



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD256/2022

SALVATORE ALGERI, JASON TRACY, GLEN KANEVSKY AND DAVID ORR IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF THE SECOND TO THIRTEENTH PLAINTIFFS NAMED IN THE SCHEDULE and others
named in the schedule
First Plaintiff

ORDER

JUDGE: JUSTICE BANKS-SMITH

DATE OF ORDER: 13 December 2022

WHERE MADE: Perth

THE COURT ORDERS THAT:

1. The originating process filed on 12 December 2022 be made returnable at 10.15 am on 13 December 2022.

Limitation of Administrators' liability

2. Pursuant to s 447A(1) of the *Corporations Act 2001* (Cth) and s 90-15 of the *Insolvency Practice Schedule (Corporations)* (Schedule 2 to the *Corporations Act*) (**IPS**), Part 5.3A of the *Corporations Act* is to operate in relation to the plaintiffs as if s 443A(1) of the *Corporations Act* provides that:

(a) the liabilities of the first plaintiffs in their capacities as administrators of each of the second to thirteenth plaintiffs (together the **Clough Companies** and each a **Clough Company**) incurred with respect to any obligations arising out of, or in connection with, any purchase orders or other agreements:

(i) which the first plaintiffs cause any of the Clough Companies to issue or enter into with:

A. a third party in connection with or relating to any of the Clough Companies' projects referred to in para 25 of the affidavit of



David Michael Orr filed 10 December 2022 (**First Orr Affidavit**);

B. PayPower Solutions Pty Ltd (**PayPower**) in respect of third party payroll services as described in paras 41-44 of the First Orr Affidavit;

(ii) that contain within their terms:

A. a limited recourse provision substantially the same as the limited recourse provision referred to in para 39 of the First Orr Affidavit;

B. notice of these orders; and

(iii) where the limited recourse provision referred to in para 39 of the First Orr Affidavit has been accepted by the third party or PayPower (as the case may be) as forming part of the terms of the purchase order or other agreement,

(together, the **Applicable Agreements** and each, an **Applicable Agreement**) are in the nature of debts incurred by the first plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Clough Companies; and

(b) notwithstanding that the liabilities in paragraph (a) of this order are debts incurred by the first plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Clough Companies, the first plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular company are insufficient to satisfy the debt and liabilities incurred by the first plaintiffs arising out of, or in connection with, the Applicable Agreements.

3. Pursuant to s 447A(1) of the *Corporations Act* and s 90-15 of the IPS, the first plaintiffs are to provide notice, in the Applicable Agreement or otherwise, to any counterparty to an Applicable Agreement of order 2 above, prior to that counterparty entering into an Applicable Agreement.

4. Pursuant to s 447A(1) of the *Corporations Act* and s 90-15 of the IPS, the first plaintiffs are to:



- (a) keep a schedule noting each Applicable Agreement entered into by the first plaintiffs on behalf of any of the Clough Companies; and
- (b) provide an update to the committee of inspection formed for the second to thirteenth plaintiffs (**Committee**), at each meeting of the Committee, as to the nature of the Applicable Agreements that the first plaintiffs have entered into or proposed to be entered into together with total estimated debts that may be incurred in respect of each Applicable Agreement, on behalf of any of the Clough Companies.

Property leased, used or occupied

5. Pursuant to s 443B(8) and s 447A(1) of the *Corporations Act* and s 90-15 of the IPS, Part 5.3A of the *Corporations Act* is to operate in relation to each of the second to thirteenth plaintiffs as if:
 - (a) the first plaintiffs' personal liability under s 443A(1)(c) and s 443B(2) of the *Corporations Act* begins on 31 January 2023, such that the first plaintiffs are not personally liable for any liability with respect to any property leased, used or occupied by any of the second to thirteenth plaintiffs (including the amounts pursuant to any leases entered into by any of the second to thirteenth plaintiffs), from any lessors, in the period from 5 December 2022 to 31 January 2023; and
 - (b) the words 'within five business days after the beginning of the administration' in s 443B(3) of the *Corporations Act* instead read 'by 31 January 2023'.

Meetings of creditors and the Halo Platform

6. Pursuant to s 90-15 of the IPS, to the extent not permitted specifically by s 75-30, s 75-35 and s 75-75 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) (**IPR**), the first plaintiffs be permitted to convene and hold meetings of creditors during the administration of the second to thirteenth plaintiffs using the Deloitte Halo platform described in the First Orr Affidavit (**Halo Platform**).
7. Pursuant to s 90-15 of the IPS, the first plaintiffs are justified in requiring that any creditors of the Clough Companies who intend to participate in the first meetings of creditors of the Clough Companies convened pursuant to s 436E of the *Corporations*



Act (First Meetings) must register with the Halo Platform by no later than 5.00 pm (AEDT) on Wednesday, 14 December 2022.

8. Pursuant to s 90-15 of the IPS, the first plaintiffs are justified in:
 - (a) ascertaining who is a creditor of any of the Clough Companies for the purposes of s 75- 85(1) of the IPR (or who may otherwise be entitled to vote by reason of s 75-86 of the IPR); and
 - (b) admitting in whole, or in part, a person's debt or claim for the purposes of s 75-85(3)(a) of the IPR,based only on the books and records of the Clough Companies and information provided by any person on, or otherwise entered in, the Halo Platform (and are otherwise entitled to disregard any other debt or claim).
9. Pursuant to s 90-15 of the IPS, the IPR operate in relation to the Clough Companies such that the requirements of a person to:
 - (a) lodge particulars of a debt or claim for the purposes of s 75-85(3)(b) of the IPR;
 - (b) provide an instrument of appointment of proxy pursuant to s 75-150(3) of the IPR; and
 - (c) provide an instrument evidencing the appointment of a power of attorney pursuant to s 75-155(2) of the IPR,in order to establish an entitlement to vote at the Second Meetings may only be satisfied by a person submitting relevant information electronically using the Halo Platform.
10. Pursuant to s 90-15 of the IPS, the first plaintiffs are justified in utilising the Halo Platform to communicate with persons who have registered on the Halo Platform, in respect of:
 - (a) notification and provision of information as to the conduct of the administrations of the Clough Companies;
 - (b) any proof or particulars of debt or claim lodged on the Halo Platform, including:



- (i) the adjudication of such proof or particulars of debts or claims for the purposes of voting at the Second Meetings pursuant to s 75-100 of the IPR; and
 - (ii) requesting further evidence from a person in respect of a debt claimed pursuant to s 75-95 of the IPR.
- 11. Information concerning a creditor's debt or claim and provided by that creditor to the first plaintiffs, is to be stored on the Halo Platform and accessible in the relevant creditor's account on the Halo Platform.
- 12. If a person claiming to be a creditor notifies the first plaintiffs that the person disputes a decision, notice or adjudication by the first plaintiffs about the person's claim, the first plaintiffs must promptly provide that person with all relevant material and information used or relied upon by the first plaintiffs in making their decision, notification or adjudication not already provided to or by the person, subject to there being no obligation to provide any confidential material or information relating to third parties.

Committee of inspection

- 13. Pursuant to s 447A(1) of the *Corporations Act* and s 90-15 of the IPS, Divisions 75 and 80 of the IPS and Division 75 of the IPR are to operate as if:
 - (a) the requirement in s 80-10 and s 80-15 of the IPS for the creditors of a company to resolve that a committee of inspection be formed and to appoint members of the committee of inspection, be dispensed with;
 - (b) a single committee of inspection be formed in respect of the second to thirteenth plaintiffs (**Committee**); and
 - (c) the members of the Committee be persons proposed by the first plaintiffs from nominations made to them in advance of, or at, the First Meeting.
- 14. Pursuant to s 447A(1) of the *Corporations Act* and s 90-15 of the IPS, to the extent not permitted specifically by s 80-5(3) of the IPR:
 - (a) a meeting of the Committee may be convened by publishing a notice via the Halo Platform; and



- (b) a meeting of the Committee may be permitted to be held by audio-visual conference (only, and in place of a physical meeting).

Confidentiality

15. Until further order, pursuant to s 37AF and s 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth), on the ground that the order is necessary to prevent prejudice to the proper administration of justice, the following documents be marked confidential on the Court file and not be made available for inspection without prior notice being provided to the plaintiffs and an order of this Court:

- (a) confidential second affidavit of David Orr filed 12 December 2022 (**Second Orr Affidavit**); and
- (b) exhibit DMO-1C to the Second Orr Affidavit.

Other ancillary orders

16. The first plaintiffs must take all reasonable steps to cause notice of these orders to be given, within one (1) business day after the making of these orders, to:

- (a) the creditors (including persons or entities claiming to be creditors) of each of the Clough Companies, in the following manner:
 - (i) where the creditor is a registered user on the Halo Platform, by publishing a notice via the Halo Platform;
 - (ii) where the creditor is not a registered user on the Halo Platform but the first plaintiffs have an email address for a creditor, notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders and this Originating Process;
 - (iii) where a creditor is not a registered user on the Halo Platform and the first plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(ii) above), notifying each such creditor, via post, of the making of the orders and providing a link to a website where the creditor may download the orders and the Originating Process; and



- (iv) placing scanned, sealed copies of the orders and the Originating Process on the website maintained by the first plaintiffs at <https://aurestructuring.deloitte-halo.com/clough>;
 - (b) the Australian Securities and Investments Commission;
 - (c) the Deputy Commissioner of Taxation; and
 - (d) the Attorney-General's Department (administering the Fair Entitlements Guarantee Scheme).
17. Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to orders 2 to 12 above on three (3) business days' notice being given to the plaintiffs and the Court.
18. The plaintiffs' costs of and incidental to this application be costs in the administration of the Clough Companies, joint and severally.

Date that entry is stamped: 13 December 2022

Sia Lagos
Registrar



Schedule

No: WAD256/2022

Federal Court of Australia

District Registry: Western Australia

Division: General

Second Plaintiff	MURRAY & ROBERTS PTY LTD (ADMINISTRATORS APPOINTED) ACN 105 617 865
Third Plaintiff	CLOUGH LIMITED (ADMINISTRATORS APPOINTED) ACN 008 678 813
Fourth Plaintiff	CLOUGH OPERATIONS PTY LTD (ADMINISTRATORS APPOINTED) ACN 109 444 279
Fifth Plaintiff	CLOUGH OVERSEAS PTY LTD ADMINISTRATORS APPOINTED) ACN 067 272 182
Sixth Plaintiff	CLOUGH SEAM GAS PTY LTD (ADMINISTRATORS APPOINTED) ACN 139 610 656
Seventh Plaintiff	CLOUGH ENGINEERING & INTEGRATED SOLUTIONS (CEIS) PTY LTD (ADMINISTRATORS APPOINTED) ACN 097 480 736
Eighth Plaintiff	E20 PTY LTD (ADMINISTRATORS APPOINTED) ACN 125 234 924
Ninth Plaintiff	SHARP RESOURCES PTY LTD (ADMINISTRATORS APPOINTED) ACN 166 613 127
Tenth Plaintiff	CLOUGH PROJECTS PTY LTD (ADMINISTRATORS APPOINTED) ACN 109 444 831
Eleventh Plaintiff	CLOUGH ENGINEERING PTY LTD (ADMINISTRATORS APPOINTED) ACN 009 093 869
Twelfth Plaintiff	CLOUGH PROJECTS INTERNATIONAL PTY LTD (ADMINISTRATORS APPOINTED) ACN 109 444 902
Thirteenth Plaintiff	CLOUGH PROJECTS AUSTRALIA PTY LTD (ADMINISTRATORS APPOINTED) ACN 109 444 215