA made each of the 2018 Representations with the intention that they should be acted upon by SMBC L&F in a manner which would result in damage to it, being the payment away of money in relation to a transaction and an underlying security that did not exist.
34. SMBC L&F relied on the 2018 Transaction Documents and the 2018 Representations and they produced in the mind of SMBC L&F an erroneous belief that the 2018 Transaction Documents and the underlying transactions they documented, were genuine, when in fact they were not.
35. As a consequence of its reliance, SMBC L&F paid away the amount of \$29,709,714.14 to an Australia and New Zealand Bank Account in the name of Flexirent pursuant to the 2018 MRASA Transaction Documents.
36. Flexirent gave no value for the receipt of the amount of \$29,709,714.14.
37. On and from the time that Flexirent received the funds from SMBC L&F, Flexirent held those amounts on trust for SMBC L&F pursuant to the principles in *Black v S Freedman & Company* (1910) 12 CLR 105.
38. In breach of trust, Flexirent transferred at least \$23,083,860.80 of the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents to the 2018 Recipients.
39. On and from the date that Flexirent transferred the funds it received from SMBC L&F to the 2018 Recipients, each of the 2018 Recipients:
  - (a) knew that the amount it was receiving was paid to it in breach of trust (because of the knowledge of Mr Papas who controlled the 2018 Recipients); and
  - (b) knowingly assisted Mr Papas to implement the fraudulent scheme to receive those funds for his and their benefit.

40. Other than FE, the identity of the 2018 Recipients to whom Flexirent paid the funds it received from SMBC L&F as a result of the 2018 Transaction Documents and the 2018 Representations is currently unknown.

***Particulars***

*Further particulars will be provided in due course.*

41. On dates unknown, the 2018 Recipients transferred the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2018 Representations to entities controlled by Mr Papas.

***Particulars***

*Further particulars of SMBC L&F's tracing claim will be provided in due course.*

42. On and from the date that the 2018 Recipients transferred the funds paid by SMBC L&F to entities controlled by Mr Papas, those entities:
- (a) knew that the amount they were receiving were paid to them in breach of trust (because of the knowledge of Mr Papas who controlled the entities); and
  - (b) knowingly assisted Mr Papas to implement the fraudulent scheme to receive those funds for his and its benefit.

43. The identity of the other persons to whom the funds paid to the 2018 Recipients by Flexirent as a result of the 2018 Transaction Documents and the 2018 Representations were dispersed is currently unknown.

***Particulars***

*Further particulars of SMBC L&F's tracing claim will be provided in due course.*

(2) Documents under the 2020 MRASA

44. On 27 July 2020, SMBC L&F received the following from FEA:
- (a) a Master Technology Licence Agreement – Waste Management dated 23 July 2020 (**2020 MTLA Waste**) purportedly executed by Veolia; and
  - (b) a Master Technology Licence Agreement – Health UV-C Disinfection dated 23 July 2020 (**2020 MTLA Health**) purportedly executed by Veolia.

45. In 9 November 2020, SMBC L&F received from FEA a letter purporting to be from Veolia and purporting to have been executed by Veolia referring to the 2020 MTLA Waste and the 2020 MTLA Health, confirming the authorised signatories and providing specimen signatures (**Authorised Officer Certificate**).

(3) *The Offer Letters and payments by SMBC L&F under the 2020 MRASA*

46. On 27 July 2020, SMBC L&F received an Offer Letter from FEA (**First 2020 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 23 July 2020 purportedly executed by Veolia.

47. On 30 July 2020, pursuant to the First 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$8,444,416.05.

48. Also on 27 July 2020, SMBC L&F received a second Offer Letter from FEA (**Second 2020 Offer Letter**) which relied on the 2020 MTLA Health and attached a TLA Schedule dated 23 July 2020 purportedly executed by Veolia.

49. Also on 30 July 2020, pursuant to the Second 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$1,550,450.13.

50. On 21 August 2020, SMBC L&F received a third Offer Letter from FEA (**Third 2020 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 18 August 2020 purportedly executed by Veolia.

51. On 26 August 2020, pursuant to the Third 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$6,576,383.83.

52. Also on 21 August 2020, SMBC L&F received a fourth Offer Letter from FEA (**Fourth 2020 Offer Letter**) which relied on the 2020 MTLA Health and attached a TLA Schedule dated 18 August 2020 purportedly executed by Veolia.

53. On 26 August 2020, pursuant to the Fourth 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$2,479,983.13.

54. On 28 September 2020, SMBC L&F received a fifth Offer Letter from FEA (**Fifth 2020 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 23 September 2020 purportedly executed by Veolia.

55. On 30 September 2020, pursuant to the Fifth 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$3,256,278.09.

56. On 13 November 2020, SMBC L&F received a sixth Offer Letter from FEA (**Sixth 2020 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 6 November 2020 purportedly executed by Veolia.
57. On 17 November 2020, pursuant to the Sixth 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$8,712,386.32.
58. Also on 13 November 2020, SMBC L&F received a seventh Offer Letter from FEA (**Seventh 2020 Offer Letter**) which relied the 2020 MTLA Health and attached a TLA Schedule dated 6 November 2020 purportedly executed by Veolia.
59. On 17 November 2020, pursuant to the Seventh 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$2,478,189.82.
60. On 21 December 2020, SMBC L&F received an eighth Offer Letter from FEA (**Eighth 2020 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 17 December 2020 purportedly executed by Veolia.
61. On 23 December 2020, pursuant to the Eighth 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$9,297,734.49.
62. Also on 21 December 2020, SMBC L&F received a ninth Offer Letter from FEA (**Ninth 2020 Offer Letter**) which relied on the 2020 MTLA Health and attached a TLA Schedule dated 17 December 2020 purportedly executed by Veolia.
63. On 23 December 2020, pursuant to the Eighth 2020 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$1,770,997.06.
64. On 2 February 2021, SMBC L&F received another Offer Letter from FEA (**First 2021 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 25 January 2021 purportedly executed by Veolia.
65. On 5 February 2021, pursuant to the First 2021 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$6,649,113.79.
66. On 8 March 2021, SMBC L&F received another Offer Letter from FEA (**Second 2021 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 1 March 2021 purportedly executed by Veolia.
67. On 11 March 2021, pursuant to the Second 2021 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$10,533,007.84.



68. Also on 8 March 2021, SMBC L&F received another Offer Letter from FEA (**Third 2021 Offer Letter**) which relied on the 2020 MTLA Health and attached a TLA Schedule dated 1 March 2021 purportedly executed by Veolia.
69. On 11 March 2021, pursuant to the Third 2021 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$1,769,324.17.
70. On 19 April 2021, SMBC L&F received another Offer Letter from FEA (**Fourth 2021 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 13 April 2021 purportedly executed by Veolia.
71. On 22 April 2021, pursuant to the Fourth 2021 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$10,018,326.86.
72. Also on 19 April 2021, SMBC L&F received another Offer Letter from FEA (**Fifth 2021 Offer Letter**) which relied the 2020 MTLA Health and attached a TLA Schedule dated 13 April 2021 purportedly executed by Veolia.
73. On 22 April 2021, pursuant to the Fifth 2021 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$1,413,053.28.
74. On 21 May 2021, SMBC L&F received another Offer Letter from FEA (**Sixth 2021 Offer Letter**) which relied on the 2020 MTLA Waste and attached a TLA Schedule dated 18 May 2021 purportedly executed by Veolia.
75. On 26 May 2021, pursuant to the Sixth 2021 Offer Letter and the terms of the 2020 MRASA, SMBC L&F made a payment to FEA in the sum of \$9,044,264.61.
76. In respect of the 2020 MRASA, Mr Papas prepared or caused to be prepared, and signed, false and fraudulent documents, being:
  - (a) the 2020 MTLA Waste and the 2020 MTLA Health (2020 MTLAs), which purported to be Master Technology License Agreements executed by Veolia when in fact they were not executed by Veolia and no such transactions existed;
  - (b) the Authorised Officer Certificate which purported to be from and executed by Veolia when in fact it was not from or executed by Veolia and no such persons were authorised by Veolia as authorised officers in respect of the 2020 MTLA Waste and the 2020 MTLA Health;
  - (c) the Offer Letters relying on the 2020 MTLAs, each such Offer Letter signed by Papas;  
and

- (d) the TLA Schedules annexed to each Offer Letter, which purported to be executed by Veolia when in fact they were not executed by Veolia and no such transactions existed,

(together, the **2020 Transaction Documents**).

77. Mr Papas forged, or caused to be forged, purported signatures of employees or officers of Veolia on the 2020 MTLAs and the TLA Schedules.

78. Papas and FEA submitted the 2020 Transaction Documents to SMBC L&F.

79. By the conduct described in the preceding paragraphs, Mr Papas and FEA represented to SMBC L&F that:

- (a) the transactions set out in the 2020 Transaction Documents were genuine;
- (b) the 2020 MTLAs, the Authorised Officer Certificate and the TLA Schedules had been executed by and were binding on Veolia;
- (c) the 2020 Transaction Documents, and the security contemplated by them, were valid, binding and enforceable;
- (d) the 2020 Transaction Documents were complete and accurate and not misleading;
- (e) there was no fraud, dishonesty, misrepresentation or negligence on the part of FEA in connection with the selection and offer of the 2020 Transaction Documents; and
- (f) the assets to be provided to Veolia to which the 2020 Transaction Documents related had been delivered to and duly accepted by Veolia on or before the payment of any money to FEA,

**(2020 Representations)**.

80. Each of the 2020 Representations was false because:

- (a) the transactions set out in the 2020 Transaction Documents were not genuine and were a fiction;
- (b) the 2020 MTLAs, the Authorised Officer Certificate and the TLA Schedules had not been executed by and were not binding on Veolia, but rather forged by Mr Papas or at Mr Papas' direction;
- (c) the 2020 Transaction Documents, and the security contemplated by them, were not valid, binding and enforceable;

- (d) there was fraud, dishonesty, misrepresentation and negligence on the part of FEA as the 2020 Transaction Documents were false and fraudulent; and
- (e) the assets represented to be provided to Veolia to which the 2020 Transaction Documents related had not been delivered to and duly accepted by Veolia, but rather did not exist at all.

81. Mr Papas and FEA made each of the 2020 Representations with knowledge that they were false (both wilfully false and without an honest belief in their truth).
82. Mr Papas and FEA made each of the 2020 Representations with the intention that they should be acted upon by SMBC L&F in a manner which would result in damage to it, being the payment away of money in relation to a transaction and an underlying security that did not exist.
83. SMBC L&F relied on the 2020 Transaction Documents and the 2020 Representations and they produced in the mind of SMBC L&F an erroneous belief that the 2020 Transaction Documents and the underlying transactions they documented, were genuine, when in fact they were not.
84. As a consequence of its reliance, SMBC L&F paid away the amount of \$83,993,909.47 to a National Australia Bank Account in the name of FEA pursuant to the 2020 Transaction Documents.
85. On dates unknown, FEA transferred the funds paid by SMBC L&F pursuant to the 2020 Transaction Documents to entities controlled by Mr Papas.

### ***Particulars***

*Particulars of SMBC L&F's tracing claim will be provided in due course.*

86. On and from the time that FEA received the amount of \$83,993,909.47 from SMBC L&F, FEA held that amount on trust for SMBC L&F pursuant to the principles in *Black v S Freedman & Company* (1910) 12 CLR 105.
87. On and from the date that FEA transferred the funds paid by SMBC L&F to entities controlled by Mr Papas, those entities:
- (a) knew that the amount they were receiving was paid to them in breach of trust (because of the knowledge of Mr Papas who controlled the entities); and
  - (b) knowingly assisted Mr Papas to implement the fraudulent scheme to receive those funds for his and its benefit.

88. The identity of the other persons to whom the funds paid to FEA by SMBC L&F as a result of the 2020 Transaction Documents and the 2020 Representations were dispersed is currently unknown.

***Particulars***

*Further particulars of SMBC L&F's tracing claim will be provided in due course.*

**E. THE CLAIM AGAINST MR PAPAS**

(1) *Funds held on trust*

89. Mr Papas:

- (a) held on trust for SMBC L&F all funds, or the traceable proceeds of those funds, that he has received from the payments made pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents and any property that he converted those funds into; and
- (b) holds on trust such of those funds or the traceable proceeds of those funds which he holds or of which he has the benefit.

***Particulars***

*Particulars of SMBC L&F's tracing claim will be provided in due course.*

90. On and from the dates on which he received any amounts paid pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, Mr Papas was obliged to account to SMBC L&F for each of those amounts.

91. Mr Papas holds on trust or is liable to account for those amounts or the traceable proceeds of those amounts and is liable to account to SMBC L&F for the balance of any funds that he has received and paid away.

***Particulars***

*Particulars of SMBC L&F's tracing claim will be provided in due course.*

92. Alternatively, Mr Papas is liable to pay those amounts or the traceable proceeds of those amounts to SMBC L&F as money had and received to SMBC L&F's use.

(2) Tort of unlawful means conspiracy

93. On a date unknown to SMBC L&F but by no later than 6 August 2018, an agreement was reached between Mr Papas, Mr Tesoriero and diverse others (known and unknown) to devise and implement the Scheme (**Scheme Agreement**).
94. The Scheme Agreement was carried into effect by the 2018 Transaction Documents and the 2020 Transaction Documents as set out above.
95. In furtherance of the Scheme Agreement, Mr Papas:
- (a) signed the Flexirent Agency Agreement;
  - (b) signed the Agent Side Letter;
  - (c) signed the 2020 MRASA;
  - (d) acted as a director of FEA which had as its predominant corporate purpose to carry into effect the Scheme;
  - (e) created or caused to be created false and fraudulent documents and caused these to be submitted to Flexirent under the 2018 MRASA and to SMBC L&F under the 2020 MRASA;
  - (f) made the 2018 Transaction Documents and the 2020 Transaction Documents;
  - (g) procured FEA to pay the amounts received by it from SMBC L&F away to third parties;
  - (h) received himself or in the Jointly Owned Entities money derived from the 2018 Transaction Documents and the 2020 Transaction Documents; and
  - (i) managed with Mr Tesoriero the Jointly Owned Entities
96. As a consequence of the acts taken by Mr Papas in furtherance of the Scheme Agreement, SMBC L&F has suffered loss and damage.

**Particulars**

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.*

(3) Knowing receipt

97. In breach of trust, Mr Papas caused the 2018 Recipients and FEA to pay away amounts currently unknown from the funds transferred to them by Flexirent or SMBC L&F to FGFS and other companies owned or controlled by him, either alone or with Mr Tesoriero.
98. Of those amounts, Mr Papas caused FGFS to pay and FGFS paid Mr Papas and Mr Papas received amounts directly and various other amounts through the receipt by companies owned or controlled by him, either alone or with Mr Tesoriero.
99. Mr Papas knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) that:
- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by the 2018 Recipients and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;
  - (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;
  - (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because he was aware of the following facts, matters and circumstances:

- (d) the amounts that the 2018 Recipients received from Flexirent and FEA received from SMBC L&F were obtained by them pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;
- (e) the 2018 Recipients and FEA had no legitimate business which would entitle them to use themselves the amounts that they received from SMBC L&F;
- (f) any amounts that the 2018 Recipients and FEA received pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which the 2018 Receipts or FEA were entitled themselves to use and pay away to their related parties;
- (g) Mr Papas, Mr Tesoriero, the Papas Controlled Entities and the Jointly Owned Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant

to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

100. Mr Papas holds on trust or is liable to account to SMBC L&F for the funds (and the traceable proceeds of the funds) that he has received, or received and dissipated, or pay equitable compensation.

(4) Knowing assistance

101. From 6 August 2018 to at least 21 May 2021, Mr Papas was aware of the Scheme and its purpose because he had devised it and set about implementing and giving effect to it.

102. Mr Papas knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) that:

- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by the 2018 Recipients and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;
- (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;
- (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because he was aware of the following facts, matters and circumstances:

- (d) the amounts that the 2018 Recipients received from Flexirent and FEA received from SMBC L&F were obtained by them pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;
- (e) the 2018 Recipients and FEA had no legitimate business which would entitle them to use themselves the amounts that they received from SMBC L&F;
- (f) any amounts that the 2018 Recipients and FEA received pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which the 2018 Receipts or FEA were entitled themselves to use and pay away to their related parties;

- (g) Mr Papas, Mr Tesoriero, the Papas Controlled Entities and the Jointly Owned Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

103. With the knowledge identified in paragraphs 101 and 102 and through his conduct in:

- (a) signing the Flexirent Agency Agreement;
- (b) signing the Agent Side Letter;
- (c) signing the 2020 MRASA;
- (d) acting as a director of FEA which had as its predominant corporate purpose to carry into effect the Scheme;
- (e) creating or causing to be created false and fraudulent documents and causing these to be submitted to Flexirent under the 2018 MRASA and to SMBC L&F under the 2020 MRASA;
- (f) making the 2018 Transaction Documents and the 2020 Transaction Documents;
- (g) receiving himself or in the Jointly Owned Entities money derived pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents;
- (h) managing with Mr Tesoriero the Jointly Owned Entities, which were entities created to hold property that was financed in part through amounts improperly obtained pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents;
- (i) procuring the 2018 Recipients and FEA to pay the amounts received by them from Flexirent and SMBC L&F away to third parties,

Mr Papas knowingly assisted the breaches of the obligations as trustees owed to SMBC L&F by FEA.

104. By reason of the knowing assistance of Mr Papas, SMBC L&F has suffered loss and damage.

#### ***Particulars***

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but*



*which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00)  
which leaves an outstanding loss of \$88,007,623.61.*

105. Mr Papas is liable to pay equitable compensation to SMBC L&F with respect to the losses occasioned by reason of the Scheme.

(5) Tort of deceit

106. Mr Papas, in relation to the 2018 Transaction Documents and the 2020 Transaction Documents, made the 2018 Representations and the 2020 Representations in the circumstances set out in Section C.

107. Each of the 2018 Representations and the 2020 Representations were false because:

- (a) the 2018 Transaction Documents and the 2020 Transaction Documents had not been executed by and were not binding on the purported customer, but rather forged by Mr Papas or at Mr Papas' direction and often falsely witnessed by Mr Papas;
- (b) the 2018 Transaction Documents and the 2020 Transaction Documents and the security contemplated by them, were not valid, binding and enforceable;
- (c) there was fraud, dishonesty, misrepresentations and negligence on the part of FEA as each of the 2018 Transaction Documents and the 2020 Transaction Documents were false and fraudulent;
- (d) the assets represented to be provided to Veolia to which each of the 2018 Transaction Documents and the 2020 Transaction Documents related had not been delivered to and duly accepted by Veolia, but rather did not exist at all.

108. Mr Papas made each of the 2018 Representations and the 2020 Representations with knowledge that they were false (both wilfully false and without an honest belief in their truth).

109. Mr Papas made each of the 2018 Representations and the 2020 Representations with the intention that they should be acted upon by SMBC L&F in a manner which would result in damage to it, being the payment away of money in relation to a transaction and an underlying security that did not exist.

110. SMBC L&F relied on the 2018 Transaction Documents and the 2020 Transaction Documents and the 2018 Representations and the 2020 Representations and they produced in the mind of SMBC L&F an erroneous belief that the 2018 Transaction Documents and the 2020 Transaction Documents, and the underlying transactions they documented, were genuine, when in fact they were not.

111. As a consequence of its reliance, SMBC L&F paid away the amount of \$113,703,623.61 to Flexirent or FEA.
112. By reason of Mr Papas' tortious acts, SMBC L&F has suffered loss and damage.

***Particulars***

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.*

*(6) Misleading and deceptive conduct or false or misleading conduct*

113. From 6 August 2018 to at least 21 May 2021, Mr Papas engaged in the following conduct:
- (a) preparing or causing to be prepared the 2018 Transaction Documents and the 2020 Transaction Documents;
  - (b) providing to SMBC L&F (either directly or through Flexirent) the 2018 Transaction Documents and the 2020 Transaction Documents;
  - (c) making each of the 2018 Representations and the 2020 Representations to SMBC L&F.
114. The conduct identified in paragraph 113 occurred in circumstances where:
- (a) the transactions set out in the 2018 Transaction Documents and the 2020 Transaction Documents were not genuine and were a fiction;
  - (b) the 2018 Transaction Documents and the 2020 Transaction Documents had not been executed by and were not binding on Veolia, but rather forged by Mr Papas or at Mr Papas' direction;
  - (c) the 2018 Transaction Documents and the 2020 Transaction Documents, and the security contemplated by them, were not valid, binding and enforceable;
  - (d) there was fraud, dishonesty, misrepresentation and negligence on the part of FEA as each of the 2018 Transaction Documents and the 2020 Transaction Documents were false and fraudulent;

- (e) the assets represented to be provided to Veolia to which each of the 2018 Transaction Documents and the 2020 Transaction Documents related had not been delivered to and duly accepted by Veolia, but rather did not exist at all.

115. By reason of engaging in the conduct identified in paragraph 113 in the circumstances identified in paragraph 114, Mr Papas:

- (a) engaged in conduct in trade or commerce that was misleading or deceptive or was likely to mislead or deceive on contravention of section 18 of the ACL;
- (b) engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of section 12DA(1) of the ASIC Act;
- (c) engaged in conduct in relation to a financial product or a financial service that was misleading or deceptive or was likely to mislead or deceive in contravention of section 1041H(1) of the Corporations Act;
- (d) made a false or misleading statement in relation to each of the 2018 Transaction Documents and the 2020 Transaction Documents that the goods or services were of a particular standard, quality, value or grade and the purported customer had agreed to acquire services from FEA (in circumstances in which the 2018 Transaction Documents and the 2020 Transaction Documents were not genuine and were in fact a fiction) in trade or commerce in connection with the supply or possible supply of goods or services in contravention of section 29(1)(a) or (b) and (d) of the ACL;
- (e) made false and misleading representation in relation to each of the 2018 Transaction Documents and the 2020 Transaction Documents that the services were of a particular standard, quality, value or grade and the purported customer had agreed to acquire services from FEA (in circumstances in which the 2018 Transaction Documents and the 2020 Transaction Documents were not genuine and were a fiction) in trade or commerce in connection with the supply or possible supply of financial services in contravention of section 12DB(1)(a) and (b) of the ASIC Act.

### ***Particulars***

*The matters set out in Section C with respect to the 2018 Transaction Documents and the 2020 Transaction Documents are repeated.*

116. By reason of the contraventions by Mr Papas of sections 18 and 29(1)(a) or (b) and (d) of the ACL, section 12DA(1) and 12DB(1)(a) and (b) of the ASIC Act and section 1041H of the Corporations Act, and in reliance on the conduct identified in paragraph 113 (including each of

the 2018 Representations and the 2020 Representations), SMBC L&F paid away the amounts identified in Section C which totalled \$113,703,623.61.

117. By reason of the contraventions referred to in paragraph 115, SMBC L&F has suffered loss and damage.

***Particulars***

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.*

118. Further and in the alternative, Mr Papas by entering into the Scheme Agreement and engaging in the conduct identified in paragraph 113 in the circumstances identified in paragraph 114;
- (a) aided, abetted and procured;
  - (b) was knowingly concerned in or a party to;
  - (c) conspired with others (by the Scheme Agreement) to give effect to,
- FEA's misleading and deceptive conduct, and false and misleading conduct, and was involved in the contraventions pleaded in paragraph 138.
119. SMBC L&F is entitled to recover from Mr Papas the loss and damage referred to in paragraph 117 by reason of sections 236 and 237 of the ACL and/or sections 12GF or 12GM of the ASIC Act and/or section 1041I of the Corporations Act.

**F. THE CLAIM AGAINST FEA**

(1) *Funds held on trust*

120. FEA:

- (a) held on trust for SMBC L&F all funds, or the traceable proceeds of those funds, that it has received from the payments made pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents and any property that it converted those funds into; and
- (b) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit.

**Particulars**

*Particulars of SMBC L&F's tracing claim will be provided in due course.*

121. On and from the dates on which it received any amounts paid pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, FEA was obliged to account to SMBC L&F for each of those amounts.
122. FEA holds on trust or is liable to account for those amounts or the traceable proceeds of those amounts and is liable to account to SMBC L&F for the balance of any funds that it has received and paid away.

**Particulars**

*Particulars of SMBC L&F's tracing claim will be provided in due course.*

123. Alternatively, FEA is liable to pay those amounts or the traceable proceeds of those amounts to SMBC L&F as money had and received to SMBC L&F's use.

(2) Tort of unlawful means conspiracy

124. On a date unknown to SMBC L&F but by no later than 6 August 2018, the Scheme Agreement was reached between Mr Papas, Mr Tesoriero and diverse others (known and unknown) to devise and implement the Scheme.
125. FEA was also a party to the Scheme Agreement by reason of the knowledge and control of it by Mr Papas as a co-conspirators and the conduct pleaded in paragraph 127.
126. The Scheme Agreement was carried into effect by the 2018 Transaction Documents and the 2020 Transaction Documents as set out above.
127. In furtherance of the Scheme Agreement, FEA:
  - (a) executed the Flexirent Agency Agreement;
  - (b) executed the Agent Side Letter;
  - (c) executed the 2019 MRASA;
  - (d) executed the 2020 MRASA;
  - (e) submitted fraudulent documents to Flexirent under the 2018 MRASA and to SMBC L&F under the 2020 MRASA;

- (f) received money from SMBC L&F under the 2020 MRASA pursuant to the Scheme Agreement; and
- (g) in accordance with the purpose of the Scheme, paid some or all of the money received from SMBC L&F away for its own purposes or to the benefit of the other conspirators.

128. As a consequence of the acts taken by FEA in furtherance of the Scheme Agreement, SMBC L&F has suffered loss and damage.

### **Particulars**

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.*

### **(3) Tort of deceit**

129. FEA, in relation to the 2018 Transaction Documents and the 2020 Transaction Documents, made the 2018 Representations and the 2020 Representations in the circumstances set out in Section C.

130. Each of the 2018 Representations and the 2020 Representations were false because:

- (a) the 2018 Transaction Documents and the 2020 Transaction Documents had not been executed by and were not binding on the purported customer, but rather forged by Mr Papas or at Mr Papas' direction and often falsely witnessed by Mr Papas;
- (b) the 2018 Transaction Documents and the 2020 Transaction Documents and the security contemplated by them, were not valid, binding and enforceable;
- (c) there was fraud, dishonesty, misrepresentations and negligence on the part of FEA as each of the 2018 Transaction Documents and the 2020 Transaction Documents were false and fraudulent;
- (d) the assets represented to be provided to Veolia to which each of the 2018 Transaction Documents and the 2020 Transaction Documents related had not been delivered to and duly accepted by Veolia, but rather did not exist at all.

131. FEA made each of the 2018 Representations and the 2020 Representations with knowledge that they were false (both wilfully false and without an honest belief in their truth), because Mr Papas had this knowledge and was the sole director and secretary of FEA.
132. FEA made each of the 2018 Representations and the 2020 Representations with the intention that they should be acted upon by SMBC L&F in a manner which would result in damage to it, being the payment away of money in relation to a transaction and an underlying security that did not exist.
133. SMBC L&F relied on the 2018 Transaction Documents and the 2020 Transaction Documents and the 2018 Representations and the 2020 Representations and they produced in the mind of SMBC L&F an erroneous belief that the 2018 Transaction Documents and the 2020 Transaction Documents, and the underlying transactions they documented, were genuine, when in fact they were not.
134. As a consequence of its reliance, SMBC L&F paid away the amount of \$113,703,623.61 to Flexirent or FEA.
135. By reason of FEA's tortious acts, SMBC L&F has suffered loss and damage.

### ***Particulars***

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.*

#### **(4) Misleading and deceptive conduct or false or misleading conduct**

136. From 6 August 2018 to at least 21 May 2021, FEA engaged in the following conduct:
  - (a) providing to SMBC L&F (either directly or through Flexirent) the 2018 Transaction Documents and the 2020 Transaction Documents; and
  - (b) making each of the 2018 Representations and the 2020 Representations to SMBC L&F.
137. The conduct identified in paragraph 136 occurred in circumstances where:
  - (a) the transactions set out in the 2018 Transaction Documents and the 2020 Transaction Documents were not genuine and were a fiction;

- (b) the 2018 Transaction Documents and the 2020 Transaction Documents had not been executed by and were not binding on Veolia, but rather forged by Mr Papas or at Mr Papas' direction;
- (c) the 2018 Transaction Documents and the 2020 Transaction Documents, and the security contemplated by them, were not valid, binding and enforceable;
- (d) there was fraud, dishonesty, misrepresentation and negligence on the part of FEA as each of the 2018 Transaction Documents and the 2020 Transaction Documents were false and fraudulent;
- (e) the assets represented to be provided to Veolia to which each of the 2018 Transaction Documents and the 2020 Transaction Documents related had not been delivered to and duly accepted by Veolia, but rather did not exist at all.

138. By reason of engaging in the conduct identified in paragraph 136 in the circumstances identified in paragraph 137, FEA:

- (a) engaged in conduct in trade or commerce that was misleading or deceptive or was likely to mislead or deceive in contravention of section 18 of the ACL;
- (b) engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of section 12DA(1) of the ASIC Act;
- (c) engaged in conduct in relation to a financial product or a financial service that was misleading or deceptive or was likely to mislead or deceive in contravention of section 1041H(1) of the Corporations Act;
- (d) made a false or misleading statement in relation to each of the 2018 Transaction Documents and the 2020 Transaction Documents that the goods or services were of a particular standard, quality, value or grade and the purported customer had agreed to acquire services from FEA (in circumstances in which the 2018 Transaction Documents and the 2020 Transaction Documents were not genuine and were in fact a fiction) in trade or commerce in connection with the supply or possible supply of goods or services in contravention of section 29(1)(a) or (b) and (d) of the ACL;
- (e) made false and misleading representation in relation to each of the 2018 Transaction Documents and the 2020 Transaction Documents that the services were of a particular standard, quality, value or grade and the purported customer had agreed to acquire services from FEA (in circumstances in which the 2018 Transaction Documents and the 2020 Transaction Documents were not genuine and were a fiction) in trade or commerce



in connection with the supply or possible supply of financial services in contravention of section 12DB(1)(a) and (b) of the ASIC Act.

***Particulars***

*The matters set out in Section C with respect to the 2018 Transaction Documents and the 2020 Transaction Documents are repeated.*

139. By reason of the contraventions by FEA of sections 18 and 29(1)(a) or (b) and (d) of the ACL, section 12DA(1) and 12DB(1)(a) and (b) of the ASIC Act and section 1041H of the Corporations Act, and in reliance on the conduct identified in paragraph 136 (including each of the 2018 Representations and the 2020 Representations), SMBC L&F paid away the amounts identified in Section C which totalled \$113,703,623.61.
140. By reason of the contraventions referred to in paragraph 138, SMBC L&F has suffered loss and damage.

***Particulars***

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA and the amount that it advanced to FEA pursuant to the 2020 MRASA (totalling \$113,703,623.61) less the amounts it has received purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$25,696,000.00) which leaves an outstanding loss of \$88,007,623.61.*

141. SMBC L&F is entitled to recover from FEA the loss and damage referred to in paragraph 140 by reason of sections 236 and 237 of the ACL and/or sections 12GF or 12GM of the ASIC Act and/or section 1041I of the Corporations Act.

(5) Contract

142. Pursuant to the 2020 MRASA, FEA represented and warranted to SMBC L&F that, on the date of each Offer Letter and on the relevant settlement date for each Offer Letter (being each of the dates on which FEA received payment from SMBC L&F in respect of the Offer Letters set out in Section D) that:
- (a) there was no fraud, dishonesty, material misrepresentation or negligence on the part of FEA in connection with the selection and offer to SMBC L&F of each receivable (cl 6.2(b));
  - (b) each receivable was a valid and binding obligation of the lessee (cl 6.2(f));

- (c) FEA had no reason to believe that any payments due to SMBC L&F under the receivable terms on or after the relevant settlement date would not be paid by the lessee in full in accordance with the receivable terms (cl 6.2(k));
- (d) all information relating to the related assets which is known to FEA which was material to be known by a prudent purchaser for value of the related assets has been disclosed to SMBC L&F in writing prior to FEA delivering the Offer Letter (cl 6.3(a));
- (e) FEA owned the related assets (cl 6.3(b)); and
- (f) the related assets existed, had been delivered to the lessee and were acceptable to the lessee (cl 6.3(c)).

143. On the date of each Offer Letter and on date on which FEA received each of the payments identified in Section D from SMBC L&F, FEA breached each of clauses 6.2 and 6.3 and remained in breach of those clauses at all times thereafter because:

- (a) there was fraud, dishonesty and material misrepresentation on the part of FEA in connection with the selection and offer to SMBC L&F of each receivable;
- (b) each receivable was not a valid and binding obligation of the lessee;
- (c) FEA had reason to believe to believe, and in fact knew, that the payments purportedly due to SMBC L&F under the receivable terms on or after the relevant settlement date would not be paid by the lessee, because the leases did not exist;
- (d) information relating to the related assets which is known to FEA which was material to be known by a prudent purchaser for value of the related assets, being the fact that the related assets did not exist, had not been disclosed to SMBC L&F in writing prior to FEA delivering the Offer Letter;
- (e) FEA did not own the related assets; and
- (f) the related assets did not exist, had not been delivered to the lessee and were not acceptable to the lessee.

144. As a consequence of the breaches of the 2020 MRASA identified in paragraph 143, SMBC L&F has suffered loss and damage.

***Particulars***

*SMBC L&F's loss and damage is the amounts payable to SMBC L&F under the 2020 MRASA and the Offer Letters, less the amounts repaid by FEA, plus interest costs, legal fees, termination costs, break costs, any other recovery costs and SMBC L&F's financing costs.*

## **G. THE CLAIM AGAINST FE**

### **(1) Funds held on trust**

145. FE:

- (a) held on trust for SMBC L&F all funds, or the traceable proceeds of those funds, that it has received from the payments made pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents and any property that it converted those funds into; and
- (b) holds on trust such of those funds or the traceable proceeds of those funds which it holds or of which it has the benefit.

#### ***Particulars***

*Particulars of SMBC L&F's tracing claim will be provided in due course.*

146. On and from the dates on which it received any amounts paid pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, FE was obliged to account to SMBC L&F for each of those amounts.

147. FE holds on trust or is liable to account for those amounts or the traceable proceeds of those amounts and is liable to account to SMBC L&F for the balance of any funds that it has received and paid away.

#### ***Particulars***

*Particulars of SMBC L&F's tracing claim will be provided in due course.*

148. Alternatively, FE is liable to pay those amounts or the traceable proceeds of those amounts to SMBC L&F as money had and received to SMBC L&F's use.

### **(2) Tort of unlawful means conspiracy**

149. On a date unknown to SMBC L&F but by no later than 6 August 2018, the Scheme Agreement was reached between Mr Papas, Mr Tesoriero and diverse others (known and unknown) to devise and implement the Scheme.

150. FE was also a party to the Scheme Agreement by reason of the knowledge and control of it by Mr Papas as a co-conspirators and the conduct pleaded in paragraph 152.
151. The Scheme Agreement was carried into effect by the 2018 Transaction Documents and the 2020 Transaction Documents as set out above.
152. In furtherance of the Scheme Agreement, FE:
- (a) received money from Flexirent under the 2018 MRASA pursuant to the Scheme Agreement; and
  - (b) in accordance with the purpose of the Scheme, paid some or all of the money received from SMBC L&F away for its own purposes or to the benefit of the other conspirators.
153. As a consequence of the acts taken by FE in furtherance of the Scheme Agreement, SMBC L&F has suffered loss and damage.

### **Particulars**

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA (totalling \$29,709,714.14) less the amounts it has received in respect of the 2018 MRASA purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$18,379,800.00) which leaves an outstanding loss of \$11,329,914.14.*

#### **(3) Knowing receipt**

154. In breach of trust, Flexirent transferred at least \$23,083,860.80 of the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents to FE.
155. As the sole director and secretary of FE, the knowledge of Mr Papas was the knowledge of FE.
156. FE knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) that:
- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by the 2018 Recipients and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;
  - (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;

- (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because it was aware of the following facts, matters and circumstances:

- (d) the amounts that the 2018 Recipients received from Flexirent and FEA received from SMBC L&F were obtained by them pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;
- (e) the 2018 Recipients and FEA had no legitimate business which would entitle them to use themselves the amounts that they received from SMBC L&F;
- (f) any amounts that the 2018 Recipients and FEA received pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which the 2018 Recipients or FEA were entitled themselves to use and pay away to their related parties;
- (g) Mr Papas, Mr Tesoriero, the Papas Controlled Entities and the Jointly Owned Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

157. FE holds on trust or is liable to account to SMBC L&F for the funds (and the traceable proceeds of the funds) that it has received, or received and dissipated, or pay equitable compensation.

(4) Knowing assistance

158. From 6 August 2018 to at least 21 May 2021, FEA was aware of the Scheme and its purpose because its sole director and secretary had devised it and set about implementing and giving effect to it.

159. FE knew (or, in the alternative, ought reasonably to have known or, in the further alternative, knew circumstances which would have disclosed to an honest and reasonable person in his position) that:

- (a) the amounts paid in relation to the 2018 Transaction Documents were dishonestly obtained by the 2018 Recipients and paid out by Flexirent in breach of its obligations to SMBC L&F as trustee set out at paragraph 37;

- (b) the amounts paid in relation to the 2020 Transaction Documents were dishonestly obtained by FEA and paid out by FEA in breach of its obligations to SMBC L&F as trustee set out at paragraph 86;
- (c) the amounts remained the property of SMBC L&F and were not permitted to be dispersed to anyone other than SMBC L&F;

because it was aware of the following facts, matters and circumstances:

- (d) the amounts that the 2018 Recipients received from Flexirent and FEA received from SMBC L&F were obtained by them pursuant to the Scheme and pursuant to the false and fraudulent 2018 Transaction Documents and the 2020 Transaction Documents;
- (e) the 2018 Recipients and FEA had no legitimate business which would entitle them to use themselves the amounts that they received from SMBC L&F;
- (f) any amounts that the 2018 Recipients and FEA received pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents were to finance the acquisition of assets for Veolia and were not amounts to which the 2018 Recipients or FEA were entitled themselves to use and pay away to their related parties;
- (g) Mr Papas, Mr Tesoriero, the Papas Controlled Entities and the Jointly Owned Entities were receiving substantial payments traceable to the funds paid by SMBC L&F pursuant to the 2018 Transaction Documents and the 2020 Transaction Documents, which they had no legitimate basis to receive.

160. FE holds on trust or is liable to account to SMBC L&F for the funds (and the traceable proceeds of the funds) that it has received, or received and dissipated, or pay equitable compensation.

161. With the knowledge identified in paragraphs 158 and 159 and through its conduct in:

- (a) receiving money from Flexirent under the 2018 MRASA pursuant to the Scheme Agreement; and
- (b) in accordance with the purpose of the Scheme, paying some or all of the money received from SMBC L&F away for its own purposes or to the benefit of the other conspirators,

FE knowingly assisted the breaches of the obligations as trustee owed to Flexirent.

162. By reason of the knowing assistance of FE, SMBC L&F has suffered loss and damage.

**Particulars**

*SMBC L&F's loss and damage is the amount that it advanced to Flexirent pursuant to the 2018 MRASA (totalling \$29,709,714.14) less the amounts it has received in respect of the 2018 MRASA purportedly as payments from Veolia but which was in fact paid by FEA as part of the concealment of the Scheme (\$18,379,800.00) which leaves an outstanding loss of \$11,329,914.14.*

163. FEA is liable to pay equitable compensation to SMBC L&F with respect to the losses occasioned by reason of the Scheme.

Date: 6 August 2021



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Signed by Maria Yiasemides  
Lawyer for the Applicant

This pleading was prepared by Michael Izzo SC and Emma Beechey of Counsel

**Schedule**

First Respondent

**BASILE PAPADIMITRIOU**

Second Respondent

**FORUM ENVIRO (AUST) PTY LTD (IN  
PROVISIONAL LIQUIDATION) (ACN 607 484 364)**

Third Respondent

**FORUM ENVIRO PTY LTD (IN PROVISIONAL  
LIQUIDATION) (ACN 168 709 840)**



**Certificate of lawyer**

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

Date: 6 August 2021

A handwritten signature in black ink, appearing to read 'Maria Yiasemides', with a horizontal line underneath the signature.

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Signed by Maria Yiasemides  
Lawyer for the Applicant