NOTICE OF FILING

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	11/11/2025 8:54:33 AM AWST
Date Accepted for Filing:	11/11/2025 9:57:49 AM AWST
File Number:	WAD403/2025
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v AVZ MINERALS LIMITED (ACN 125 176 703) & ORS
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.

Statement of claim

No. of 2025

Federal Court of Australia
District Registry: Perth, Western Australia
Division: General

Australian Securities and Investments Commission
Plaintiff

AVZ Minerals Limited (ACN 125 176 703) & Ors
Defendants

Parties and relevant entities

1. The Plaintiff (**ASIC**) is a body corporate:

   a. established by section 7 of the *Australian Securities Commission Act 1989* (Cth);

   b. continued by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

   c. able to sue in its corporate name pursuant to section 8 of the ASIC Act.

2. The First Defendant (**AVZ**) is a company:

   a. incorporated and registered under the *Corporations Act 2001* (Cth) (**Corporations Act**);

   b. which holds and held at all material times 100% of the shares in AVZ International Pty Ltd (**AVZI**);

   c. whose shares have been listed on the Australian Stock Exchange (**ASX**) since 14 September 2007 and were ED securities within the meaning of sections 111AD

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff
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and 111AE of the Corporations Act and quoted ED securities within the meaning of section 111AM of the Corporations Act;

d. which was a listed disclosing entity within the meaning of section 111AL(1) of the Corporations Act and subject to the requirements of section 674A of the Corporations Act and the ASX's Listing Rule 3.1;

e. whose securities were suspended from quotation under ASX Listing Rule 17.2 on 11 May 2022 and which remain suspended; and

f. whose business comprised resource exploration in the Democratic Republic of Congo (**DRC**).

3. AVZI is a company:

a. incorporated and registered under the Corporations Act;

b. is and was at all material times a wholly owned subsidiary of AVZ; and

c. holds and held at all material times shares in Dathcom Mining SAS (**Dathcom**).

4. Dathcom is a company:

a. incorporated in the DRC for the purposes of a joint venture between AVZ (via AVZI), Dathomir Mining Resources SARL (**Dathomir**), a private DRC company, and La Congolaise D'Exploitation Minière (**Cominiere**), a DRC quasi-government entity; and

b. which owned the Manono Lithium and Tin Project located in the DRC (**Manono Project**).

5. The Second Defendant (**Mr Ferguson**) is and was at all material times:

a. a director of AVZ and, from about February 2018, the managing director of AVZ;

b. from 24 August 2018 a director of AVZI; and

c. a director of Dathcom.

6. The Third Defendant (**Mr Johnston**):

a. is and was at all material times a director of AVZ; and

b. a director of Dathcom.

AVZ's interest in the Manono Project

7. At all material times, AVZ's only project was developing the Manono Project.

8. The Manono Project is an open-pit mining development in the DRC, which is estimated to be one of the largest lithium rich lithium-caesium-tantalum (LCT) pegmatite deposits in the world.

9. As at 23 June 2019, the shareholding in Dathcom, and accordingly ownership of the Manono Project, was as follows:

    a. AVZI held 60%;

    b. Dathomir held 15%; and

    c. Cominiere held 25%.

10. To develop the Manono Project, AVZ required significant funds.

11. To raise these funds, AVZ proposed to (through AVZI):

    a. acquire Dathomir's 15% interest in Dathcom, increasing AVZI's shareholding (and, thereby, AVZ's interest) in Dathcom to 75%; and

    b. then sell 24% of its interest to a third-party cornerstone investor,

    thereby raising necessary funds and retaining a 51% majority interest in the Manono Project.

12. On or about 23 June 2019, AVZ and Dathomir entered into a Share Purchase Agreement for AVZ to acquire 5% of Dathomir's interest in Dathcom for a price of US$5,500,000 (**2019 SPA**).

13. Under the terms of the 2019 SPA:

    a. AVZ was to pay Dathomir US$500,000 within 14 days of execution of the 2019 SPA: cl. 2.1(c);

    b. AVZ was to pay the remaining US$5,000,000 to Dathomir within 36 months of execution of the 2019 SPA: cl. 2.1(c); and

    c. AVZ would become the owner of the shares upon payment of the remaining US$5,000,000 in full: cl. 2.1(d).

14. On or about 2 July 2019, AVZ paid US$500,000 to Dathomir pursuant to cl. 2.1(c) of the 2019 SPA.

15. In the period between June 2019 and May 2020, AVZ made at least three announcements on the ASX market announcement platform referencing the execution of a share purchase agreement to acquire an additional 5% interest in the Manono Project, increasing its interest to 65%.

Particulars

(a) ASX Announcement 'AVZ to Increase Equity Stake in the Manono Project' dated 24 June 2019.

(b) ASX Announcement 'AVZ Receives Confirmation of increased equity stake in world-class Manono Project' dated 1 October 2019.

(c) ASX Announcement 'Strong Investor Support for the Exercise of Listed Options' dated 27 May 2020.

16. On or about 16 September 2020, AVZ, AVZI and Dathomir entered into a further Share Purchase Agreement for AVZ to acquire (via AVZI) an additional 10% of Dathomir's interest in Dathcom for a price of US$15,500,000 (**2020 SPA**).

17. Under the terms of the 2020 SPA:

a. AVZI was to pay Dathomir US$500,000 upon execution of the 2020 SPA: cl. 2.1(c);

b. AVZI was to pay the remaining US$15,000,000 to Dathomir upon the earlier of:

i. 12 months from execution (cl. 2.1(c)(i)); or

ii. AVZ securing a minimum of US$50,000,000 in funds (cl. 2.1(c)(ii));

c. AVZI would become the owner of the shares upon payment of the remaining US$15,000,000 in full: cl. 2.1(d).

18. Upon execution of the 2020 SPA, AVZ (on behalf of AVZI) paid Dathomir US$500,000 pursuant to cl. 2.1(c) of the 2020 SPA.

19. Upon completion of the 2019 SPA and 2020 SPA, AVZ (via AVZI) would increase its interest in Dathcom and, thereby, the Manono Project to 75%.

20. In the period between September 2020 to August 2021, AVZ made four announcements on the ASX market announcement platform stating words to the effect that it had entered into an agreement giving it the right or option to acquire an additional 10% interest Dathcom that would, on completion, increase AVZ's interest in the Manono Project to 75%.

Particulars

(a) ASX Announcement 'AVZ to increase equity stake in the Manono Lithium and Tin Project to 75%' dated 21 September 2020.

(b) ASX Announcement 'AGM Presentation' dated 19 November 2020.

(c) ASX Announcement 'Capital raising Presentation' dated 2 July 2021.

(d) ASX Announcement 'Manono Lithium and Tin Project Operational Update' dated 21 July 2021.

21. By the ASX announcements pleaded in paragraphs 15 and 20 above, AVZ represented to the market that:

a. it had a lawful right to acquire Dathomir's 15% interest in the Manono Project; and

b. the acquisition of Dathomir's 15% interest in the Manono Project was significant to AVZ and to the long-term value of its business.

Dathomir's notice of termination or repudiation of the 2019 SPA and 2020 SPA

22. On or about 31 December 2020, Dathomir wrote to AVZI seeking an updated valuation of the shareholding to be disposed of to AVZI pursuant to the 2019 SPA and 2020 SPA (**31 December 2020 Letter**).

Particulars

Letter from Dathomir to AVZI dated 31 December 2020.

23. A translated copy of the 31 December 2020 Letter was received by Mr Ferguson on 11 January 2021.

24. On or about 14 May 2021, Dathomir (via its legal counsel) wrote to AVZI stating that it was terminating the 2019 SPA and 2020 SPA (**14 May 2021 Letter**).

Particulars

Email from Mr Edouard Mukendi & Associes to Mr Ferguson of AVZ sent 15 May 2021 attaching a letter addressed to AVZI dated 14 May 2021.

25. Between 16 and 17 May 2021, Mr Ferguson provided a copy of the 14 May 2021 Letter to two other directors of AVZ, Mr Johnston and John Clark (**Mr Clark**).

Particulars

(a) Email from Mr Ferguson to Mr Johnston dated 16 May 2021.

(b) Email from Mr Ferguson to Mr Clark dated 17 May 2021.

26. A translated copy of the 14 May 2021 Letter was received by Mr Ferguson on 14 June 2021

Particulars

Email from Marinika Poilly to Mr Ferguson dated 14 July 2021 attaching a translation of the 14 May 2021 Letter.

27. On or about 5 July 2021, Dathomir (via its legal counsel) sent AVZ an announcement of its termination of the 2019 SPA and 2020 SPA, which also stated that Dathomir intended to sell the 15% interest to another interested investor (**5 July 2021 Announcement**).

Particulars

Email from Mr Edouard Mukendi & Associates to Mr Ferguson of AVZ dated 6 July 2021 attaching an “announcement” in French and English dated 5 July 2021.

28. A translated copy of the 5 July 2021 Announcement was received by Mr Ferguson on 6 July 2021.

Particulars

Email from Mr Edouard Mukendi & Associates to Mr Ferguson of AVZ dated 6 July 2021 attaching an “announcement” in French and English dated 5 July 2021.

Capital Raise

29. In about July 2021, AVZ undertook a capital raise by way of a share placement to pay for the purchase of Dathomir’s 15% shareholding in Dathcom pursuant to the 2019 SPA and 2020 SPA (**Capital Raise**).

30. On 2 July 2021, AVZ made two announcements on the ASX market announcement platform referencing the Capital Raise and stating that the proceeds would allow AVZ to increase its interest in Dathcom and/or the Manono Project to 75% by acquiring Dathomir's 15% shareholding.

Particulars

(a) ASX Announcement 'Investors back Manono Lithium and Tin Project in $40M placement' dated 2 July 2021.

(b) ASX Announcement of Capital Raising Presentation dated 2 July 2021.

31. By 2 July 2021, AVZ had raised over $40,000,000 from investors from the Capital Raise.

32. From 21 July 2021 to 11 August 2021, AVZ made three announcements on the ASX market announcement platform with respect to the Capital Raise as follows:

a. on 21 July 2021, AVZ announced that it completed a heavily oversubscribed 'share placement' raising $40 million (before costs) from institutional, sophisticated and professional investors, providing it with the necessary funds to increase its equity interest in the Manono Project to 75% via the exercise of existing options over a 15% minority interest held by Dathomir; and

b. in two separate announcements made on 29 July 2021 and 11 August 2021, AVZ announced that it completed a $40 million 'placement' and that that proceeds from the 'placement' would allow AVZ to increase its interest in the Manono Project from 60% to 75%.

Particulars

(a) ASX Announcement 'Manono Lithium and Tin Project Operational Update' dated 21 July 2021.

(b) ASX Announcement 'Activities Report for the Quarter ending 30 June 2021' dated 29 July 2021.

(c) ASX Announcement 'Additional Disclosure to Report for the Quarter ending 30 June 2021' dated 11 August 2021.

Attempt to make the US$20 million payment

33. Between about 12 and 13 August 2021, AVZ took steps to transfer US$20,000,000 to Dathomir.

Particulars

(a) On about 12 August 2021, AVZ arranged with Associated Foreign Exchange Australia Pty Ltd (**AFEX**) to transfer the US$20,000,000 payment to Dathomir.

(b) On 12 August 2021, AVZ provided payment details for Dathomir to AFEX.

(c) On 13 August 2021, Mr Ferguson provided approval to AFEX for the US$20,000,000 payment to Dathomir.

(d) On 13 August 2021, AFEX processed the payment and provided SWIFT confirmation to AVZ.

34. On 13 August 2021, Mr Ferguson instructed Peter Harris & Associates to prepare an announcement to the ASX market announcement platform that US$20,000,000 had been paid to Dathomir to secure its 15% shareholding in Dathcom.

Particulars

Email from Mr Ferguson to Peter Harris dated 13 August 2021.

35. On 18 August 2021, AVZ announced on the ASX market announcement platform that it had exercised an option to acquire Dathomir's 15% shareholding in Dathcom, increasing its equity share in the Manono Project to 75% (**18 August 2021 Announcement**).

Particulars

ASX Announcement Manono Lithium and Tin Project Corporate Updated dated 18 August 2021.

36. At the time of making the 18 August 2021 Announcement:

a. AFEX had informed AVZ that US$20,000,000 had not yet been allocated to Dathomir's account and the payment was still in progress;

b. AVZ had not received confirmation from AFEX that US$20,000,000 had been paid into Dathomir's account; and

Particulars

Emails from Mr Eliott Birch of AFEX to Mr de Jager of AVZ dated 17, 18 and 19 August 2021, advising that the payment of US$20 million was still "in progress".

c. AVZ knew but did not disclose in the announcement or at all that Dathomir had given notice of termination of the 2019 SPA and 2020 SPA.

Particulars of knowledge

(a) ASIC refers to and relies upon the matters pleaded in paragraphs 22 to 28 above.

(b) Mr Ferguson's, Mr Clark's and Mr Johnston's knowledge, as directors of AVZ, is attributed to AVZ.

37. On about 20 August 2021, Dathomir (via its legal counsel) wrote to AVZ (via its legal counsel) stating that any payment made by AVZ to Dathomir pursuant to the 2019 SPA or 2020 SPA would be returned (**20 August 2021 Email**).

Particulars

Email from Edouard Mukendi to Christian Lukusa dated 20 August 2021 (subsequently forwarded by Maohuai (Simon) Cong of Dathomir to Mr Ferguson by way of an email attachment on 21 August 2021).

38. A translated version of the 20 August 2021 Email was received by Mr Ferguson on 23 August 2021.

Particulars

Email from Marinika Poilly of AVZ to Mr Ferguson dated 23 August 2021 attaching a translation of the 20 August 2021 Email.

39. Mr Ferguson's knowledge, as the managing director of AVZ, of the 20 August 2021 Email is attributed to AVZ.

The Commercial Court Proceedings

40. On or about 24 August 2021, Dathomir applied to the Commercial Court of Lubumbashi, DRC (**Commercial Court**), for the appointment of an independent expert for the purpose of evaluating and determining the actual value of its 15% shareholding in Dathcom (**Valuation Application**).

41. In the Valuation Application, Dathomir informed the Commercial Court that:

a. Dathomir had terminated the 2019 SPA and 2020 SPA;

b. on 5 July 2021, Dathomir had instructed its bank not to accept payment from AVZI for the contracted price of Dathomir's 15% shareholding; and

c. on 6 July 2021, its bank had acceded to that request.

42. On or about 27 August 2021, orders were made by the Commercial Court for the appointment of an independent expert to evaluate and determine the actual value of Dathomir's 15% shareholding in Dathcom (**Valuation Order**).

43. On or about 30 August 2021:

a. the Clerk of the Commercial Court issued a Summons requiring the attendance of AVZI, Dathcom, Comineire and RawBank at a hearing to be held on 6 December 2021, at which orders would be sought by Dathomir for the suspension of the remaining $20,000,000 payments under the 2019 SPA and 2020 SPA (**Suspension Summons**);

b. the bailiff of the Commercial Court personally served at least the Valuation Order on Mr Nelson Bwihangane of Dathcom (**Notice of Service**);

c. Mr Bwihangane of Dathcom then sent an email to Christian Lukasa of Momentum Attorneys and Advisors (**Momentum Attorneys**), copied to Mr Balthazar of Dathcom, attaching the Valuation Application, the Valuation Order, the Notice of Service and the Suspension Summons (together the **Court Documents**); and

Particulars

Email from Mr Bwihangane to Mr Lukusa of Momentum Attorneys dated 30 August 2021.

d. Mr Balthazar then forwarded the email pleaded in subparagraph (c) above to Mr Ferguson and copied Mr Johnston.

Particulars

Email from Mr Balthazar to Mr Ferguson dated 30 August 2021.

44. On or about 1 September 2021, Mr de Jager emailed translated copies of the Court Documents to Mr Ferguson.

45. Mr Ferguson's, Mr Clark's and Mr de Jager's knowledge, as directors of AVZ, of the Court Documents is attributed to AVZ.

The transfer of Dathcom's shares

46. By letter dated 30 August 2021, AVZ (via Mr Ferguson) wrote to Dathcom (via Mr Johnston) requesting that Dathcom take the required steps to have AVZ registered on the share certificates and share registry for the 15% share acquired from Dathomir.

Particulars

Letter from Mr Ferguson of AVZ to Mr Johnston of Dathcom dated 30 August 2021.

47. On about 30 August 2021, Dathcom (via Mr Johnston) wrote to AVZ (via Mr Ferguson) approving the transfer of Dathomir's 15% shareholding to AVZI and notifying AVZI that the share certificates and share register would be updated accordingly.

Particulars

Letter from Mr Johnston of Dathcom to Mr Ferguson of AVZ dated 30 August 2021.

48. On or soon after 30 August 2021, Mr Johnston (in his capacity as director of Dathcom) registered AVZI on Dathcom's share registry and issued share certificates to AVZI with respect to Dathomir's 15% shareholding.

Particulars

(a) Certificat D'Actions – Dathcom Mining SA Certificat No 001/DATHCOM/CGR/019 dated 30 August 2021.

(b) Certificat D'Actions – Dathcom Mining SA Certificat No 002/DATHCOM/CGR/019 dated 30 August 2021.

(c) Dathcom Mining SA Shareholders Registry.

The return of the US$20 million payment and Forgery Summons

49. By no later than 1 September 2021, AVZ was informed that the US$20,000,000 payment had been returned to AVZ's AFEX account.

Particulars

(a) Email from Elliot Birch to Jan de Jager and Abbey Siew dated 1 September 2021.

(b) Email from Mr de Jager to Mr Ferguson dated 1 September 2021.

50. Mr Ferguson's and Mr de Jager's knowledge, as directors of AVZ, of the matters pleaded in paragraph 49 above is attributed to AVZ.

51. On about 16 September 2021, the High Court of Lubumbashi, DRC, issued a summons to Mr Johnston and Dathcom regarding allegations by Dathomir of forgery with respect to the share registry and share certificates transferring Dathomir's 15% shareholding to AVZI (as pleaded in paragraphs 46 to 48 above) (**Forgery Summons**).

52. The Forgery Summons was received by Mr Johnston on 16 September 2021.

Particulars

Email from Nelson Bwihangane of Dathomir to Mr Lukusa of Momentum Attorneys, copied to Mr Johnston, dated 16 September 2021.

53. Mr Johnston's knowledge, as a director of AVZ, of the Forgery Summons is attributed to AVZ.

54. On about 17 September 2021, AVZI applied to the Commercial Court of Kinshasa/Gombe for orders that Momentum Attorneys act as receivers and to keep the US$20,000,000 in an escrow account pending the determination of the dispute between AVZ and Dathomir regarding the 2019 SPA and the 2020 SPA (**Escrow Application**).

55. On about 22 September 2021, orders were made by the Commercial Court of Kinshasa/Gombe that Momentum Attorneys hold the US$20,000,000 in an escrow account pending the determination of the dispute between AVZ and Dathomir regarding the 2019 SPA and the 2020 SPA (**Escrow Order**).

56. On about 22 September 2021, a meeting of the Board of Directors of AVZ (**Board**) was held at which the Board discussed the matters pleaded in paragraphs 22 and 49 above.

September 2021 ASX Announcements

57. By 14 September 2021, AVZ had engaged in negotiations with Suzhou CATH Energy Technologies (**CATH**) for CATH to become a cornerstone investor in the Manono Project by acquiring 24% of AVZI's interest in Dathcom.

58. On about 27 September 2021, AVZ announced on the ASX market announcement platform that it had secured a cornerstone investor for the Manono Project and that:

a. CATH would acquire a 24% interest in Dathcom for $240,000,000; and

b. AVZ would retain a controlling 51% interest in Dathcom post completion.

Particulars

ASX Announcement Cornerstone Investor Secured for Development of Manono Lithium and Tin Project dated 27 September 2021.

59. On about 30 September 2021, AVZ represented in its full year statutory accounts (**2021 Full Year Accounts**), which accounts were announced on the ASX Market Announcement platform that:

a. it held a 75% interest in the Manono Project (**Manono Representation**); and/ or

b. that it had acquired 75% of the shares in Dathcom (**Dathcom Representation**); and

c. that, other than the matters disclosed in its full year statutory accounts (which took place after 30 June 2021), there was no other matter or circumstance that arose after that time that significantly affected or may significantly affect its operations, the result of those operations or its state of affairs (**No Adverse Matters Representation**).

Particulars

ASX Announcement Full Year Statutory Accounts dated 30 September 2021.

60. On or about 30 September 2021, AVZ made the Manono, Dathcom and No Adverse Matters Representations in its Financial Year 2021 Annual Report to Shareholders (Directors' Report signed on 30 September 2021) (**2021 Annual Report**) that it announced on the ASX Market Announcement platform.

61. At the time of publishing the announcement on 27 September 2021 and its 2021 Full Year Accounts and 2021 Annual Report on 30 September 2021, AVZ knew but did not disclose the documents or at all, that:

a. Dathomir had given notice of termination of the 2019 SPA and 2020 SPA;

b. Dathomir had applied for the Valuation Order on 24 August 2021;

c. Dathomir had informed the Commercial Court that:

i. it had terminated the 2019 SPA and 2020 SPA;

ii. on 5 July 2021, it had instructed its bank not to accept payment from AVZI for the contracted price of Dathomir's 15% shareholding; and

iii. on 6 July 2021, its bank had acceded to that request;

d. the Commercial Court had made the Valuation Order on 27 August 2021;

e. the Clerk of the Commercial Court had issued the Suspension Summons on 30 August 2021;

f. the US$20,000,000 payment to complete its purchase of the 15% shareholding had been returned to AVZ on 1 September 2021;

g. Mr Johnston and Dathcom had been issued the Forgery Summons on 16 September 2021;

h. AVZI had applied for the Escrow Order on 17 September 2021;

i. the Commercial Court of Lubumbashi had made the Escrow Order on 22 September 2021;

j. there was a legal dispute between Dathomir and AVZ in relation to the 2019 SPA and 2020 SPA;

k. it was unclear whether AVZ had completed the acquisition of shares pursuant to the 2019 SPA and 2020 SPA; and

l. there was a significant risk to the further performance or completion of the 2019 SPA and 2020 SPA on the terms of those agreements.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraphs 22 to 28, 37 to 39, 43 to 45 and 49 to 56 above.

62. On about 4 October 2021, pursuant to the Escrow Order, AVZ paid US$20,000,000 to Momentum Attorney's escrow account.

63. On or about 29 October 2021, AVZ made the Manono and Dathcom Representations in its 'Activities Report for the Quarter Ending 30 September 2021' that it announced on the ASX market announcement platform.

64. On or about 18 November 2021, AVZ made the Manono and Dathcom Representations in its AGM Presentation that it announced on the ASX market announcement platform.

65. On or about 24 November 2021, AVZ made the Manono Representation in its DRC Africa Business Forum presentation that it announced on the ASX market announcement platform

66. On or about 10 December 2021, AVZ made the Manono Representation in its Capital Raising presentation that it announced on the ASX market announcement platform

67. At the time of making the Manono, Dathcom and No Adverse Matters Representations in the documents pleaded in paragraphs 63 to 66 above, AVZ knew but did not disclose the matters pleaded in paragraph 61 and 62 above.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraphs 22 to 28, 37 to 39, 43 to 45, 49 to 56 and 62 above.

The Forgery Orders

68. On about 24 December 2021, the High Court of Lubumbashi, DRC, found Mr Johnston guilty of forgery with respect to the share registry and share certificates transferring Dathomir's 15% shareholding to AVZI (as pleaded in paragraphs 46 to 48 above), and ordered the destruction of the forged documents (**Forgery Orders**).

69. By at least 27 December 2021, AVZ knew of the Forgery Orders.

Particulars of knowledge

(a) On 27 December 2021, Mr Johnston signed a Procuration Speciale in relation to the Forgery Orders.

(b) Mr Johnston's knowledge of the Forgery Orders, as a director of AVZ, is attributed to AVZ.

Events following the Forgery Orders

70. On or about 31 January 2022, AVZ represented that it had completed an acquisition of 15% equity in the Manono Project from Dathomir in August 2021 (**Completion Representation**) in its 'Activities Report for the Quarter Ending 31 December 2021' that it announced on the ASX Market Announcement platform.

71. The Completion Representation was false in that AVZ had not completed an acquisition of 15% equity in the Manono Project from Dathomir in August 2021.

72. At the time of making the Completion Representation on 31 January 2022, AVZ knew but did not disclose the matters pleaded in paragraphs 61, 62 or 68 above.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraphs 22 to 28, 37 to 39, 43 to 45, 49, 56, 62 and 68 to 69 above.

73. On or about 10 February 2022, AVZ made the Manono Representation in an announcement to the ASX market announcement platform.

74. On or about 16 March 2022, AVZ made the Manono Representation in an announcement to the ASX market announcement platform of its financial report and account for the half-year ended 31 December 2021.

75. On or about 6 April 2022, AVZ made the Manono Representation in a presentation that was made to the Battery Minerals Conference and that was also attached to an announcement to the ASX market announcement platform regarding the presentation.

76. On or about 28 April 2022, AVZ made the Manono Representation and the Completion Representation in its 'Activities Report for the Quarter Ending 31 March 2022' that it announced on the ASX market announcement platform.

77. At the time of making the Manono Representations and the Completion Representation in the documents pleaded in paragraphs 73 to 76 above, AVZ knew but did not disclose the matters pleaded in paragraphs 61, 62 or 68 above.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraphs 22 to 28, 37 to 39, 43 to 45, 49 to 56, 62, 68 to 69 above.

78. In about late April and/or early May 2022, there were media articles published which referred to claims by Dathomir disputing the validity of the transfer of its 15% shareholding in Dathcom to AVZ (**Media Articles**).

Particulars

Media articles dated 26 April and 1 May 2022 contained in a publication entitled Africa Intelligence.

79. The Media Articles were received by directors of AVZ, including Mr Ferguson, Mr Johnston and Mr Clarke.

Particulars

(a) Email from admin@avzminerals.com.au to Mr Ferguson, Mr Johnston and Mr Clark (amongst others) dated 26 April 2022, attaching a media article.

(b) Email from Mr Clark to Mr Ferguson dated 3 May 2022, attaching a media article.

(c) Email from Mr Ferguson to Mr Johnston dated 3 May 2022, attaching a media article.

80. On or about 4 May 2022, AVZ made an announcement on the ASX market announcement platform responding to the media articles, in which it made the Dathcom Representation and also represented that:

a. it held good legal title to a 75% equity interest in the Manono Project;

b. the 2019 SPA and 2020 SPA had been completed; and

c. the 2019 SPA and 2020 SPA had not been terminated.

(**May 2022 Representations**).

81. The May 22 Representations were false in that:

a. AVZ did not hold good legal title to a 75% equity interest in the Manono Project; and

b. the 2019 SPA and 2020 SPA had not been completed.

82. At the time of making the Dathcom Representation and May 2022 Representations as pleaded in paragraph 80 above, AVZ knew but did not disclose the matters pleaded in paragraphs 61, 62 or 68 above.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraphs 22 to 28, 37 to 39, 43 to 45, 49 to 56, 62, 68 to 69 above.

83. AVZ shares were placed into a trading halt prior to trading commencing on Monday, 9 May 2022 and were voluntarily suspended from quotation on 11 May 2022 until it was

delisted from the ASX from 13 May 2024 in accordance with ASX's policy in Guidance Note 33.

Breach of continuous disclosure obligations

84. By reason of the matters pleaded in paragraphs 22 to 28 above, from on or about 6 July 2021, AVZ knew that Dathomir had given notice to terminate the 2019 SPA and 2020 SPA.

Particulars of knowledge

(a) ASIC refers to and relies upon the matters pleaded in paragraphs 22 to 28.

(b) Mr Ferguson's, Mr Johnston's and Mr Clark's knowledge, as directors of AVZ, is attributed to AVZ.

85. By reason of the matters pleaded in paragraphs 37 to 39, 43 to 45 and 49 to 56 above, from on or about 22 September 2021, in addition to the matters pleaded in paragraph 84 above, AVZ knew that:

a. Dathomir had given notice of termination of the 2019 SPA and 2020 SPA;

b. Dathomir had applied for the Valuation Order on 24 August 2021;

c. Dathomir had informed the Commercial Court that:

i. it had terminated the 2019 SPA and 2020 SPA;

ii. on 5 July 2021, it had instructed its bank not to accept payment from AVZI for the contracted price of Dathomir's 15% shareholding; and

iii. on 6 July 2021, its bank had acceded to that request;

d. the Commercial Court had made the Valuation Order on 27 August 2021;

e. the Clerk of the Commercial Court had issued the Suspension Summons on 30 August 2021;

f. the US$20,000,000 payment to complete its purchase of the 15% shareholding had been returned to AVZ on 1 September 2021;

g. Mr Johnston and Dathcom had been issued the Forgery Summons on 16 September 2021;

h. AVZI had applied for the Escrow Order on 17 September 2021;

i. the Commercial Court of Lubumbashi had made the Escrow Order on 22 September 2021;

j. there was a legal dispute between Dathomir and AVZ in relation to the 2019 SPA and 2020 SPA;

k. it was unclear whether AVZ had completed the acquisition of shares pursuant to the 2019 SPA and 2020 SPA; and

l. there was a significant risk to the further performance or completion of the 2019 SPA and 2020 SPA on the terms of those agreements.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraphs a 37 to 39, 43 to 45 and 49 to 56 above.

86. By reason of the matters pleaded in paragraph 62 above, from on or about 4 October 2021, in addition to the matters pleaded in paragraphs 84 and 85 above, AVZ knew that:

a. it had paid the US$20 million into Momentum Attorney's account pursuant to the Escrow Order;

b. further or alternatively, there was a legal dispute between Dathomir and AVZ in relation to the 2019 SPA and 2020;

c. further or alternatively, it was unclear whether AVZ had completed the acquisition of shares pursuant to the 2019 SPA and 2020 SPA; and

d. further or alternatively, there was a significant risk to the further performance or completion of the 2019 SPA and 2020 SPA on the terms of those agreements.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraph 62 above.

87. By reason of the matters pleaded in paragraphs 68 to 69 above, from on or about 27 December 2021 in addition to the matters pleaded in paragraphs 84 to 86 above, AVZ knew that:

a. the High Court of Lubumbashi made the Forgery Orders;

b. the 2019 SPA and 2020 SPA had not been completed;

c. AVZ did not hold 75% of the issued capital of Dathcom;

d. further or alternatively, there was a legal dispute between Dathomir and AVZ in relation to the 2019 SPA and 2020; and

e. further or alternatively, there was a significant risk to the further performance or completion of the 2019 SPA and 2020 SPA on the terms of those agreements.

Particulars of knowledge

ASIC refers to and relies upon the matters pleaded in paragraphs 68 to 69 above.

88. The information pleaded in paragraphs 84 to 87 above, individually or in combination or together, was information that:

a. was required to be disclosed in accordance with Chapter 3 of the ASX Listing Rules;

b. was not generally available;

c. if it were generally available, would have a material effect on the price or value of shares in AVZ;

d. in respect of the information pleaded in paragraph 84 above, a reasonable person would expect, if it were generally available, to have a material effect on the price or value of shares in AVZ; and

e. in respect of the information pleaded in paragraphs 85 to 87 above, AVZ knew, or was reckless or negligent with respect to whether the information would, if it were generally available, have a material effect on the price or value of shares in AVZ.

89. From 6 July 2021, AVZ was obliged to but did not notify the market operator of the information pleaded in paragraph 84 above.

90. From 22 September 2021, AVZ was obliged to but did not notify the market operator of the information in:

a. any one of the subparagraphs to paragraph 85 above;

b. any combination of two or more of the subparagraphs to paragraph 85 above; or

c. all of the subparagraphs to paragraph 85 above.

91. From 4 October 2021, AVZ was obliged to but did not notify the market operator of the information in:

a. any one of the subparagraphs to paragraph 86 above;

b. any combination of two or more of the subparagraphs to paragraph 86 above; or

c. all of the subparagraphs to paragraph 86 above.

92. From 27 December 2021, AVZ was obliged to but did not notify the market operator of the information in:

a. any one of the subparagraphs to in paragraph 87 above;

b. any combination of two or more of the subparagraphs to paragraph 87 above; or

c. all of the subparagraphs to paragraph 87 above.

93. By reason of the matters pleaded in paragraphs 88 to 92 above, AVZ contravened:

a. section 674(2) of the Corporations Act (as it stood prior to 14 August 2021) in respect of AVZ's conduct prior to 14 August 2021 in relation to the matters as pleaded in paragraph 84 and 89 above; and

b. section 674A(2) of the Corporations Act in respect of AVZ's conduct from 14 August 2021 in relation to the matters pleaded in paragraphs 85 to 87 and 90 to 92.

Consequences of contravention

94. By reason of the matters pleaded in paragraphs 84 to 93 above, AVZ is liable to be the subject of declarations of contravention pursuant to section 1317E of the Corporations Act.

95. Further, the contraventions of section 674(2) (as it stood prior to 14 August 2021) and section 674A(2) of the Corporations Act by AVZ:

a. materially prejudiced the interests of its members for the purposes of section 1317G(1)(b)(i) of the Corporations Act; and

b. is serious for the purposes of section 1317G(1)(b)(iii) of the Corporations Act.

96. By reason of the matters pleaded in paragraph 95 above, AVZ is liable to pay a pecuniary penalty pursuant to section 1317G of the Corporations Act.

Misleading or deceptive conduct

97. By:

a. making the Manono Representations, the Dathcom Representations and the No Adverse Matters Representations as pleaded in paragraphs 59 and 60 above in the context alleged in paragraph 61 above;

b. making the Manono Representations and the Dathcom Representations as pleaded in paragraphs 63 to 66 in the context alleged in paragraph 67 above;

c. making the Completion Representation as pleaded in paragraph 70 above in the context alleged in paragraphs 71 and 72 above;

d. making the Manono Representations and the Completion Representation as pleaded in paragraphs 73 to 76 in the context pleaded in paragraph 77 above; and

e. making the Dathcom Representation and May 2022 Representations as pleaded in paragraph 80 above in the context alleged in paragraphs 81 and 82 above,

AVZ engaged in conduct that would cause, or was likely to cause, actual or potential investors in AVZ to assume or believe that there was no impediment or material risk to the completion of the 2019 SPA and 2020 SPA on their terms, when in fact there was such an impediment or risk.

98. The conduct pleaded in paragraph 97 above was conduct in relation to a financial product within the meaning of section 1041H of the Corporations Act.

99. By engaging in the conduct pleaded in paragraphs 97 to 98 above AVZ engaged in misleading or deceptive conduct in contravention of section 1041H of the Corporations Act.

Breach of directors' duties – s. 180(1)

100. In their positions as directors of AVZ, Mr Ferguson's and Mr Johnston's duties and responsibilities included:

a. authorising and approving statements from AVZ to the public;

b. ensuring that AVZ complied with its obligations under the Corporations Act and the ASX Listing Rules with respect to continuous disclosure; and

c. ensuring that any public statements made on behalf of AVZ were not misleading or deceptive or likely to mislead or deceive.

101. Pursuant to section 180(1) of the Corporations Act, Mr Ferguson and Mr Johnston were required to exercise their powers and discharge their duties with a degree of care and diligence of a reasonable person if they:

a. were a director or officer of a corporation in AVZ's circumstances; and

b. occupied the office held by, and had the same responsibilities within AVZ, as the director or officer.

102. Mr Ferguson and Mr Johnston knew of the matters pleaded in paragraphs 84 to 87 above.

Particulars of knowledge

Mr Ferguson's and Mr Johnston's knowledge can be discerned from their actions, the receipt of information and the matters as pleaded in paragraphs 22 to 28, 36 to 38, 43, 44, 49, 51, 52, 54, 55, 56, 62, 68 to 69 above, and the particulars thereto.

103. By:

a. failing to disclose the matters pleaded in paragraphs 84 to 87 above to the market; and

b. representing the position to the market regarding its shareholding in Dathcom and the Manono Project as pleaded in paragraph 97 above,

AVZ risked harming its reputation, jeopardising market perceptions of AVZ and exposing AVZ to the risk of legal and regulatory proceedings being brought against it, including for contraventions of sections 674(2) (as it stood prior to 14 August 2021), 674A(2) and 1041H(1) of the Corporations Act.

104. A reasonable director of a corporation in AVZ's circumstances who occupied the office of Mr Ferguson and Mr Johnston, and had the same responsibilities and knowledge as Mr Ferguson and Mr Johnston (including the matters pleaded in paragraphs 84 to 87

above), acting with care and diligence (as required by section 180(1) of the Corporations Act), would:

a. not have authorised or approved the ASX announcements:

i. from 18 August 2021, as pleaded in paragraphs 35 above;

ii. alternatively, from 22 September 2021, as pleaded in paragraphs 58 to 60 above;

iii. alternatively, from 4 October 2021, as pleaded in paragraphs 63 to 66;

iv. alternatively, from 27 December 2021, as pleaded in paragraphs 70, 73, 74, 75, 76 and 80 above; and

b. have taken steps to ensure that the market was informed as to the matters pleaded in paragraphs 84 to 87 above.

105. Mr Ferguson authorised and approved the ASX announcements pleaded in paragraphs 35, 58 to 60, 63 to 66, 70, 73 to 76 and 80 above.

106. Mr Johnston authorised and approved the ASX announcements pleaded in paragraphs 35, 58 to 60, 63, 64, 70, 73 to 76 and 80 above.

107. Mr Ferguson and Mr Johnston did not take any steps to ensure that AVZ informed the market as to the matters pleaded in paragraphs 104(b) above.

108. By reason of the matters pleaded in paragraphs 105 to 107 above, Mr Ferguson and Mr Johnston harmed AVZ's reputation, jeopardised market perceptions of AVZ and exposed AVZ to the risk of legal and regulatory proceedings being brought against it, including for contraventions of sections 674(2) (as it stood prior to 14 August 2021), 674A(2) and 1041H(1) of the Corporations Act.

Particulars

(a) A class action is pending against AVZ for contraventions of sections 674A(2) and 1041H of the Corporations Act, s. 12DA of the ASIC Act and/or s. 18 of the *Australian Consumer Law*.

(b) ASIC has commenced these proceedings against AVZ for contraventions of sections 674(2), 674A(2) and 1041H(1) of the Corporations Act.

109. By reason of the matters pleaded in paragraphs 100 to 108 above, Mr Ferguson and Mr Johnston:

a. failed to act with care and diligence in contravention of s. 180(1) of the Corporations Act; and

b. are liable to be the subject of declarations of contravention pursuant to s. 1317E of the Corporations Act.

110. Further, the contraventions of s. 180(1) of the Corporations Act by Mr Ferguson and Mr Johnston:

a. materially prejudiced the interests of AVZ or its members for the purposes of section 1317G(1)(b)(i) of the Corporations Act; and

b. is serious for the purposes of section 1317G(1)(b)(iii) of the Corporations Act.

111. By reason of the matters pleaded in paragraph 110 above, Mr Ferguson and Mr Johnston are liable to pay a pecuniary penalty pursuant to section 1317G of the Corporations Act.

Giving false or misleading information - Section 1309 of the Corporations Act

112. Mr Ferguson authorised and approved the announcements to the ASX market announcement platform as pleaded in paragraphs 57 to 60, 63 to 66, 70, 73 to 76 and 80 above and, thereby, authorised or permitted the making available or giving of information relating to the affairs of AVZ to members of AVZ and to the ASX (being the operator of a financial market) as contained in those announcements.

113. Mr Johnston authorised and approved the announcements to the ASX market announcement platform as pleaded in paragraphs 35, 58 to 60, 63, 64, 70, 73 to 76 and 80 above and, thereby, authorised or permitted the making available or giving of information relating to the affairs of AVZ to members of AVZ and to the ASX (being the operator of a financial market) as contained in those announcements.

114. The:

a. announcements as pleaded in paragraphs 59 and 60 above made the Manono Representations, the Dathcom Representations and the No Adverse Matters Representations and omitted the matters pleaded in paragraph 61 above;

b. announcements as pleaded in paragraphs 63 to 66 made the Manono Representations and the Dathcom Representations and omitted the matters pleaded in paragraph 67 above;

c. announcement as pleaded in paragraph 70 above made the Completion Representation, which was false as pleaded in paragraph 71, and omitted the matters pleaded in paragraphs 72 above;

d. announcements as pleaded in paragraphs 73 to 76 above made the Manono Representations and the Completion Representation, which was false as pleaded in paragraph 72, and omitted the matters pleaded in paragraph 77 above;

e. announcement as pleaded in paragraph 80 made the Manono Representation and the May 2022 Representations, which were false as pleaded in paragraph 81, and omitted the matters pleaded in paragraph 82 above;

and were, therefore, false or misleading in a material respect, alternatively, omitted matters that rendered the announcements misleading in a material respect.

Particulars of materiality

ASIC refers to and relies upon the matters pleaded in paragraphs 7 to 9 and 20 to 21 above.

115. Mr Ferguson did not take reasonable steps before authorising and approving the announcements pleaded in paragraphs 114 above to ensure that the information was not false or misleading, alternatively, the announcements did not omit matters that made them misleading in a material respect.

Particulars of reasonable steps

(a) Full disclosure of all matters pleaded in paragraphs 22 to 28, 37, 40 to 45, 51, 52 and 68 to 69 to the Board of AVZ.

(b) Allowing for and facilitating discussion by the Board of the matters pleaded in sub-paragraphs (a) above before authorising and approving the announcements pleaded in paragraph 114 above.

116. Mr Johnston did not take reasonable steps before authorising and approving the announcements pleaded in paragraphs 113 and 114 above to ensure that the

information was not false or misleading, alternatively, the announcements did not omit matters that made them misleading in a material respect.

Particulars of reasonable steps

ASIC refers to and relies upon the particulars to paragraph 115 above.

117. By engaging in the conduct pleaded in paragraphs 112 to 115 above, Mr Ferguson and Mr Johnston:

a. engaged in conduct in contravention of section 1309(2) and 1309(12) of the Corporations Act; and

b. are liable to be the subject of declarations of contravention pursuant to s. 1317E of the Corporations Act.

118. Further, the contraventions of s. 1309(2) and 1309(12) of the Corporations Act by Mr Ferguson and Mr Johnston materially prejudiced the interests of AVZ or its members for the purposes of section 1317G(1)(b)(i) of the Corporations Act.

119. By reason of the matters pleaded in paragraph 118 above, Mr Ferguson and Mr Johnston are liable to pay a pecuniary penalty pursuant to section 1317G of the Corporations Act.

AND THE APPLICANT CLAIMS AGAINST THE FIRST RESPONDENT:

A. Pursuant to section 1317E of the Corporations Act, a declaration that, by engaging in the conduct pleaded in paragraph 89 above and by reason of the matters pleaded in paragraph 84 and paragraph 88(a)-(d), AVZ contravened section 674(2) of the Corporations Act (as it stood prior to 14 August 2021).

B. Pursuant to section 1317E of the Corporations Act, declarations that, by engaging in the conduct pleaded in paragraphs 90 to 93 above and by reason of the matters pleaded in paragraphs 85 to 87 and paragraph 88(a)-(c) and (e), AVZ contravened section 674A(2) of the Corporations Act.

C. Pursuant to s. 21 of the *Federal Court of Australia Act 1976* (Cth), declarations that, by engaging in the conduct pleaded in paragraph 97 above, AVZ contravened section 1041H of the Corporations Act.

D. Pursuant to section 1317G of the Corporations Act, an order that AVZ pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court thinks fit

for its contraventions of sections 674(2) (as it stood prior to 14 August 2021) and 674A(2) of the Act.

E. Costs.

F. Such further or other orders or relief as the Court thinks fit.

AND THE APPLICANT CLAIMS AGAINST THE SECOND RESPONDENT:

G. Pursuant to section 1317E of the Corporations Act, a declaration that, by engaging in the conduct pleaded in paragraphs 102, 104 and 107 above, Mr Ferguson contravened section 180(1) of the Corporations Act.

H. Pursuant to section 1317E of the Corporations Act, a declaration that, by engaging in the conduct pleaded in paragraphs 112, 114 and 115 above, Mr Ferguson contravened section 1309(2) and (12) of the Corporations Act.

I. Pursuant to section 1317G of the Corporations Act, an order that Mr Ferguson pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court thinks fit by reason of the matters pleaded at paragraphs 110, 118 and 119 above for his contraventions of sections 180(1) and 1309(12) of the Corporations Act.

J. Pursuant to section 206C of the Corporations Act, an order that Mr Ferguson be disqualified from managing corporations for a period that the Court considers appropriate.

K. Costs.

L. Such further or other orders or relief as the Court thinks fit.

AND THE APPLICANT CLAIMS AGAINST THE THIRD RESPONDENT:

M. Pursuant to section 1317E of the Corporations Act, a declaration that, by engaging in the conduct pleaded in paragraphs 106, 107 and 109 above, Mr Johnston contravened section 180(1) of the Corporations Act.

N. Pursuant to section 1317E of the Corporations Act, a declaration that, by engaging in the conduct pleaded in paragraphs 113, 114 and 116 above, Mr Johnston contravened section 1309(2) and (12) of the Corporations Act.

O. Pursuant to section 1317G of the Corporations Act, an order that Mr Johnston pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court thinks fit by

reason of the matters pleaded at paragraphs 110, 118 and 119 above for his contraventions of sections 180(1) and 1309(12) of the Corporations Act..

P. Pursuant to section 206C of the Corporations Act, an order that Mr Johnston be disqualified from managing corporations for a period that the Court considers appropriate.

Q. Costs.

R. Such further or other orders or relief as the Court thinks fit.

Date: 11 November 2025

Signed by Sam Gomersall

Lawyer for the Applicant

This pleading was settled by William Keane SC, Philippa Honey and Guru Kugananthan

Certificate of lawyer

I, Sam Gomersall, 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: 11 November 2025

Signed by Sam Gomersall

Lawyer for the Applicant