

NOTICE OF FILING

Details of Filing

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File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BDO
AUDIT (WA) PTY LTD ACN 112 284 787 & ANOR
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

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.



Form 17
Rule 8.05(1)(a)

Statement of Claim

No. WAD 463 of 2025

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

Australian Securities and Investments Commission

Plaintiff

BDO Audit (WA) Pty Ltd (ACN 112 284 787)

First Defendant

Dean Neville Just

Second Defendant

A. PARTIES

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**):
 - (a) is a body corporate established by s 7 of the *Australian Securities Commission Act 1989* (Cth);
 - (b) is continued in existence by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
 - (c) is entitled by s 8(1)(d) of the ASIC Act to sue in its corporate name;
 - (d) is empowered to exercise the functions and powers conferred upon it under the ASIC Act and the *Corporations Act 2001* (Cth) (**the Act**), by operation of s 11 of the ASIC Act; and
 - (e) has statutory functions and powers conferred on it by the ASIC Act and by other statutes identified in s 12A of the ASIC Act.
2. The First Defendant, BDO Audit (WA) Pty Ltd (ACN 112 284 787) (**BDO**):
 - (a) is and was at all material times a corporation duly incorporated under the Act, and

- able to be sued;
- (b) is and was at all material times, an authorised audit company registered under s 1299C of the Act;
 - (c) carries on and at all material times carried on a business in Australia of providing audit services;
 - (d) was appointed as auditor of Dubber Corporation Ltd (ACN 089 145 424) (**Dubber**), the ultimate holding company of a group companies (**Dubber Group**), on 29 November 2011 and ceased as Dubber’s auditor on 24 November 2022; and
 - (e) was engaged by Dubber, to audit, relevantly, Dubber Group’s full-year consolidated statements of financial position as at:
 - (i) 30 June 2020 (**FY2020 Audit**);
 - (ii) 30 June 2021 (**FY2021 Audit**); and
 - (iii) 30 June 2022 (**FY2022 Audit**),collectively ‘**Audits**’.
3. The Second Defendant, Mr Dean Neville Just (**Mr Just**);
- (a) is and has been a director of BDO since 1 July 2013;
 - (b) is and has been a registered company auditor (no: 403806) since 1 July 2011;
 - (c) is and was the registered company auditor primarily responsible to BDO for the conduct of the Audits; and
 - (d) was the lead auditor for the Audits within the meaning of s 324AF of the Act.
4. Dubber:
- (a) is and was at all material times:
 - (i) a public company incorporated under the Act;
 - (ii) listed on the Australian Securities Exchange;
 - (iii) the ultimate holding company of the other companies in the Dubber Group, including Dubber Pty Ltd (ACN 150 843 164);
 - (b) together with its subsidiaries, at all material times carried on relevantly the business of providing cloud-based call recording software;

- (c) was required by:
 - (i) s 292(1)(b) of the Act to prepare a financial report (including financial statements) and directors' report for each financial year (the **Financial Report**);
 - (ii) s 301(1) of the Act to have the Financial Report for a financial year audited in accordance with Division 3 of Part 2M.3 and obtain an auditor's report (**Auditor's Report**); and
 - (iii) s 319 of the Act to lodge the Financial Report and Auditor's Report with ASIC.

B. DUBBER GROUP'S FINANCIAL REPORTS

- 5. Dubber's FY2020, FY2021 and FY2022 Financial Reports included consolidated financial statements for the Dubber Group.

Particulars

- A. The FY2020 Financial Report and Auditor's Report was included in Dubber's annual report of 30 June 2020 (**FY2020 Annual Report**), published on about 30 October 2020 [**JDB.0003.0001.0515** at **.0558** to **.0598** and **.0602** to **.0605**].
 - B. The FY2021 Financial Report and Auditor's Report was included in Dubber's annual report of 30 June 2021 (**FY2021 Annual Report**), published on about 1 November 2021 [**JDB.0003.0001.0610** at **.0661** to **.0709** and **.0712** to **.0717**].
 - C. The FY2022 Financial Report and Auditor's Report was included in Dubber's annual report of 30 June 2022 (**FY2022 Annual Report**), published on about 7 October 2022 [**JDB.0003.0001.0722** at **.0781** to **.0833** and **.0837** to **.0842**].
- 6. Dubber's FY2020, FY2021 and FY2022 Financial Reports were required to:
 - (a) consist of, relevantly, the financial statements for the financial year and the notes to the financial statements: s 295 of the Act;
 - (b) comply with the 'accounting standards' as defined in the Act: s 296; and
 - (c) include financial statements which gave a true and fair view of the financial

position of Dubber Group: s 297 of the Act.

C. APPLICABLE ACCOUNTING AND AUDIT STANDARDS IN FORCE

7. At all relevant times, the expression ‘accounting standards’ was defined in s 9 of the Act to include any instrument in force under s 334 of the Act.
8. At all relevant times AASB 10 ‘Consolidated Financial Statements’ (**AASB 10**) was an accounting standard in force under s 334 of the Act.
9. Pursuant to s 295(2)(b) of the Act and AASB 10, for each of FY2020, FY2021 and FY2022:
 - (a) Dubber’s financial statements were required to be prepared in relation to the consolidated entity, which was the Dubber Group; and
 - (b) the assets and liabilities of Dubber Pty Ltd were required to be included in the consolidated entity financial statements and formed part of the financial position of the Dubber Group.
10. At all relevant times, in performing the Audits, BDO was required to comply with the auditing standards, being the Australian Auditing Standards (**ASAs**) as made by the Auditing and Assurance Standards Board from time to time: s 307A and s 336 the Act.
11. At all relevant times, the ASAs extracted in **Annexure A** were in force under s 336 of the Act, and imposed obligations on BDO and Mr Just.

D. FY2020

D.1. \$10m Transfer on 5 July 2019

12. On or about 5 July 2019, Dubber Pty Ltd transferred a total of \$10 million (**\$10m Transfer**) to an account with National Australia Bank Limited (**NAB**) (BSB number 083-081 account number 25-648-4598) (**CW Trust Account**) in the name of Mark Madafferi TAS Christopher William Legal (**CW Legal**), purportedly for the purposes of that sum being invested in a term deposit by CW Legal to be held on trust for Dubber Pty Ltd.

Particulars

- A. The \$10m Transfer was recorded in a Westpac Banking Corporation (**Westpac**) statement for an account held by Dubber Pty Ltd [**GM9.0021.0001.0209**] and an NAB statement for the CW Trust Account for the period 30 April 2019 to 16 August 2019

[GM9.0019.0001.0074 at .0085 to .0086] to have been received on 5 July 2019, as follows:

- i. \$500,000;
- ii. \$4,500,000;
- iii. \$5,000,000;

B. The \$10m Transfer was also recorded in a trust account statement of CW Legal dated 15 February 2024 (matter reference number 15391) (**Trust Statement**) [GM9.0015.0001.0003 at .0010] to have been made on 5 July 2019, as follows:

- i. \$500,000 (Receipt 642; Reason: Investment Funds);
- ii. \$4,500,000 (Receipt 643; Reason: Investment Funds);
- iii. \$5,000,000 (Receipt 644; Reason: Investment Funds);

C. The purported purpose of the \$10m Transfer is to be inferred from:

- i. the receipts in B above; and
- ii. the statement in the FY2020 Annual Report note 4 that the ‘*cash on call deposit can be called back at any time by the company*’, page 64. [JDB.0003.0001.0515 at .0578].

13. CW Legal did not invest the funds from the \$10m Transfer in a term deposit account held on trust for Dubber Pty Ltd or Dubber.

D.2. Attempt by BDO to obtain bank confirmation during FY2019 Audit

14. On or about 27 August 2019, Dubber’s CFO, Mr Peter Curigliano (**Mr Curigliano**), provided BDO with:

- (a) a document purporting to be an NAB letter dated 29 June 2019 (**Purported June 2019 NAB Letter**) regarding a term deposit with NAB in the amount of \$2,745,933.19 in the name of ‘Mark Madafferi T/As Christopher William Legal As Trustee for Dubber Corporation Ltd’ with the account number 72-712-4602 for the period commencing on 28 June 2019 and ending on 28 June 2020 with an interest rate of 2.5%; and
- (b) a document purporting to be an NAB letter dated 12 July 2019 (**Purported July 2019 NAB Letter**) regarding a term deposit with NAB in the amount of \$10 million in the name of ‘Mark Madafferi T/As Christopher William Legal As Trustee for Dubber Pty Ltd’ with the account number 42-807-8642 for the period commencing on 12 July 2019 and ending on 12 July 2020 with an interest rate of 2.3%

(Purported 2019 \$10m Term Deposit).

Particulars

- A. Both the Purported June 2019 NAB Letter and the Purported July 2019 NAB Letter were received by BDO as attachments to an email from Mr Curigliano to Mr Brian Wong, Assistant Manager, Audit, BDO on 27 August 2019 [**BDO.001.001.3027**, attaching **BDO.001.001.3031** (Purported June 2019 NAB Letter) and **BDO.001.001.3030** (Purported July 2019 NAB Letter)].
- B. The preceding email chain recorded that:
 - i. Mr Curigliano had received the Purported June 2019 NAB Letter and the Purported July 2019 NAB Letter from Mr Jim Hilaris (**Mr Hilaris**) of Sureplus Services, an external bookkeeper for Dubber (email at 12.01 pm on 27 August 2019); [**BDO.001.001.3027**]; and
 - ii. Mr Hilaris had received those documents from Mr Chris Madafferi, purportedly a 'Commercial Finance Specialist' employed by an entity using the business name 'Funds2U' (email at 11.05 am on 27 August 2019). [**BDO.001.001.3027**].

15. During the audit as at 30 June 2019 (**FY2019 Audit**), BDO:

- (a) determined that a bank confirmation was necessary to provide sufficient and appropriate audit evidence for the \$2.7 million term deposit referred to in the Purported June 2019 NAB Letter;
- (b) initiated a bank confirmation procedure for the \$2.7 million term deposit referred to in the Purported June 2019 NAB Letter using Confirmation.com, a secure online platform operated by Thomson Reuters that enables auditors to submit, track, and receive bank confirmation requests electronically, the use of which is widespread by auditors in Australia;
- (c) informed Mr Mark Madafferi (**Mr Madafferi**) that the Confirmation.com process had been initiated, and asked Mr Madafferi to authorise the bank to provide confirmation to BDO of the \$2.7 million term deposit; and
- (d) failed to obtain a bank confirmation, because Mr Madafferi did not authorise the bank confirmation request.

Particulars

- A. On 28 August 2019, in an email exchange between Mr Allan Jiang, Manager, BDO and Mr Curigliano, Mr Jiang requested Mr Curigliano

to confirm Mr Madafferi was the authorised signatory for the term deposit account for BDO to initiate a bank confirmation request [BDO.001.001.3173 at _0005 to _0004].

- B. On 5 September 2019, in an email exchange between Mr Jiang and Mr Curigliano, Mr Jiang asked Mr Curigliano for Mr Madafferi's email address so that BDO could receive a bank confirmation before sign off, which email address was provided [BDO.001.001.3173 at _0003].
- C. On 12 September 2019, in an email exchange:
- i. Mr Jiang informed Mr Madafferi that BDO had initiated a bank confirmation request on the term deposit through Confirmation.com, and asked Mr Madafferi to complete the authorisation for that confirmation [BDO.001.001.3268 at _0002];
 - ii. Mr Madafferi did not provide the confirmation, and said that 'Steve [McGovern, Dubber's CEO] instructed me to change the signatories on the account which required the breaking of the term deposit to set up a new one. I will confirm where we are with this on getting Steve's instructions.'
 - iii. BDO replied to Mark Madafferi (copied to Mr Wong), 'We just want to obtain the confirmation of the balance as at 30 June 19. Therefore you should still be able to authorise the request if that's ok with you' [BDO.001.001.3268];
- D. On 18 September 2019 Mr Jiang forwarded the above email chain to Mr Curigliano, copied to Mr Wong, stating of Mr Madafferi that:
- 'As at today he has not authorised the bank confirmation request yet. All he need [sic] to do is to click the authorisation option in the email... As it is a very important audit evidence [sic] we need to obtain before we sign off. It will be appreciated if you could help us to chase up his authorisation.'* [DBR.0005.0004.5764]
- E. On 26 September 2019, in an email exchange:
- i. Mr Jiang wrote to Mr Curigliano informing him that BDO required the outstanding confirmation and requesting Mr Curigliano to contact Mr Madafferi, to authorise the request urgently.
 - ii. Mr Curigliano replied that he would expect that the bank would take up to a week to respond and requested that receipt of this 'surely would not create a roadblock for you to issue BDO's Declaration and Audit Report?' [DBR.0005.0004.2781 at .2781]
- F. BDO's FY2019 Audit file records that 'BDO attempted to obtain a bank confirmation, but were unsuccessful due to the authorised signatory being the solicitor Mark Madafferi not available to authorise

the bank confirmation request in confirmation.com due to personal matters’ [BDO.008.001.0097 worksheet, F.02.01 at cell I36, and worksheet F.02.02 at cell A2].

D.3. FY2020 Audit engagement

16. On or around 14 February 2020, Dubber engaged BDO to audit the full-year consolidated financial statements of the companies in the Dubber Group as at 30 June 2020 (**FY2020 Financial Statements**).

Particulars

The engagement was recorded in:

- A. Letter from BDO to Dubber dated 12 February 2020 (**FY2020 Engagement Letter**) [DBR.0005.0004.3308]; countersigned on 14 February 2020 [BDO.002.001.0003];
- B. BDO Terms of Trade (**FY2020 Terms**) [DBR.0005.0004.3307]; and
- C. Fee Letter from BDO to Dubber dated July 2020 [DBR.0005.0004.3309].

D.4. Conduct of, and relevant to, the FY2020 Audit

17. During the FY2020 Audit, BDO and Mr Just knew that BDO had, for the purpose of the FY2019 Audit, tried but failed to obtain a bank confirmation for a term deposit purportedly held by CW Legal as trustee for Dubber.

Particulars

- A. As to BDO’s knowledge, ASIC refers to the documents referred to in the particulars subjoined to paragraph 15 above, and the following references during the FY2020 Audit to the FY2019 Audit:
 - i. an email exchange in May 2020 between Mr Just and Mr Jiang relating to the FY2020 Audit and the Purported 2019 \$10m Term Deposit during which Mr Just queried the need to have funds transferred from their trust account back to their bank account before 30 June and whether that will still be an issue as *‘per prior year’* [BDO.001.001.4551]; and
 - ii. an email exchange on 11 August 2020 in which Mr Jiang advised Mr Just of his understanding that \$10 million was on deposit in the trust account, noting that Mr Wong had requested it be transferred back, and stating that the audit team could *‘... try to do bank confirm again this year’* [BDO.001.001.4907].
- B. Mr Just’s knowledge is to be inferred from the documents referred to

in paragraphs A. i. and ii. above.

18. For the FY2020 Audit, BDO and Mr Just considered that audit evidence of the Purported 2019 \$10m Term Deposit should be obtained by:
- (a) obtaining a bank confirmation of the Purported 2019 \$10m Term Deposit as at 30 June 2020;
 - (b) further or alternatively to (a) above, requesting Dubber ensure that the Purported 2019 \$10m Term Deposit be transferred to a Dubber bank account prior to 30 June 2020; and
 - (c) understanding the commercial rationale for the Purported 2019 \$10m Term Deposit.

Particulars

- A. The plan to obtain a bank confirmation was recorded in the following documents:
 - i. an Audit Test Summary Report [F59.0011.0001.0038 at cell 47G] which states at that bank confirmations are to be obtained for *'selected accounts'*; and
 - ii. the 11 August 2020 email exchange between Mr Jiang and Mr Just [BDO.001.001.4907], in which Mr Jiang referred to the *'\$10 million deposit'* and said *'We can try to do bank confirm again this year'*, to which Mr Just replied *'Yeah agreed, if they intend to classify it as cash, need to transfer it back to Dubber account and if we can get a confirm even better'*.
 - B. The need to make a request to Dubber to ensure that the Purported 2019 \$10m Term Deposit transferred to a Dubber bank account prior to 30 June 2020 was recorded in a 17 June 2020 email from Mr Jiang to Mr Curigliano [BDO.001.001.4592 at _0002].
 - C. The need to understand the commercial rationale of the Purported 2019 \$10m Term Deposit was recorded in an 11 August 2020 email chain between Mr Just, Mr Jiang and Mr Wong in which Mr Just wrote that BDO needed, *'to understand again why they have 10mil in a lawyer account'* [BDO.001.001.4909].
19. On or about 30 September 2020, Mr Curigliano sent BDO a document purporting to be an NAB letter dated 12 July 2020 (**Purported July 2020 NAB Letter**) regarding a term deposit with NAB in the amount of \$10 million in the name of 'Mark Madafferi T/As Christopher William Legal As Trustee for Dubber Pty Ltd' with the account number 42-

807-8642 for the period commencing on 12 July 2020 and ending on 12 July 2021 with an interest rate of 1.15% (**Purported 2020 \$10m Term Deposit**).

Particulars

The Purported July 2020 NAB Letter was provided by email from Mr Curigliano to Mr Wong, in which Mr Curigliano described it as a ‘*renewal for the \$10M on 12 July 2020*’ [**BDO.001.001.5297**, attaching **BDO.001.001.5298**]. The Purported July 2020 NAB Letter contained the statement ‘*If you need to withdraw part or all of your NAB Term Deposit before maturity you must give 31 days’ notice and a reduction in interest will apply*’.

20. On or about 27 October 2020, BDO sought to obtain audit evidence for the Purported 2019 \$10m Term Deposit by requiring Mr Curigliano to log into Dubber Pty Ltd’s Westpac account number 42-4489 online during a video call with BDO, during which BDO team members were shown two entries recording:
- (a) that a payment had been received by Dubber Pty Ltd on 14 September 2020 in the amount of \$5 million; and
 - (b) that a payment had been received by Dubber Pty Ltd on 23 October 2020 in the amount of \$5,023,244.89,

(the **Two Payments**).

Particulars

That BDO audit team members saw entries in an online bank account recording the Two Payments during a video call is recorded in or to be inferred from:

- A. BDO’s worksheet ‘Cash OSP’ cell J26 recording the procedure [**BDO.002.001.0160**]; and
 - B. an email chain ending 26 October 2020 between Mr Jiang, Mr Wong and Mr Curigliano, in which Mr Curigliano agreed to a Zoom meeting for such purpose [**DBR.0005.0003.5785**].
21. On or about 29 October 2020, BDO received a letter from Mr Curigliano representing, relevantly, that Dubber and/or Dubber Pty Ltd had the ability and intent to withdraw the Purported 2020 \$10m Term Deposit held by CW Legal on behalf of Dubber Pty Ltd at any time if required.

Particulars

BDO received the letter by email sent on 29 October 2020 from Mr Curigliano to Mr Wong [BDO.002.001.0122, attaching BDO.002.001.0123 at _0002].

22. While conducting the FY2020 Audit, BDO did not:
- (a) independently verify that the Purported 2019 \$10m Term Deposit existed and was available to Dubber Pty Ltd as at 30 June 2020, including by requiring that:
 - (i) CW Legal authorise NAB to correspond directly with BDO, either through Confirmation.com or otherwise, to obtain confirmation of the existence and balance of the Purported 2019 \$10m Term Deposit as at 30 June 2020;
 - (ii) alternatively, if direct confirmation were not practicable (which is denied), a BDO audit team member witness a member of CW Legal access the NAB website and view the balance of the Purported 2019 \$10m Term Deposit as at 30 June 2020;
 - (b) request from Dubber Pty Ltd, Dubber and/or CW Legal:
 - (i) a written record of the contractual arrangements pursuant to which the \$10m Transfer was made; and
 - (ii) a written explanation of the business rationale for the Purported 2019 \$10m Term Deposit sufficient to account for it being a significant transaction outside the usual course of Dubber's business, including why the deposit had been made via a third-party law firm;
 - (c) independently verify the source of the Two Payments, including as to whether or not the Two Payments had in fact been paid from the proceeds of the Purported 2020 \$10m Term Deposit;
 - (d) obtain a written (or any) explanation as to why:
 - (i) the Purported 2019 \$10m Term Deposit had not been transferred back to Dubber Pty Ltd prior to 30 June 2020, as requested by BDO on 17 June 2020;
 - (ii) the Two Payments were made approximately a month apart and not in a single transaction; and
 - (iii) Mr Curigliano had stated in his 29 October 2020 letter that Dubber had the

ability to withdraw the Purported 2020 \$10m Term Deposit at any time, when the Purported July 2020 NAB Letter stated '*If you need to withdraw part or all of your NAB Term Deposit before maturity you must give 31 days' notice*'.

23. When conducting the FY2020 Audit, BDO and Mr Just knew or ought to have known that there was a material risk that the Purported 2019 \$10m Term Deposit did not exist and/or was materially misstated, because they knew, or ought to have known, of the following matters:
- (a) the Purported 2019 \$10m Term Deposit:
 - (i) represented approximately 39% of the total equity of the Dubber Group, was a substantial portion of Dubber Pty Ltd's cash assets; and
 - (ii) was a significant transaction outside the normal course of Dubber's business;
 - (b) BDO had not received an explanation providing any legitimate commercial rationale for why the Purported 2019 \$10m Term Deposit was held by CW Legal, rather than by Dubber Pty Ltd directly;
 - (c) Dubber Pty Ltd had failed to call back the Purported 2019 \$10m Term Deposit by 30 June 2020, despite Mr Curigliano having said to BDO on or about 17 June 2020 that that he had '*today requested for a large slice of the funds to be returned by 30 June. I don't foresee any issues*';
 - (d) BDO had not obtained a bank confirmation for the purported \$2.7 million term deposit during the FY2019 Audit, despite BDO commencing the process to obtain such a confirmation, as set out in paragraph 17 above;
 - (e) BDO had not independently verified that the source of the Two Payments was the Purported 2020 \$10m Term Deposit, and had not ascertained why the Two Payments were made a month apart and not in a single transaction;
 - (f) BDO staff had doubts about the business rationale for the Purported 2019 \$10m Term Deposit and the reliability of the evidence being provided to BDO in relation thereto;
 - (g) Mr Just had sought, but failed, to obtain information to reasonably satisfy himself of the reliability of Mr Madafferri;
 - (h) the letter from Mr Curigliano dated 29 October 2020 representing that Dubber had

the ability to withdraw the Purported 2020 \$10m Term Deposit at any time was inconsistent with the Purported July 2020 NAB Letter, which stated ‘*If you need to withdraw part or all of your NAB Term Deposit before maturity you must give 31 days’ notice*’; and

- (i) BDO had not done the things referred to in paragraph 22 above.

Particulars

As to BDO’s and Mr Just’s knowledge of the risk that the Purported 2019 \$10m Term Deposit did not exist, ASIC refers to the Audit Test Summary Report [F59.0011.0001.0038] and in relation to the matters in (a) to (h) above, ASIC refers to:

- A. In relation to sub-paragraph (a), the FY2020 Financial Statements being audited, which recorded that the Dubber Group’s cash and cash equivalents were \$18,408,881, which amount included \$10 million described as a ‘*cash on call deposit*’. The FY2020 Financial Statements, also recorded that the total equity of the Dubber Group at 30 June 2020 was \$25,546,379 [JDB.0003.0001.0515 at .0559 and .0578];
- B. In relation to sub-paragraph (b):
- i. an email of 4 February 2020 in which Mr Jiang wrote to Mr Wong that he did not understand the commercial reason for the deposit, to which Mr Jiang replied that ‘*there is none*’ [BDO.001.001.3978];
 - ii. an email chain of 11 August 2020 between Mr Just, Mr Jiang and Mr Wong, in which Mr Just wrote that BDO needed, ‘*to understand again why they have 10mil in a lawyer account*’, to which Mr Jiang responded with an illustrated image of cash being passed under a table [BDO.001.001.4909]; and
 - iii. an email of 15 October 2020 from Mr Jiang to Mr Just and Mr Wong, in which Mr Jiang wrote that Dubber had announced it had \$16 million at the end of 30 September 2020, but with \$14.4 million of that was ‘*in the lawyer’s pocket*’ [BDO.001.001.5492].
- C. In relation to sub-paragraph (c):
- i. the email exchange of 17 June 2020 between Mr Jiang and Mr Curigliano, which was forwarded to Mr Just [BDO.001.001.4592 at _0002];
 - ii. an email of 30 June 2020 from Mr Wong to Mr Curigliano, copied to Mr Just and Mr Jiang, in which Mr Wong wrote ‘*Are you able to confirm that the company’s cash balance held in the lawyer’s trust accounts have been transferred back to the*

company's own bank accounts at 30 June [BDO.001.001.5732 at _0002]; and

- iii. the email exchange of 11 August 2020 referred to in B (ii) above.
- D. In relation to sub-paragraph (d), ASIC refers to and repeats the particulars subjoined to paragraph 17 above.
- E. In relation to sub-paragraph (e):
- i. The online account viewed by the BDO 'team', revealed only that the Two Payments had been made to Dubber Pty Ltd and did not verify the source of those payments, including whether the payments were made by withdrawing the Purported 2020 \$10m Term Deposit from NAB (worksheet 'Cash OSP' at cell J26) [BDO.002.001.0160].
 - ii. There was also no explanation in BDO's worksheet of why there were Two Payments, and why they were made more than a month apart.
 - iii. An email of 31 October from Mr Jiang to Mr Just noted *inter alia* that '*Allegedly \$5 million has been transferred back in Sep but we haven't seen the bank statement*' [BDO.001.001.5542].
- F. In relation to sub-paragraph (f) and (g):
- i. An email of 17 June 2020 from Mr Wong to Mr Just, with the subject line '*FW: Dubber 30 June 20 audit - funds held in lawyer's trust accounts*', in which Mr Wong included an internet meme depicting Saul Goodman, the unscrupulous lawyer from the fictional television series *Breaking Bad* and *Better Call Saul* [BDO.001.001.4592].
 - ii. the email exchanges of 4 February 2020, 11 August 2020 and 15 October 2020 referred to in B (i) to (iii) above.
 - iii. An email exchange of 26 October 2020 between Mr Just and Mr Jiang which [BDO.001.001.5620] recorded that:
 - Mr Curigliano had attempted to provide Mr Jiang and Mr Wong with a screenshot as evidence of the balance of the Purported 2020 \$10m Term Deposit;
 - Mr Jiang advised Mr Curigliano that this was insufficient, and forwarded the email to Mr Just '*in case*' Dubber had told Mr Just that they had '*provided the 'support' for the transfer of \$10 million*'; and
 - Mr Just wrote to Mr Jiang that he had searched online for Mr Madafferi and could not '*really find any info on him but there are some very colourful characters with Madafferi as a last name in Melbourne...Hopefully they're not related*'.
- G. In relation to subparagraph (h), ASIC refers to paragraphs 19 and 21 above and to the particulars subjoined thereto.

D.5. FY2020 – Dubber’s Financial Report and BDO’s Audit Report

24. On or about 30 October 2020:

- (a) Mr Just signed an audit report of the Dubber Group, in his capacity as director of BDO and as lead auditor (**FY2020 Audit Report**);

Particulars

The FY2020 Audit Report was contained in the FY2020 Annual Report, pages 87 to 91 [**JDB.0003.0001.0515** at **.0601** to **.0605**].

- (b) Dubber published its FY2020 Annual Report, which included the FY2020 Financial Statements and the FY2020 Audit Report; and
- (c) Dubber lodged the FY2020 Annual Report with ASIC.

25. The FY2020 Financial Statements represented that:

- (a) the Dubber Group’s cash and cash equivalents were \$18,408,881, which amount included \$10 million described as a ‘*cash on call deposit*’;

(FY2020 Cash Position Representation)

Particulars

The statement was contained in the FY2020 Annual Report at pages 24, 44, 46, 63 and 72. On page 63, as part of note 4, the report stated that the ‘*cash on call deposit can be called back at any time by the company*’ [**JDB.0003.0001.0515** at **.0538**, **.0559**, **.0561**, **.0578** and **.0587**].

- (b) the total equity of the Dubber Group was \$25,546,379 (approximately 39% of which was attributable to the Purported 2019 \$10m Term Deposit described as a ‘*cash on call deposit*’).

26. The FY2020 Cash Position Representation was:

- (a) not accurate; and
- (b) a material misstatement,

because as at 30 June 2020, \$10 million of the stated \$18,408,881 was not held by, or on behalf of, the Dubber Group in a cash on call deposit.

27. In the FY2020 Audit Report, BDO and Mr Just made the following statements:

- (a) ‘*In our opinion the accompanying financial report of the [Dubber] Group, is in*

accordance with the Corporations Act 2001, including: (i) Giving a true and fair view of the Group's financial position as at 30 June 2020 and of its financial performance for the year ended on that date' [JDB.0003.0001.0515 at .0602];

- (b) *'We conducted our audit in accordance with Australian Auditing Standards' [JDB.0003.0001.0515 at .0602];*
- (c) *'We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion' [JDB.0003.0001.0515 at .0602]; and*
- (d) impliedly by reason of the statements in (a) to (c) above, that:
 - (i) the audit had been carried out with due care and skill; and
 - (ii) there were reasonable grounds for the opinions alleged in subparagraphs (a) and (c).

(collectively the **FY2020 Audit Statements**).

D.6. BDO and Mr Just's failure to comply with the ASAs in the FY2020 Audit

28. In the circumstances referred to in paragraphs 12 to 23 above, a reasonably competent auditor with the knowledge of BDO and Mr Just referred to in those paragraphs, undertaking the FY2020 Audit would have taken the following steps (alternatively, such one or more of them as was reasonable in the circumstances):

- (a) planned to perform the audit procedures referred to in paragraph 22 above;
- (b) obtained the bank confirmation referred to in paragraph 22(a) above and the audit evidence referred to in paragraph 22(b) above;
- (c) in the event that a bank confirmation was not obtained verifying the existence of the Purported 2019 \$10m Term Deposit and that it was held on trust for Dubber Pty Ltd as at 30 June 2020:
 - (i) required the financial report to be modified; and/or
 - (ii) qualified their FY2020 Audit Report to reflect that they had been unable to obtain reasonable assurance that the 2020 financial report as a whole was not materially misstated;
- (d) independently verified whether or not the Two Payments had in fact been paid from the Purported 2020 \$10m Term Deposit as alleged in paragraph 22(c) above; and

- (e) obtained written explanations of the kind alleged in paragraph 22(d) above.
29. BDO did not take any of the steps in paragraph 28 above (alternatively, failed to take such one or more of those steps as a reasonably competent auditor would have taken) and Mr Just did not require BDO to take those steps.
30. By reason of paragraphs 28 and 29 above, BDO and Mr Just failed to conduct the FY2020 Audit in accordance with the ASAs because:
- (a) contrary to ASA 200 [15], BDO and Mr Just did not plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated;
 - (b) contrary to ASA 200 [16], BDO and Mr Just failed to adequately exercise professional judgement in planning and performing the audit;
 - (c) contrary to ASA 200 [17], BDO and Mr Just did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable BDO to draw reasonable conclusions on which to base its opinion and in order to obtain reasonable assurance, specifically that the FY2020 Financial Statements contained in the FY2020 Financial Report were free from material misstatement;
 - (d) contrary to ASA 200 [18], BDO and Mr Just did not comply with all ASAs relevant to the audit;
 - (e) contrary to ASA 240 [5], BDO and Mr Just did not undertake adequate inquiries or adopt adequate procedures to obtain reasonable assurance that the FY2020 Financial Statements were free from material misstatement as a whole;
 - (f) contrary to ASA 240 [13], BDO and Mr Just did not maintain sufficient professional scepticism throughout the audit, recognising the possibility that a material misstatement due to fraud could exist;
 - (g) contrary to ASA 240 [33(c)] BDO and Mr Just failed to investigate further the business rationale (or lack thereof) of the transaction referred to at paragraph 12 above, which was a significant transaction outside the normal course of Dubber's business, or otherwise appeared to be unusual;
 - (h) contrary to ASA 300 [10], BDO and Mr Just did not update and change the overall strategy and audit plan as necessary during the course of the audit;

- (i) contrary to ASA 315 [5] and [25], BDO and Mr Just did not perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial report and assertion levels, nor identify and assess the risks of material misstatement at the financial report level, and the assertion level for classes of transactions, account balances, and disclosures;
- (j) contrary to ASA 315 [31], BDO and Mr Just did not, having obtained information which was inconsistent with the audit evidence on which they originally based the assessment, revise the assessment and modify the further planned audit procedures accordingly;
- (k) contrary to ASA 330 [6], BDO and Mr Just did not design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level;
- (l) contrary to ASA 330 [25], BDO and Mr Just did not, based on the audit procedures performed and the audit evidence obtained, evaluate before the conclusion of the audit whether the assessments of the risks of material misstatement at the assertion level remain appropriate;
- (m) contrary to ASA 330 [26] and [27], BDO and Mr Just did not obtain sufficient appropriate audit evidence, should have attempted to obtain further audit evidence, and did not so attempt;
- (n) contrary to ASA 500 [6], BDO and Mr Just did not design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence;
- (o) contrary to ASA 500 [7], BDO and Mr Just did not, when performing audit procedures, consider the relevance and reliability of the information to be used as audit evidence;
- (p) BDO and Mr Just determined (or ought to have determined) that a response to a positive confirmation request was necessary to obtain sufficient appropriate audit evidence. Having failed to obtain such a response, they did not determine the implications of that failure for the audit and the auditor's opinion in accordance with ASA 705, contrary to ASA 505 [13]; and/or

(q) contrary to ASA 705 [6], BDO and Mr Just did not, where they ought to have concluded, based on the audit evidence obtained, that the Financial Report as a whole was not free from material misstatement or, alternatively, that they were unable to obtain sufficient appropriate audit evidence to conclude that the Financial Report as a whole is free from material misstatement.

31. By reason of the matters set out in paragraphs 28 to 30 above, BDO failed to exercise reasonable skill and care when conducting the FY2020 Audit.

D.7. FY2020 Contravention of s 1308(5)

32. On or about 30 October 2020 the FY2020 Annual Report and FY2020 Audit Report were lodged with ASIC.

33. The FY2020 Audit Statements referred to in paragraph 27 above were materially false or misleading and made the FY2020 Audit Report materially false or misleading because:

(a) by reason of the matters set out in paragraphs 12, 13, and 25 to 26 above the FY2020 financial report of the Dubber Group was materially misstated and:

(i) was not in accordance with the Act; and

(ii) neither it nor the FY2020 Financial Statements it contained gave a true and fair view of the Dubber Group's financial position as at 30 June 2020;

(b) by reason of the matters set out in paragraphs 14 to 30 above:

(i) BDO had not conducted the FY2020 Audit in accordance with the ASAs;

(ii) BDO had not conducted the FY2020 Audit with due care and skill; and

(iii) there were not reasonable grounds for the opinion in paragraph 27(a) above and the belief in paragraph 27(c) above.

34. By reason of the matters referred to at paragraphs 14 to 33 above,

(a) BDO; and

(b) Mr Just

did not take all reasonable steps to ensure that FY2020 Audit Report was not materially false or misleading because of the FY2020 Audit Statements.

35. By reason of paragraphs 32 to 34 above, on or about 30 October 2020, BDO and Mr Just contravened s 1308(5) of the Act.

E. FY2021

E.1. \$20m Transfer

36. On or about 23 October 2020, Dubber transferred \$20 million (**\$20m Transfer**) to the CW Trust Account, purportedly for the purposes of that sum being invested in a term deposit by CW Legal to be held on trust for Dubber or Dubber Pty Ltd.

Particulars

- A. The \$20m Transfer was recorded in a Westpac statement for an account held by Dubber Corporation Limited [**GM9.0039.0001.0005** at **.0009**]; and an NAB bank statement for the CW Trust Account for statement period 2 October 2020 to 2 November 2020 [**GM9.0019.0001.0166** at **.0167**] to have been received on 23 October 2020;
 - B. The \$20m Transfer was also recorded in the Trust Statement [**GM9.0015.0001.0003** at **.0017**] as \$20,000,000 received from Dubber Pty Ltd on 23 October 2020 (Receipt 1420; Reason: Dubber Deposit);
 - C. The purported purpose of the \$20m Transfer is to be inferred from the statement in the FY2021 Annual Report note 4 that the '*cash on call deposit can be called back at any time by the company*', page 72 [**JDB.0003.0001.0610** at **.0682**].
37. CW Legal did not invest the funds from the \$20m Transfer in a term deposit held on trust for Dubber or Dubber Pty Ltd.

E.2. FY2021 Audit engagement

38. On or around 15 June 2021, Dubber engaged BDO to audit the full-year consolidated financial statements of the companies in the Dubber Group as at 30 June 2021 (**FY2021 Financial Statements**).

Particulars

The engagement was recorded in:

- D. Fee Letter from BDO to Dubber dated 15 June 2021, which stated that it was to be read in conjunction with the FY2020 Engagement Letter [**BDO.002.001.0236** at **_0001**];
- E. FY2020 Engagement Letter [**DBR.0005.0004.3308**]; and
- F. FY2020 Terms, which were enclosed with the FY2020 Engagement Letter [**DBR.0005.0004.3307**].

E.3. Conduct of, and relevant to, FY2021 Audit

E.3.1. Background to the FY2021 Audit: conduct of the FY2021 half-year audit

39. On or about 10 February 2021, for the purpose of the half-year audit, Mr Curigliano provided BDO with a document purporting to be an NAB letter dated 26 October 2020 (**Purported October 2020 NAB Letter**) regarding a term deposit with NAB in the amount of \$20,000,000 in the name of ‘Mark Madafferi T/As Christopher William Legal As Trustee for Dubber Pty Ltd’ with the account number 42-807-8642 for the period commencing on 26 October 2020 and ending on 26 October 2021 with an annual interest rate of 1.05% and total interest at maturity of \$210,000 (**Purported 2020 \$20m Term Deposit**).

Particulars

- A. On 10 February 2021 Mr Matt Muscat, Auditor, BDO sent an email to Mr Curigliano requesting to be ‘*sent a bank statement showing the \$20,000,000 NAB 42-807-8642 term deposit balance (at call deposits for Dubber Pty Ltd from the consol)*’ [**BDO.001.001.6481**].
- B. By a reply email that day, Mr Curigliano sent to Mr Muscat the Purported October 2020 NAB Letter [**BDO.001.001.6481**, attaching **BDO.001.001.6482**].
- C. The FY2021 half year audit file contained a copy of the Purported October 2020 NAB Letter as audit working paper titled ‘F.03 NAB On Call Deposits 2020’ [**BDO.002.001.0178**] and was also referred to in audit working paper titled ‘F.02 Cash Workbook’, which was reviewed by Mr Just, in the comment ‘*Current \$20,000,000 sighted through bank statement - refer to F.03 for documentation.*’ [**BDO.002.001.0176** at cell 39G].
40. From the commencement of the FY2021 Audit on 13 May 2021, BDO and Mr Just knew or ought to have known of the matters referred to in paragraphs 17 to 23 and 39 above.

Particulars

ASIC refers to and repeats the matters set out in paragraphs 17 to 23 and 39 above and the particulars subjoined thereto.

E.3.2. Conduct of the FY2021 Audit

41. On 21 April 2021, BDO made a request to Dubber that ‘*Cash at solicitor’s trust account ... should be transferred back to DUB’s accounts preferably prior to 30 June, similar to PY*’.

Particulars

The request was made in an email of 21 April 2021 from Mr Wong to Mr Curigliano [DBR.0005.0002.8095 at _0002].

42. During the FY2021 Audit, BDO:
- (a) had initially planned to request bank confirmations;
 - (b) subsequently considered Dubber bank accounts, other than the Purported 2020 \$20m Term Deposit account, and determined that bank confirmations were not required for them. As an alternative procedure for the Dubber bank account balances (other than the Purported 2020 \$20m Term Deposit) BDO viewed live online banking screens showing the balances as at 30 June 2021;
 - (c) identified that appropriate procedures had to be designed to address the Purported 2020 \$20m Term Deposit Account;
 - (d) raised a potential risk of material misstatement in respect of Purported 2020 \$20m Term Deposit;
 - (e) informed Mr Curigliano that, as the Purported 2020 \$20m Term Deposit had not been transferred back into a Dubber Group bank account before 30 June 2021 as BDO had hoped:
 - (i) the transfer to Dubber's account should be made by the end of July 2021; and
 - (ii) in addition, BDO would '*require support for the balances held in solicitor's trust at reporting date*'.

Particulars

- A. As to sub-paragraph (a), on 15 June 2021, Ms Samudra Nair, Manager, BDO, sent an email to Mr Curigliano attaching an updated copy of the audit plan [DBR.0005.0002.8326, attaching DBR.0005.0002.8327];
- B. As to sub-paragraph (b), the consideration of bank accounts, other than the Purported 2020 \$20m Term Deposit, and determination about bank confirmations was made in audit working paper titled 'External Bank Confirm Consideration' dated 12 August 2021 [BDO.002.001.0261];
- C. As to sub-paragraphs (c) and (d), on 13 July 2021, a BDO engagement team discussion was held between team members including Mr Just, and a record of that discussion included [BDO.002.001.0353 at _0004]:

'Cash held in trust account with lawyer (Christopher

William Legal) as at 30 June 2021 - \$20m. Last year cash was called into trading account before sign off – do we need to request the same this year too?

Appropriate procedures have to be designed to address the above matters and have been raised as a potential RMM on APT.'

- D. As to sub-paragraph (e), the information was provided in an email of 23 July 2021 from Ms Nair to Mr Curigliano [**BDO.001.001.7500** at **_0004**].
43. Subsequent to the end of FY2021, BDO sighted a screenshot (or 'snip') purporting to show Dubber's Westpac account (Business Cash Reserve) BSB 033-157 account number 44-6466, recording receipt on 10 September 2021 in the amount of \$20,210,000 with the description 'DEPOSIT MADAFFERI M TD Payout'.

Particulars

BDO's worksheet [**BDO.002.001.0263**] contains the snip, and cell K42 in that worksheet:

'As at 30/06/2021, there is \$20m sitting in a term deposit account held with DUB's solicitors, Mark Madafferi T/As Christopher william legal as trustee for Dubber Pty Ltd - see F.05 for further information. The \$20m term deposit was renewed on the 26th of October 2020 on a 12 month maturity term at 1.05% p/a. Previously BDO have sighted the movement of funds sitting in the Solcitor's [sic] trust account being deposited in the Westpac Transaction Account ending #489 during the PY through a Zoom call between the CFO and the team - the CFO logged into the Westpac online banking platform 'live' and the team noted the payments received from the Madefferi [sic] solicitors (CWL). Satisfied that the \$20m is controlled by DUB. Management have represented that they have the ability and capacity to recall the cash they need at anytime and pay any costs associated with the withdrawal.

Audit team have noted that the \$20M should be classified as other receivables at reporting date and have therefore considered this as presentation SOM. Refer to 5.03.

Subsequent to the year end, as of 10 Sep 2021, we note that Dubber have received this money in their Westpac savings accounting [sic] ending 446466. BDO have sighted receipt - refer snip to right.'

44. On or about 29 October 2021, BDO and Mr Just received a representation letter from Mr

Curigliano stating that:

- (a) *‘the term deposit of \$20,000,000 held by Mark Madafferi T/As Christopher William Legal As Trustee for Dubber Pty Ltd is classified correctly as a cash and cash equivalent at 30 June 2021 in accordance with AASB 107 para 7’; and*
- (b) *‘Subsequent to the year end, as of 10 Sep 2021, the Group have received this money in their Westpac savings accounting [sic] ending 446466’.*

Particulars

BDO and Mr Just received the letter by email sent on 29 October 2021 from Mr Curigliano to Ms Nair copied to inter alia, Mr Just [**BDO.002.001.0335**, attaching **BDO.002.001.0333**].

45. While conducting the FY2021 Audit, BDO did not:
- (a) independently verify that the Purported 2020 \$20m Term Deposit existed and was available to Dubber Pty Ltd as at 30 June 2021, by requiring that:
 - (i) CW Legal authorise NAB to correspond directly with BDO, either through Confirmation.com or otherwise;
 - (ii) alternatively, if direct confirmation were not practicable (which is denied), a BDO audit team member witness a member of CW Legal access the NAB website and view the Purported 2020 \$20m Term Deposit;
 - (b) request from Dubber Pty Ltd, Dubber and/or CW Legal:
 - (i) a written record of the contractual arrangements pursuant to which the \$20m Transfer was made; and
 - (ii) a written explanation of the business rationale for the Purported 2020 \$20m Term Deposit sufficient to account for it being a significant transaction outside the usual course of Dubber’s business, including why the deposit had been made via a third-party law firm;
 - (c) independently verify whether or not the payment received by Dubber on 10 September 2021 was in fact paid from the proceeds of the Purported 2020 \$20m Term Deposit;
 - (d) obtain a written (or any) explanation as to:

- (i) why the transfer was unable to be made by 30 June 2021 as requested by BDO on or about 21 April 2021, and was not made until 10 September 2021;
 - (ii) why, given the Purported October 2020 NAB Letter stated that maturity of the term deposit was 26 October 2021 and that withdrawal prior to maturity would result in a reduction in interest, the payment on 10 September 2021 purported to include the full interest entitlement of \$210,000.
46. When conducting the FY2021 Audit, BDO and Mr Just knew or ought to have known that there was a material risk that the Purported 2020 \$20m Term Deposit did not exist and/or was materially misstated, because they knew, or ought to have known, of the following matters:
- (a) the Purported 2020 \$20m Term Deposit represented approximately 34% of the total equity of the Dubber Group and was a substantial portion of Dubber Pty Ltd's cash assets and was a significant and unusual transaction;
 - (b) BDO had not received an explanation providing any legitimate commercial rationale for why Dubber Pty Ltd's funds were being held by CW Legal through term deposits on trust, rather than by Dubber Pty Ltd directly;
 - (c) Dubber Pty Ltd had failed to call back the Purported 2020 \$20m Term Deposit by 30 June 2021;
 - (d) BDO staff had doubts about the business rationale for the Purported 2020 \$20m Term Deposit and the reliability of the evidence being provided to BDO in relation thereto;
 - (e) BDO had not verified the source of the payment made on 21 September 2021;
 - (f) BDO had not verified why the payment made on 21 September 2021 reflected the full term deposit interest entitlement of \$210,000, when the Purported October 2020 NAB Letter stated that interest payable would be reduced in the event of early redemption;
 - (g) BDO had not done the things referred to in paragraph 45 above; and
 - (h) the matters relating to the FY2020 Audit set out in paragraph 23 above.

Particulars

As to BDO's and Mr Just's knowledge of the risk that the Purported 2020 \$20m Term Deposit did not exist, ASIC refers to the Audit Test Summary Report [F59.0011.0001.0368] and in relation to the matters in (a) to (h) above, ASIC refers to:

- A. In relation to sub-paragraph (a), the FY2021 Financial Statements being audited, which recorded that the Dubber Group's cash and cash equivalents were \$32,041,224, which amount included \$20 million described as a *'cash on call deposit'*. The FY2021 Financial Statements, also recorded that the total equity of the Dubber Group at 30 June 2020 was \$58,956,036 [JDB.0003.0001.0610 at .0662 and .0682].
- B. In relation to sub-paragraph (b):
- i. ASIC refers to the particulars in paragraph B sub-joined to sub-paragraph 23(b); and
 - ii. a 23 July 2021 message exchange between Mr Kunal Patel, Manager, BDO and Ms Nair regarding the Purported 2020 \$20m Term Deposit in which Mr Patel wrote *'do you make sense of this account name on NAB statement??'* [screenshot of account name 'Mark Madafferi T/As Christopher William Legal At Trustee for Dubber Pty Ltd'] to which Ms Nair replied *'no I dont / i dont understand it at all tbh'* [BDO.007.001.0019 at _0002].
- C. In relation to sub-paragraph (c):
- i. the 21 April 2021 email request from Mr Wong to Mr Curigliano [DBR.0005.0002.8095 at _0002];
 - ii. the 27 July 2021 email thread last from Mr Patel to Mr Curigliano, copied to Mr Just [BDO.001.001.7500]; and
 - iii. BDO's worksheet [BDO.002.001.0263] contains the snip, and cell K42 in that worksheet.
- D. In relation to sub-paragraphs (d) and (e):
- i. the particulars in paragraph F, sub-joined to paragraph 23; and
 - ii. a 27 July 2021 message exchange between Mr Patel and Ms Nair regarding Purported 2020 \$20m Term Deposit in which Ms Nair wrote *'if they truly are the legal holder he should be able to login/ access/ control it'* [BDO.007.001.0023 at _0003].
- E. In relation to sub-paragraph (f):
- i. the online account viewed by the BDO 'team', as recorded in BDO's worksheet [BDO.002.001.0263] worksheet 'Cash OSP', included a screenshot (or 'snip') purporting to show Dubber's Westpac account (Business Cash Reserve) BSB 033-157 account

number 44-6466 recording receipt on 10 September 2021 in the amount of \$20,210,000 with the description ‘*DEPOSIT MADAFFERI MTD Payout*’;

- ii. the snip did not record that Dubber had received that amount by withdrawing the Purported 2020 \$20m Term Deposit from NAB; and
- iii. the Purported October 2020 NAB Letter.

F. In relation to sub-paragraph (g):

- i. in relation to sub-paragraph 45(a)(i) message exchanges between Ms Nair and Ms Sunita Popp, Partner, BDO on 26 August 2021 regarding the failure to obtain bank confirmations and the circumstances in which they were expected [**BDO.007.001.0035** at **_0002, BDO.007.001.0054**]; and
- ii. in relation to sub-paragraph 45(a)(ii), an email of 10 August 2021 in which Mr Muscat seeks either to obtain a bank confirmation or sighting of bank balances by online meeting for accounts other than the Purported 2020 \$20m Term Deposit [**DBR.0005.0002.8947**].

G. In relation to sub-paragraph (h), ASIC refers to and repeats the particulars subjoined to paragraph 23.

E.4. FY2021 - Dubber’s FY2021 Financial Statements and BDO’s FY2021 Audit Report

47. On or about:

- (a) 29 October 2021, Mr Just signed an audit report of the Dubber Group, in his capacity as director of BDO (**FY2021 Audit Report**);

Particulars

The FY2021 Audit Report was contained in the FY2021 Annual Report, pages 102 to 108 [**JDB.0003.0001.0610** at **.0712** to **.0717**].

- (b) 1 November 2021, Dubber published its FY2021 Annual Report, which included the FY2021 Financial Statements and the FY2021 Audit Report; and
- (c) 1 November 2021, Dubber lodged the FY2021 Annual Report with ASIC.

48. The FY2021 Financial Statements represented that:

- (a) the Dubber Group’s cash and cash equivalents were \$32,041,224, which amount included \$20 million described as a ‘*Cash on call deposit*’ (**FY2021 Cash Position Representation**); and

Particulars

The statement was contained in the FY2021 Annual Report at pages 52 and 72. On page 72, as part of note 4, it is stated that the '*cash on call deposit can be called back at any time by the company*' [JDB.0003.0001.0610 at .0662 and .0682].

- (b) the total equity of the Dubber Group was \$58,956,036 approximately 34% of which was attributable to the Purported \$20m Term Deposit.

49. The FY2021 Cash Position Representation was:

- (a) not accurate; and
- (b) a material misstatement,

because as at 30 June 2021 \$20 million of the stated \$32,041,224 was not held by, or on behalf of, the Dubber Group in a cash on call deposit.

50. By the FY2021 Audit Report, BDO and Mr Just made the following statements:

- (a) '*In our opinion the accompanying financial report of the [Dubber] Group, is in accordance with the Corporations Act 2001, including: (i) Giving a true and fair view of the Group's financial position as at 30 June 2021 and of its financial performance for the year ended on that date;*' [JDB.0003.0001.0610 at .0713];
- (b) '*We conducted our audit in accordance with Australian Auditing Standards*' [JDB.0003.0001.0610 at .0713];
- (c) '*We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion*' [JDB.0003.0001.0610 at .0713]; and
- (d) impliedly by reason of the statements in (a) to (c) above, that:
 - (i) the audit had been carried out with due care and skill; and
 - (ii) there were reasonable grounds for the opinion in subparagraphs (a) and the belief in subparagraph (c).

(collectively the **FY2021 Audit Statements**).

E.5. BDO and Mr Just's failure to comply with the ASAs in the FY2021 Audit

51. In the circumstances referred to in paragraphs 36 to 46 above, a reasonably competent auditor with the knowledge of BDO and Mr Just referred to in those paragraphs,

undertaking the FY2021 Audit would have taken the following steps (alternatively, such one or more of them as was reasonable in the circumstances):

- (a) planned to perform the audit procedures referred to in paragraph 45 above;
 - (b) obtained the bank confirmation referred to in 45(a) above and the audit evidence referred to in paragraph 45(b) above;
 - (c) in the event that a bank confirmation was not obtained verifying the existence and balance of the Purported \$20m Term Deposit and that it was held on trust for Dubber Pty Ltd as at 30 June 2021:
 - (i) required the financial report to be modified; and/or
 - (ii) qualified their FY2021 Audit Report to reflect that they had been unable to obtain reasonable assurance that the 2021 financial report as a whole was not materially misstated,
 - (d) independently verified whether the payment of \$20,210,000 received by Dubber on 10 September 2021 was in fact paid from the Purported \$20m Term Deposit as alleged in paragraph 45(c) above; and
 - (e) obtained written explanations of the kind alleged in paragraph 45(d) above.
52. BDO did not take any of the steps referred to in paragraph 51 above (alternatively, failed to take such one or more of those steps as a reasonably competent auditor would have taken) and Mr Just did not require BDO to take such steps.
53. By reason of the matters set out in paragraphs 51 and 52 above, BDO and Mr Just failed to conduct the FY2021 Audit in accordance with the ASAs, including because:
- (a) contrary to ASA 200 [15], BDO and Mr Just did not perform the audit with professional scepticism recognising that circumstances may exist that caused the financial report to be materially misstated;
 - (b) contrary to ASA 200 [16], BDO and Mr Just failed to adequately exercise professional judgement in planning and performing the audit;
 - (c) contrary to ASA 200 [17], BDO and Mr Just did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable BDO to draw reasonable conclusions on which to base its opinion in order to obtain reasonable assurance that the FY2021 Financial Statements contained in the

FY2021 Financial Report were free from material misstatement;

- (d) contrary to ASA 200 [18], BDO and Mr Just did not comply with all ASAs relevant to the audit;
- (e) contrary to ASA 240 [5], BDO and Mr Just did not undertake adequate inquiries or adopt adequate procedures to obtain reasonable assurance that the FY2021 Financial Statements were free from material misstatement as a whole;
- (f) contrary to ASA 240 [13], BDO and Mr Just did not maintain sufficient professional scepticism throughout the audit, recognising the possibility that a material misstatement due to fraud could exist;
- (g) contrary to ASA 240 [33(c)], BDO and Mr Just failed to investigate further the business rationale (or lack thereof) of the transaction referred to at paragraph 36 above, which was a significant transaction outside the normal course of Dubber's business, or otherwise appeared to be unusual;
- (h) contrary to ASA 300 [10], BDO and Mr Just did not update and change the overall strategy and audit plan as necessary during the course of the audit;
- (i) contrary to ASA 315 [5] and [25], BDO and Mr Just did not perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial report and assertion levels, nor identify and assess the risks of material misstatement at the financial report level, and the assertion level for classes of transactions, account balances, and disclosures;
- (j) contrary to ASA 315 [31], BDO and Mr Just did not, having obtained information which was inconsistent with the audit evidence on which they originally based the assessment, revise the assessment and modify the further planned audit procedures accordingly;
- (k) contrary to ASA 330 [6], BDO and Mr Just did not design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level;
- (l) contrary to ASA 330 [25], BDO and Mr Just did not, based on the audit procedures performed and the audit evidence obtained, evaluate before the conclusion of the audit whether the assessments of the risks of material misstatement at the assertion

level remain appropriate;

- (m) contrary to ASA 330 [26] and [27], BDO and Mr Just did not obtain sufficient appropriate audit evidence, should have attempted to obtain further audit evidence, and did not so attempt;
- (n) contrary to ASA 500 [6], BDO and Mr Just did not perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence;
- (o) contrary to ASA 500 [7], BDO and Mr Just did not, when performing audit procedures, consider the relevance and reliability of the information to be used as audit evidence;
- (p) BDO and Mr Just determined (or ought to have determined) that a response to a positive confirmation request was necessary to obtain sufficient appropriate audit evidence. Having failed to obtain such a response, they did not determine the implications of that failure for the audit and the auditor's opinion in accordance with ASA 705, contrary to ASA 505 [13]; and
- (q) contrary to ASA 705 [6], BDO and Mr Just did not, where they ought to have concluded, based on the audit evidence obtained, that the financial report as a whole was not free from material misstatement or, alternatively, that they were unable to obtain sufficient appropriate audit evidence to conclude that the financial report as a whole is free from material misstatement.

54. By reason of the matters set out in paragraphs 51 to 53 above, BDO and Mr Just failed to exercise reasonable skill and care when conducting the FY2021 Audit.

E.6. FY2021 Contravention of s 1308(5)

55. On or about 1 November 2021 the FY2021 Annual Report and FY2021 Audit Report were lodged with ASIC.

56. The FY2021 Audit Statements referred to in paragraph 50 above were materially false or misleading and made the FY2021 Audit Report materially false or misleading because:

- (a) by reason of the matters set out in paragraphs 36, 37, and 48 to 49 above, the FY2021 financial report of the Dubber Group was materially misstated and:
 - (i) was not in accordance with the Act;

- (ii) neither it nor the financial statements it contained gave a true and fair view of the Dubber Group's financial position as at 30 June 2021;
 - (b) by reason of the matters set out in paragraphs 38 to 53 above:
 - (i) BDO had not conducted the FY2021 Audit in accordance with the ASAs;
 - (ii) BDO had not conducted the FY2021 Audit with due care and skill; and
 - (iii) there were not reasonable grounds for the opinion in paragraph 50(a) above and the belief in paragraph 50(c) above.
57. By reason of the matters referred to at paragraphs 38 to 56 above:
- (a) BDO; and
 - (b) Mr Just
- did not take all reasonable steps to ensure that FY2021 Audit Report was not materially false or misleading because of the FY2021 Statements.
58. By reason of paragraphs 55 to 57 above, on or about 30 October 2021:
- (a) BDO; and
 - (b) Mr Just
- contravened s 1308(5) of the Act.

F. FY2022

F.1. \$30m Transfer

59. On or about 6 August 2021, Dubber Pty Ltd transferred a total of \$30 million (**\$30m Transfer**) to the CW Trust Account purportedly for the purposes of that sum being invested in a term deposit by CW Legal to be held on trust for Dubber Pty Ltd.

Particulars

- A. the \$30m Transfer was recorded in a Westpac statement for an account held by Dubber Pty Ltd [**GM9.0014.0001.0833** at **.0847**]; and an NAB bank statement for the CW Trust Account for statement period 31 July 2021 to 16 August 2021 [**GM9.0010.0001.0189** at **.0190**] to have been received on 6 August 2021;
- B. the \$30m Transfer was also recorded in the Trust Statement [**GM9.0015.0001.0003** at **.0019**] as \$30,000,000 received from Dubber Pty Ltd on 6 August 2021 (Receipt 1949; Reason: Dubber Deposit); and

- C. the purported purpose of the \$30m Transfer is to be inferred from:
 - i. the receipt in B above; and
 - ii. the statement in the FY2022 Annual Report at note 5 that ‘*Cash at Call deposit is a cash term deposit held with a AA3 rated financial institution with 90 day rollover terms and a 31 day call back in the name of the Company’s legal firm as trustee for the Company*’ at page 81 [**JDB.0003.0001.0722** at **.0802**].

60. CW Legal did not invest the funds from the \$30m Transfer in a term deposit held on trust for Dubber or Dubber Pty Ltd.

F.2. FY2022 Audit engagement

61. On or around 9 June 2022, Dubber engaged BDO to audit the full-year consolidated financial statements of the companies in the Dubber Group as at 30 June 2022 (**FY2022 Financial Statements**).

Particulars

The engagement was recorded in:

- A. Letter from BDO to Dubber dated 9 June 2022 (**FY2022 Engagement Letter**) [**DBR.0005.0002.0271**];
- B. BDO Terms of Trade [**DBR.0005.0002.0273**]; and
- C. Fee Letter from BDO to Dubber dated 9 June 2022 [**DBR.0005.0002.0272**].

F.3. Conduct of, and relevant to, the FY2022 Audit

F.3.1. Background to the FY2022 Audit: conduct of the 2022 half-year audit

62. For the purpose of the 2022 half-year audit:
- (a) on or about 11 February 2022, BDO received from Mr Hilaris a document purporting to be an NAB letter dated 9 August 2021 (**Purported August 2021 NAB Letter**) regarding a term deposit with NAB in the amount of \$30,000,000 in the name of ‘Mark Madafferi T/As Christopher William Legal As Trustee for Dubber Pty Ltd’ for the period commencing on 9 August 2021 and ending on 9 August 2022 with an annual interest rate of 0.75% and total interest at maturity of \$225,000 (**Purported 2021 \$30m Term Deposit**);

Particulars

BDO received the Purported August 2021 NAB Letter by email sent on 11 February 2022 from Mr Hilaris to Jake Impiombato, Undergraduate, BDO [**BDO.006.000.0020**, attaching **BDO.006.000.0021**].

- (b) On or about 28 February 2022, BDO and Mr Just received a letter from Mr Curigliano representing, relevantly, that Dubber and/or Dubber Pty Ltd had the ability and intent to withdraw the Purported 2021 \$30m Term Deposit held by CW Legal on behalf of Dubber Pty Ltd at any time if required.

Particulars

BDO received the letter by email sent on 28 February 2022 from Mr Curigliano to Ms Nair and copied to Mr Just [**DBR.0005.0002.2478**, attaching **DBR.0005.0002.2481**].

- 63. From the commencement of the FY2022 Audit on or about 9 June 2022, BDO and Mr Just knew or ought to have known of the matters referred to in paragraphs 39 to 46 and 62 above.

Particulars

ASIC refers to and repeats the matters set out in paragraphs 39 to 46 and 62 above and the particulars subjoined thereto.

F.3.2. Conduct of the FY2022 Audit

- 64. During the FY2022 Audit, BDO and Mr Just:
 - (a) had initially planned to request bank confirmations for Dubber's cash balances;
 - (b) thereafter considered Dubber bank account balances and determined that bank confirmations were not required for them. As an alternative procedure for the Dubber bank account balances (other than the Purported 2021 \$30m Term Deposit) BDO viewed live online banking screens showing the balances as at 30 June 2021;
 - (c) identified that appropriate procedures had to be designed to address the Purported 2021 \$30m Term Deposit;
 - (d) raised a potential risk of material misstatement in respect of Purported 2021 \$30m Term Deposit;

- (e) planned to obtain a confirmation of the Purported 2021 \$30m Term Deposit as at 30 June 2022;
- (f) planned to request Dubber to transfer the Purported 2021 \$30m Term Deposit into a Dubber bank account before sign off; and
- (g) considered it necessary to understand the commercial rationale for the Purported 2021 \$30m Term Deposit.

Particulars

- A. as to sub-paragraph (a), the plan to obtain confirmations for cash balances was recorded on BDO's audit working paper titled '*RPT.190 Audit Tests Report*' [F59.0011.0001.0672];
 - B. as to sub-paragraph (b), the consideration of bank accounts, other than the Purported 2021 \$30m Term Deposit, and determination about bank confirmations was made in audit working paper titled '*External Bank Confirm Consideration*' dated 19 August 2022 [BDO.002.001.0686];
 - C. as to subparagraph (c), that appropriate procedures had to be designed to address the Purported 2021 \$30m Term Deposit was recorded in a note of the engagement team's discussion dated 3 August 2022 (**Engagement Note**) attended by Mr Just [F59.0011.0001.0612 at .0616];
 - D. as to sub-paragraph (d), a potential risk of material misstatement in respect of Purported 2021 \$30m Term Deposit was recorded in the Engagement Note [F59.0011.0001.0612 at .0616];
 - E. as to sub-paragraph (e), the plan to obtain a confirmation for the Purported 2021 \$30m Term Deposit was recorded in the BDO portal, which included the request to Dubber '*Can a new confirmation please be obtained for the \$30M TD held as at 30/06/2022*' [BDO.001.002.8784];
 - F. as to sub-paragraph (f), the need to make a request to Dubber to ensure that the Purported 2021 \$30m Term Deposit was transferred to a Dubber bank account was recorded in the Engagement Note [F59.0011.0001.0612 at .0616]; and
 - G. as to sub-paragraph (g), the need to understand the commercial rationale of the Purported 2021 \$30m Term Deposit was recorded in a 2 October 2022 email from Mr Just to Ms Nair and Ms Popp [BDO.001.002.9266].
65. On 22 August 2022, BDO obtained from Mr Madafferi a letter dated 17 August 2022 on Dubber letterhead signed by Mr Madafferi asserting that the Purported 2021 \$30m Term

Deposit was invested with CW Legal as trustee for Dubber Pty Ltd as at 30 June 2022.

Particulars

The letter dated 17 August 2022 was received by BDO as an attachment to an email from Mr Madafferri to Mr Mick Franke, Auditor, BDO on 22 August 2022 [BDO.003.001.0015, attaching BDO.003.001.0016].

66. On 30 September 2022, BDO obtained from Mr Curigliano a letter dated 9 August 2022 from Mr Madafferri stating:

RE: Term Deposit - \$30,000,000 Rollover

This is to confirm we can get you an interest rate on the above funds at an annual rate on the following terms:

- a) 90 days rollovers,
- b) 12-month term,
- c) Interest rate 2.5% paid annually.

Nb: if you want early termination a 90-day rollover during the 12-month term technically the bank requires a 31 days' notice, and the interest will be forfeited for the rollover period.

Particulars

Email from Mr Curigliano to Ms Nair of BDO (copied to Mr Wong and Mr Just) [F59.0012.0001.0723, attaching F59.0012.0001.0738].

67. On or about 2 October 2022, Mr Just received an email from Mr Curigliano supplying the following answers in red text to questions Mr Just had asked in an email earlier that day in respect of the Purported 2021 \$30m Term Deposit [F59.0012.0001.0292 at .0293]:

As we discussed, one of the other outstanding matters relates to funds held on trust with a lawyer. To assist, can you please provide us with a position paper addressing the following:

- * Background as to the use of the trust account; *Dubber was approached by a number of organisations regarding Term Deposits. All were too restrictive.*
- * What relationship Dubber has with the lawyer? *CWL have acted for Dubber for 10+ years. They made representations to Dubber that they could attain preferential interest rates based on funds held for multiple clients.*
- * Why did Dubber choose to hold funds with the lawyer? *As above and lawyer has confirmed that the funds are in place with a AA3 financial institution - NAB*
- * Is their [sic] any family or close connection between the lawyer and any member of Dubber management? *No*
- * What contractual relationship exists between Dubber and the lawyer? *Legal / Commercial relationship*
- * Any restrictions on the funds? *No*
- * Are any of the funds associated/ linked to any customer or supplier contracts that Dubber holds? *No*
- * Do the funds relate to any guarantees granted by Dubber? *No*

68. On or about 5 October 2022, BDO obtained from Mr Madafferri a document purporting

to be a letter dated 12 August 2022 (**Purported August 2022 NAB Letter**) regarding a term deposit with NAB in the amount of \$30,000,000 in the name of ‘Mark Madafferi T/As Christopher William Legal As Trustee for Dubber Corporation Pty Ltd’ for the period commencing on 10 August 2022 and ending on 10 August 2023 with an annual interest rate of 2.5% and total interest at maturity of \$750,000 with account number 27-501-4452.

Particulars

The Purported August 2022 NAB Letter were received by BDO as attachments to an email from Mr Madafferi to Ms Nair, then Senior Manager BDO, on 5 October 2022 [**BDO.004.001.1413**, attaching **BDO.004.001.1415**].

69. On or about 7 October 2022 BDO received a letter of same date from Mr Curigliano on behalf of Dubber representing that the ‘*Term deposit of \$30,000,000 held by Mark Madafferi T/As Christopher William Legal as Trustee for Dubber Pty Ltd ... represents funds held in a trust account by Christopher William Legal on behalf of Dubber*’, and that Dubber had ‘*the ability to withdraw the funds at any time if required*’ [**F59.0011.0001.0959** at **.0960**].

Particulars

The letter dated 7 October 2022 was received by BDO as attachments to an email from Mr Curigliano to Mr Just on 7 October 2022 [**DBR.0005.0001.4517**, attaching **DBR.0005.0001.4518**].

70. While conducting the FY2022 Audit, BDO did not:
- (a) independently verify that the balance of the Purported 2021 \$30m Term Deposit existed as at 30 June 2022 by requiring that:
 - (i) CW Legal authorise NAB to correspond directly with BDO, either through Confirmation.com or otherwise;
 - (ii) alternatively, if direct confirmation were not practicable (which is denied), a BDO audit team member witness a member of CW Legal access on the NAB website the Purported 2021 \$30m Term Deposit;
 - (b) obtain sufficient appropriate audit evidence from Dubber Pty Ltd, Dubber and/or CW Legal to understand:

- (i) the contractual arrangements pursuant to which the \$30m Transfer was made;
 - (ii) the business rationale for the Purported 2021 \$30m Term Deposit sufficient to account for it being a significant transaction outside the usual course of Dubber's business, including why the deposit had been made via a third-party law firm;
- (c) obtain a written (or any) explanation of why, in relation to the two letters dated 9 August 2021 and 12 August 2022 purporting to be from NAB to Chiodo Madafferi and recording the amount of \$30m being held in a term deposit, the second letter had a different bank account number, and recorded an account held on trust for Dubber Corporation Pty Ltd, an entity which did not exist.
71. As a result of conducting the FY2022 Audit, BDO and Mr Just knew or ought to have known that there was a material risk that the Purported 2021 \$30m Term Deposit did not exist and/or was materially misstated, because they knew, or ought to have known, of the following matters:
- (a) the Purported 2021 \$30m Term Deposit represented approximately 25.7% of the total equity of the Dubber Group;
 - (b) BDO had not received an explanation providing any legitimate commercial rationale for why the Purported 2021 \$30m Term Deposit was held by CW Legal, rather than by Dubber or Dubber Pty Ltd directly;
 - (c) the Purported August 2021 NAB Letter did not record that the cash at call deposit was a cash term deposit held with a 90-day rollover term;
 - (d) they had been provided no evidence or reason to believe that the rate of 0.75% recorded in the Purported August 2021 NAB Letter was above market rates;
 - (e) Dubber Pty Ltd had refused to call back the Purported 2021 \$30m Term Deposit by 30 June 2022, before sign off or at all;
 - (f) BDO staff had doubts about the business rationale for the Purported 2021 \$30m Term Deposit and the reliability of the evidence being provided to BDO in relation thereto;
 - (g) the letter dated 12 August 2022 purporting to be from NAB to Chiodo Madafferi and recording the amount of \$30m being held in a term deposit recorded an account

- held on trust for Dubber Corporation Pty Ltd, an entity which did not exist;
- (h) BDO had not done the things referred to in paragraph 70 above;
 - (i) the matters relating to the FY2020 Audit set out in paragraph 23 above;
 - (j) the matters relating to the FY2021 Audit set out in paragraph 46 above;
 - (k) it was CW Legal itself that had suggested to Dubber that Dubber invest money in a term deposit via CW Legal, because it *'could attain preferential interest rates'*; and
 - (l) the *'unusual'* nature of Dubber's relationship with CW Legal and that *'it does not appear Dubber are achieving above market returns from the relationship'* despite CW Legal saying that it could obtain *'preferential interest rates'*.

Particulars

As to BDO's and Mr Just's knowledge of the risk that the Purported 2021 \$30m Term Deposit did not exist, ASIC refers to the Audit Test Summary Report [F59.0011.0001.0672] and in relation to the matters in (a) to (l) above, ASIC refers to:

- A. In relation to sub-paragraph (a), the FY2022 Financial Statements being audited, recorded that the total equity of the Dubber Group as at 30 June 2022 was \$116,790,924 [JDB.0003.0001.0722 at .0783].
- B. In relation to sub-paragraph (b), ASIC refers to the particulars sub-joined to paragraphs 23(b) and 46(b) above.
- C. In relation to sub-paragraph (c), ASIC relies upon the Purported August 2021 NAB Letter [BDO.006.000.0021].
- D. In relation to sub-paragraph (d):
 - i. BDO had received no plausible explanation that CW Legal was in fact receiving an above market rate;
 - ii. an email from Mr Just to Ms Nair at 7:35pm regarding the terms of the Purported August 2021 NAB Letter stating *'Yeah they were only getting 0.75% interest Hardly preferential I wouldn't have thought... That cracked a mention in the board report'* [BDO.001.002.9595]; and
 - iii. further particulars may be provided before trial.
- E. In relation to sub-paragraph (e):
 - i. an email from Mr Just to Mr Curigliano on 19 September 2022 at 1:56pm recording that BDO needed the *'At call deposits*

(AUD\$30m) to be transferred into Dubber bank account prior to sign off [F59.0012.0001.0697];

- ii. a message from Ms Nair to Mr Franke on 20 September 2022 at 11:28am recording the need for *'At call deposits (AUD\$30m) to be transferred into Dubber bank account prior to sign off* [BDO.007.001.0025 at _0003];
- iii. an email of 23 September 2022 at 4:01pm from Mr Just to Mr Curigliano recording Mr Just's discussion with Mr McGovern including that *'Evidence that at call deposits (AUD\$30m) to be transferred into Dubber bank account prior to sign off* [F59.0012.0001.0663];
- iv. an email of 29 September 2022 from Ms Nair to Mr Curigliano noting that the *'Status of at call deposits (AUD\$30m) to be transferred into Dubber bank account...'* [BDO.004.001.1285];
- v. an email of 30 September 2022 at 4:08pm from Mr Just to Mr McGovern and Mr Curigliano recording, amongst other things, *'Evidence of \$30mil cash held in trust is at call, to be evidence through transfer to Dubber's bank account as per prior year.'* [BDO.001.002.9138 at _0002];
- vi. an email on 4 October 2022 at 7:16pm from Mr Curigliano, responding to an enquiry from Ms Nair *'With respect to the \$30M at call deposit, can you please confirm status regarding transfer of these funds into Dubber's bank account?'* to which Mr Curigliano replied *'Transfer of funds has not occurred [sic]. The funds were rolled into a 90 day TD (as shown in Mark's letter to Steve), and we were advised recently that breaking the TD would mean we would forfeit interest in the order of \$180k+. The \$30M matured in early August which is within 3 months of 30 June 2022 and hence was considered a cash or cash equivalent item'* [F59.0012.0001.0307]; and
- vii. text messages from Ms Nair to Mr Just on 4 October 2022 at 8:07pm noting *'also about to shoot this email to the lawyer'* *'looks like funds aint coming to Dub bank account'* to which Mr Just responded *'nope, can understand given cost of audit'* [BDO.007.001.0026 at _0004].

F. In relation to sub-paragraph (f), ASIC refers to and repeats:

- i. the particulars in paragraph F, sub-joined to paragraph 23; and
- ii. the particulars in paragraph D above.

G. In relation to sub-paragraph (g), ASIC refers to and repeats the particulars sub-joined to paragraph 68.

H. In relation to sub-paragraph (h):

- i. in relation to sub-paragraph 70(a)(ii) to an email of 31 August 2022 12:16pm in which Mr Jason Oates, Auditor, BDO had

requested to see the ‘30 June 2022 account balances’ for certain cash accounts in Dubber’s online banking portal but in relation to the Purported 2021 \$30m Term Deposit had only requested to see statements for the account [F59.0012.0001.0098, BDO.001.002.8875]; and

- ii. in relation to sub-paragraph 70(a)(i) to an email of 2 September 2022 at 3:20pm in which Mr Mick Franke wrote to Mr Wong noting (in respect of cash accounts other than the Purported 2021 \$30m Term Deposit), that ‘we won’t be using confirmation.com to confirm this cash this year.’ [BDO.001.002.8879].
- I. In relation to sub-paragraph (i), ASIC refers to and repeats the particulars sub-joined to paragraph 23.
- J. In relation to sub-paragraph (j), ASIC refers to and repeats the particulars subjoined to paragraph 46.
- K. In relation to sub-paragraph (k), ASIC refers to the email sent by Mr Just to Mr McGovern and Mr Curigliano on 2 October 2022 at 4.50pm seeking a position paper on the ‘funds held on trust with a lawyer’ including ‘Why did Dubber choose to hold funds with the lawyer?’ [F59.0012.0001.0161], and the reply email from Mr McGovern to Mr Just on that date at 7:27pm that stated amongst other things that ‘CWL have acted for Dubber for 10+ years. They made representations to Dubber that they could attain preferential interest rates based on funds held for multiple clients’ [BDO.001.002.9368 at _0002].
- L. In relation to sub-paragraph (l), ASIC refers to the BDO Completion Report for the FY2022 Audit [BDO.002.001.0731 at _0014].

F.4. FY2022 - Dubber’s Financial Statements and BDO’s audit report

72. On or about 7 October 2022:

- (a) Mr Just signed an audit report of the Dubber Group, in his capacity as director of BDO (FY2022 Audit Report);

Particulars

The FY2022 Audit Report was contained in the FY2022 Annual Report, pages 116 to 121 [JDB.0003.0001.0722 at .0837 to .0842].

- (b) Dubber published its FY2022 Annual Report, which included the FY2022 Financial Statements and the FY2022 Audit Report; and
- (c) Dubber lodged the FY2022 Annual Report with ASIC.

73. The FY2022 Financial Statements represented that:

- (a) the Dubber Group had a cash at call deposit in the amount of \$30 million; and
- (b) the cash at call deposit was a cash term deposit held with a AA3 rated financial institution with 90-day rollover terms and a 31-day call back in the name of Dubber's legal firm as trustee for the Dubber Group

(FY2022 Cash Position Representation);

Particulars

The FY2022 Annual Report, pages 62 and 81 [**JDB.0003.0001.0722 at .0783 and .0802**].

- (c) the total equity of the Dubber Group was \$116,790,924, approximately 25.7% of which was attributable to the Purported 2021 \$30m Term Deposit described as a '*cash at call deposit*'.

74. The FY2022 Cash Position Representation was:

- (a) not accurate; and
- (b) a material misstatement,

because as at 30 June 2022, \$30 million was not held by, or on behalf of, the Dubber Group in a cash on call deposit.

75. By the FY2022 Audit Report, BDO and Mr Just made the following statements:

- (a) '*In our opinion the accompanying financial report of the [Dubber] Group, is in accordance with the Corporations Act 2001, including: (i) Giving a true and fair view of the Group's financial position as at 30 June 2022 and of its financial performance for the year ended on that date;*' [**JDB.0003.0001.0722 at .0838**];
- (b) '*We conducted our audit in accordance with Australian Auditing Standards*' [**JDB.0003.0001.0722 at .0838**];
- (c) '*We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion*' [**JDB.0003.0001.0722 at .0838**]; and
- (d) impliedly by reason of the statements in (a) to (c) above, that:
 - (i) the audit had been carried out with due care and skill; and
 - (ii) there were reasonable grounds for the opinion in subparagraphs (a) and the belief in subparagraph (c).

(collectively the **FY2022 Audit Statements**).

F.5. BDO and Mr Just's failure to comply with the ASAs in the FY2022 Audit

76. In the circumstances referred to in paragraphs 62 to 71 above, a reasonably competent auditor with the knowledge of BDO and Mr Just referred to in those paragraphs, undertaking the FY2022 Audit would have taken the following steps (alternatively, such one or more of them as was reasonable in the circumstances):
- (a) planned to perform the audit procedures referred to in paragraph 70 above;
 - (b) obtained the bank confirmations referred to in paragraph 70(a) above and the audit evidence referred to in paragraph 70(b) above; and
 - (c) in the event that a bank confirmation was not obtained verifying the existence and balance of the Purported 2021 \$30m Term Deposit and that it was held on trust for Dubber Pty Ltd as at 30 June 2022:
 - (i) required the financial report to be modified; and/or
 - (ii) qualified their audit report to reflect that they had been unable to obtain reasonable assurance that the 2022 financial report as a whole was not materially misstated.
 - (d) obtained written explanations of the kind alleged in paragraph 70(c) above.
77. BDO did not take any of the steps in paragraph 76 above (alternatively, failed to take such one or more of those steps as a reasonably competent auditor would have taken) and Mr Just did not require BDO to take such steps.
78. By reason of the matters set out in paragraphs 75 and 76 above, BDO and Mr Just failed to conduct the FY2022 Audit in accordance with the ASAs, including because:
- (a) contrary to ASA 200 [15], BDO and Mr Just did not plan and perform the audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated;
 - (b) contrary to ASA 200 [16], BDO and Mr Just failed to adequately exercise professional judgement in planning and performing the audit;
 - (c) contrary to ASA 200 [17], BDO and Mr Just did not obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable

BDO to draw reasonable conclusions on which to base its opinion in order to obtain reasonable assurance that the FY2022 Financial Statements contained in the FY2022 Financial Report were free from material misstatement;

- (d) contrary to ASA 200 [18], BDO and Mr Just did not comply with all ASAs relevant to the audit;
- (e) contrary to ASA 240 [5], BDO and Mr Just did not undertake adequate inquiries or adopt adequate procedures to obtain reasonable assurance that the FY2022 Financial Statements were free from material misstatement as a whole;
- (f) contrary to ASA 240 [13], BDO and Mr Just did not maintain sufficient professional scepticism throughout the audit, recognising the possibility that a material misstatement due to fraud could exist;
- (g) contrary to ASA 240 [33(c)], BDO and Mr Just failed to investigate further the business rationale (or lack thereof) of the transaction referred to at paragraph 59 above, which was a significant transaction outside the normal course of Dubber's business, or otherwise appeared to be unusual;
- (h) contrary to ASA 300 [10], BDO and Mr Just did not update and change the overall strategy and audit plan as necessary during the course of the audit;
- (i) contrary to ASA 315 [5] and [25], BDO and Mr Just did not perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial report and assertion levels, nor identify and assess the risks of material misstatement at the financial report level, and the assertion level for classes of transactions, account balances, and disclosures;
- (j) contrary to ASA 315 [31], BDO and Mr Just did not, having obtained information which was inconsistent with the audit evidence on which they originally based the assessment, revise the assessment and modify the further planned audit procedures accordingly;
- (k) contrary to ASA 330 [6], BDO and Mr Just did not design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level;
- (l) contrary to ASA 330 [25], BDO and Mr Just did not, based on the audit procedures

performed and the audit evidence obtained, evaluate before the conclusion of the audit whether the assessments of the risks of material misstatement at the assertion level remain appropriate;

- (m) contrary to ASA 330 [26] and [27], BDO and Mr Just did not obtain sufficient appropriate audit evidence, should have attempted to obtain further audit evidence, and did not so attempt;
- (n) contrary to ASA 500 [6], BDO and Mr Just did not design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence;
- (o) contrary to ASA 500 [7], BDO and Mr Just did not, when performing audit procedures, consider the relevance and reliability of the information to be used as audit evidence;
- (p) BDO and Mr Just determined (or ought to have determined) that a response to a positive confirmation request was necessary to obtain sufficient appropriate audit evidence. Having failed to obtain such a response, they did not determine the implications of that failure for the audit and the auditor's opinion in accordance with ASA 705, contrary to ASA 505 [7], [10], [11] and [13]; and/or
- (q) contrary to ASA 705 [6], BDO and Mr Just did not, where they ought to have concluded, based on the audit evidence obtained, that the financial report as a whole was not free from material misstatement or, alternatively, that they were unable to obtain sufficient appropriate audit evidence to conclude that the financial report as a whole is free from material misstatement.

79. By reason of paragraphs 59 to 78 above, BDO and Mr Just failed to exercise reasonable skill and care when conducting the FY2022 Audit.

F.6. FY2022 Contravention of s 1308(5)

80. On or about 7 October 2022 the FY2022 Annual Report and FY2022 Audit Report were lodged with ASIC.

81. The FY2022 Audit Statements referred to in paragraph 75 above were materially false or misleading and made the FY2022 Audit Report materially false or misleading because:

- (a) by reason of the matters set out in paragraphs 59, 60 and 73 to 74 above, the

FY2022 financial report of the Dubber Group was materially misstated and:

- (i) was not in accordance with the Act;
 - (ii) neither it nor the financial statements it contained gave a true and fair view of the Dubber Group's financial position as at 30 June 2022;
- (b) by reason of the matters set out at paragraphs 61 to 78 above:
- (i) BDO had not conducted the FY2022 Audit in accordance with the ASAs;
 - (ii) BDO had not conducted the FY2022 Audit with due care and skill;
 - (iii) there were not reasonable grounds for the opinion in paragraph 75(a) above and the belief in paragraph 75(c) above.

82. By reason of the matters referred to at paragraphs 61 to 81 above:

- (a) BDO; and
- (b) Mr Just,

did not take all reasonable steps to ensure that FY2022 Audit Report was not materially false or misleading because of the FY2022 Statements.

83. By reason of paragraphs 80 to 82 above, on or about 30 October 2022:

- (a) BDO; and
- (b) Mr Just,

contravened s 1308(5) of the Act.

AND THE PLAINTIFF SEEKS:

ASIC claims the relief set out in the Originating Process filed on 22 December 2025.

Date: 13 March 2026



Signed by Sam Gomersall
Lawyer for the plaintiff

This pleading was prepared by Jonathon Moore KC, Christina Klemis and Alex James-Martin of Counsel.

Annexure A – the ASAs

The following auditing standards as amended from time to time, were in force under s 336 of the Act during the relevant period:

Reference	Extract	Operative date	Relevant Audit Period
ASA 200 - Objective and General Principles Governing Audit of a Financial Report			
ASA 200 [15]	Professional Scepticism The auditor shall plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.	15 December 2016 ¹	FY2020
		15 July 2020 ²	FY2021 FY2022
ASA 200 [16]	Professional Judgement The auditor shall exercise professional judgement in planning and performing an audit of a financial report.	15 December 2016	FY2020
		15 July 2020	FY2021 FY2022
ASA 200 [17]	Sufficient Appropriate Audit Evidence and Audit Risk To obtain reasonable assurance, the auditor shall obtain sufficient appropriate audit evidence to reduce audit risk to an acceptably low level and thereby enable the auditor to draw reasonable conclusions on which to base the auditor's opinion.	15 December 2016	FY2020
		15 July 2020	FY2021 FY2022

¹ ASA 200 made on 27 October 2009 with registration number F2009L04064, as amended up to 1 December 2015 by F2015L02032.

² ASA 200 made on 27 October 2009 with registration number F2009L04064, as amended up to 30 June 2020 by F2020L00885.

ASA 200 [18]	<p>Conduct of an Audit in Accordance with Australian Auditing Standards</p> <p><i>Complying with Australian Auditing Standards Relevant to the Audit</i></p> <p>The auditor shall comply with all Australian Auditing Standards relevant to the audit. An Auditing Standard is relevant to the audit when the Auditing Standard is in effect and the circumstances addressed by the Auditing Standard exist.</p>	15 December 2016	FY2020
		15 July 2020	FY2021 FY2022
ASA 240 - The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Reports			
ASA 240 [5]	<p>Responsibility for the Prevention and Detection of Fraud</p> <p>An auditor conducting an audit in accordance with Australian Auditing Standards is responsible for obtaining reasonable assurance that the financial report taken as a whole is free from material misstatement, whether caused by fraud or error. Owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial report may not be detected, even though the audit is properly planned and performed in accordance with Australian Auditing Standards.</p>	1 January 2018 ³	FY2020
		15 July 2020 ⁴	FY2021 FY2022

³ ASA 240 made on 27 October 2009 with registration number F2009L04075, as amended up to 30 May 2017 by F2017L01179.

⁴ ASA 240 made on 27 October 2009 with registration number F2009L04075, as amended up to 30 June 2020 by F2020L00885.

ASA 240 [13]	Professional Scepticism In accordance with ASA 200, the auditor shall maintain professional scepticism throughout the audit, recognising the possibility that a material misstatement due to fraud could exist, notwithstanding the auditor’s past experience of the honesty and integrity of the entity’s management and those charged with governance.	1 January 2018	FY2020
		15 July 2020	FY2021 FY2022
ASA 240 [33(c)]	Responses to the Assessed Risks of Material Misstatement Due to Fraud <i>Audit Procedures Responsive to Risks Related to Management Override of Controls</i> Irrespective of the auditor’s assessment of the risks of management override of controls, the auditor shall design and perform audit procedures to: ... (c) For significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor’s understanding of the entity and its environment and other information obtained during the audit, evaluate whether the business rationale (or the lack thereof) of the transactions suggests that they may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets.	1 January 2018	FY2020
		15 July 2020	FY2021 FY2022

ASA 300 - Planning an Audit of a Financial Report			
ASA 300 [10]	<p>Planning Activities</p> <p>The auditor shall update and change the overall audit strategy and the audit plan as necessary during the course of the audit.</p>	15 December 2016 ⁵	FY2020 FY2021 FY2022
ASA 315 - Identifying and Assessing the Risks of Material Misstatement			
ASA 315 [5]	<p>Risk Assessment Procedures and Related Activities</p> <p>The auditor shall perform risk assessment procedures to provide a basis for the identification and assessment of risks of material misstatement at the financial report and assertion levels. Risk assessment procedures by themselves, however, do not provide sufficient appropriate audit evidence on which to base the audit opinion.</p>	15 December 2016 ⁶	FY2020 FY2021 FY2022
ASA 315 [25]	<p>Identifying and Assessing the Risks of Material Misstatement</p> <p>The auditor shall identify and assess the risks of material misstatement at:</p> <p>(a) the financial report level; and (b) the assertion level for classes of transactions, account balances, and disclosures</p> <p>to provide a basis for designing and performing further audit procedures.</p>	15 December 2016	FY2020 FY2021 FY2022

⁵ ASA 300 made on 27 October 2009 with registration number F2009L04077, as amended up to 1 December 2015 by F2015L02032.

⁶ ASA 315 made on 27 October 2009 with registration number F2009L04079, as amended up to 1 December 2015 by F2015L02032.

ASA 315 [31]	<p><i>Revision of Risk Assessment</i></p> <p>The auditor's assessment of the risks of material misstatement at the assertion level may change during the course of the audit as additional audit evidence is obtained. In circumstances where the auditor obtains audit evidence from performing further audit procedures, or if new information is obtained, either of which is inconsistent with the audit evidence on which the auditor originally based the assessment, the auditor shall revise the assessment and modify the further planned audit procedures accordingly.</p>	15 December 2016	FY2020 FY2021 FY2022
ASA 330 - The Auditor's Response to Assessed Risk			
ASA 330 [6]	<p>Audit Procedures Responsive to the Assessed Risks of Material Misstatement at the Assertion Level</p> <p>The auditor shall design and perform further audit procedures whose nature, timing, and extent are based on and are responsive to the assessed risks of material misstatement at the assertion level.</p>	15 December 2016 ⁷	FY2020 FY2021 FY2022
ASA 330 [25]	<p>Evaluating the Sufficiency and Appropriateness of Audit Evidence</p> <p>Based on the audit procedures performed and the audit evidence obtained, the auditor shall evaluate before the conclusion of the audit whether the assessments of the risks of material misstatement at the assertion level remain appropriate.</p>	15 December 2016	FY2020 FY2021 FY2022

⁷ ASA 330 made on 27 October 2009 with registration number F2009L04081, as amended up to 1 December 2015 by F2015L02032.

ASA 330 [26]	The auditor shall conclude whether sufficient appropriate audit evidence has been obtained. In forming an opinion, the auditor shall consider all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report.	15 December 2016	FY2020 FY2021 FY2022
ASA 330 [27]	If the auditor has not obtained sufficient appropriate audit evidence as to a material financial report assertion, the auditor shall attempt to obtain further audit evidence. If the auditor is unable to obtain sufficient appropriate audit evidence, the auditor shall express a qualified opinion or disclaim an opinion on the financial report.	15 December 2016	FY2020 FY2021 FY2022
ASA 500 - Audit Evidence			
ASA 500 [6]	Sufficient Appropriate Audit Evidence The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.	1 January 2018 ⁸	FY2020
		15 December 2019 ⁹	FY2021 FY2022

⁸ ASA 500 made on 27 October 2009 with registration number F2009L04084, as amended up to 30 May 2017 by F2017L01179.

⁹ ASA 500 made on 27 October 2009 with registration number F2009L04084, as amended up to 5 December 2018 by F2019L00016.

ASA 500 [7]	<p>Information to Be Used as Audit Evidence</p> <p>When designing and performing audit procedures, the auditor shall consider the relevance and reliability of the information to be used as audit evidence.</p>	1 January 2018	FY2020
	<p>Information to Be Used as Audit Evidence</p> <p>When designing and performing audit procedures, the auditor shall consider the relevance and reliability of the information to be used as audit evidence, including information obtained from an external information source.</p>	15 December 2019	FY2021 FY2022
ASA 505 - External Confirmations			
ASA 505 [7]	<p>External Confirmation Procedures</p> <p>When using external confirmation procedures, the auditor shall maintain control over external confirmation requests, including:</p> <p>(a) Determining the information to be confirmed or requested;</p> <p>(b) Selecting the appropriate confirming party;</p> <p>(c) Designing the confirmation requests, including determining that requests are properly addressed and contain return information for responses to be sent directly to the auditor; and</p> <p>(d) Sending the requests, including follow-up requests when applicable, to the confirming party.</p>	1 January 2010 ¹⁰	FY2020
		15 December 2019 ¹¹	FY2021 FY2022

¹⁰ ASA 505 made on 27 October 2009 with registration number F2009L04088.

¹¹ ASA 505 made on 27 October 2009 with registration number F2009L04088, as amended up to 5 December 2018 by F2019L00016.

ASA 505 [10]	<p>Results of the External Confirmation Procedures</p> <p><i>Reliability of Responses to Confirmation Requests</i></p> <p>If the auditor identifies factors that give rise to doubts about the reliability of the response to a confirmation request, the auditor shall obtain further audit evidence to resolve those doubts.</p>	1 January 2010	FY2020
		15 December 2019	FY2021 FY2022
ASA 505 [11]	<p>If the auditor determines that a response to a confirmation request is not reliable, the auditor shall evaluate the implications on the assessment of the relevant risks of material misstatement, including the risk of fraud, and on the related nature, timing and extent of other audit procedures.</p>	1 January 2010	FY2020
		15 December 2019	FY2021 FY2022
ASA 505 [13]	<p><i>When a Response to a Positive Confirmation Request Is Necessary to Obtain Sufficient Appropriate Audit Evidence</i></p> <p>If the auditor has determined that a response to a positive confirmation request is necessary to obtain sufficient appropriate audit evidence, alternative audit procedures will not provide the audit evidence the auditor requires. If the auditor does not obtain such confirmation, the auditor shall determine the implications for the audit and the auditor's opinion in accordance with ASA 705.</p>	1 January 2010	FY2020
		15 December 2019	FY2021 FY2022

ASA 705 - Modifications to the Opinion in the Independent Auditor's Report

ASA 705 [6]	<p>Circumstances When a Modification to the Auditor's Opinion is Required</p> <p>The auditor shall modify the opinion in the auditor's report when:</p> <p>(a) The auditor concludes that, based on the audit evidence obtained, the financial report as a whole is not free from material misstatement; or</p> <p>(b) The auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial report as a whole is free from material misstatement.</p>	15 December 2016 ¹²	FY2020
		15 July 2020 ¹³	FY2021 FY2022

¹² ASA 705 made on 1 December 2015 with registration number F2015L02017.

¹³ ASA 705 made on 1 December 2015 with registration number F2015L02017, as amended up to 30 June 2020 by F2020L00885.