



Federal Court of Australia

District Registry: Australian Capital Territory

Division: Fair Work

No: ACD46/2018

No: ACD47/2018

No: ACD46/2018

SIMON ALEXANDER TURNER

Applicant

TESA MINING (NSW) PTY LIMITED (ACN 111 753 792) and others named in the schedule

First Respondent

No: ACD47/2018

SIMON ALEXANDER TURNER

Applicant

READY WORKFORCE (A DIVISION OF CHANDLER MacLEOD) PTY LTD (ACN 088 288 037) and others named in the schedule

First Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 28 October 2019

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Subject to Augusta Ventures Limited (**AVL**) filing an application for leave to appeal from these orders by 4 pm on 8 November 2019, AVL is to provide security for the respondents' costs by serving on the respondents Deeds of Indemnity in the form of Annexure A and Annexure B to be executed by PartnerRe Ireland Insurance DAC (**PartnerRe Ireland**) and Hiscox Insurance Company Limited (**Hiscox Insurance**) respectively, in the respondents' favour and in the following tranches:

- (a) Deeds of Indemnity totalling the amount of:



- (i) \$1,000,000 in favour of the third respondent in proceeding number ACD46 of 2018 and the second respondent in proceeding number ACD47 of 2018;
- (ii) \$550,000 in favour of the first and third respondents in proceeding number ACD47 of 2018,

to be provided 28 days after the dismissal of the application for leave to appeal or after the determination of the appeal (if leave is granted) by the Full Court of the Federal Court;

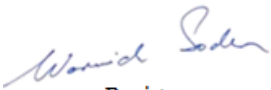
(b) Deeds of Indemnity totalling the amount of:

- (i) \$1,000,000 in favour of the third respondent in proceeding number ACD46 of 2018 and the second respondent in proceeding number ACD47 of 2018;
- (ii) \$550,000 in favour of the first and third respondents in proceeding number ACD47 of 2018,

to be provided 45 days prior to the first day fixed for the final hearing of the proceedings.

2. By 15 November 2019, AVL is to provide written confirmation from PartnerRe Ireland and Hiscox Insurance to the respondents that in the event that AVL's application for leave to appeal or appeal (if leave is granted) is dismissed, PartnerRe Ireland and Hiscox Insurance agree to enter into the Deeds of Indemnity in the form of Annexure A and Annexure B respectively.
3. By the same date that AVL provides security in accordance with order 1(a), AVL pay \$50,000 into the Federal Court of Australia to be retained as further security in relation to the respondents' costs of enforcing the Deeds of Indemnity.

Date that entry is stamped: 30 October 2019


Registrar



Schedule

Federal Court of Australia

District Registry: Australian Capital Territory

Division: Fair Work

No: ACD46/2018

Second Respondent THE TESA GROUP PTY LTD (ACN 107 606 833)

Third Respondent MT ARTHUR COAL PTY LTD (ACN 000 181 902)

No: ACD47/2018

Second Respondent MT ARTHUR COAL PTY LTD (ACN 000 181 902)

Third Respondent CHANDLER MacLEOD GROUP LIMITED (ACN 090 555 052)



Annexure A

DEED OF INDEMNITY

THIS DEED OF INDEMNITY IS MADE ON

2019

1. Definitions:

Business Day means a day on which banks are generally open in the City of London for the transaction of normal banking business (other than a Saturday)

2. Partner Re Ireland Insurance DAC of 3rd Floor, The Exchange, George's Dock, IFSC, Dublin hereby unconditionally and irrevocably undertakes to pay to _____ ("**the Respondent**") any sum or sums which Augusta Ventures Limited ("**the Claimant**") is liable to pay in respect of the Respondent's costs, as is the subject of an order of the Federal Court of Australia in proceedings number ACD46/2018 or ACD47/2018 ("**Proceedings**") or as otherwise agreed between Augusta Ventures Limited and the relevant Respondent.
3. The payment or payments will be made by Partner Re Ireland Insurance DAC within 7 Business Days of receipt by Partner Re Ireland Insurance DAC of the Respondent's written demand for such sums or within 10 Business Days of the issue of an order in the Proceedings that the Claimant pay the Respondent's costs, whichever is the later.
4. Partner Re Ireland Insurance DAC shall be liable to pay the Respondent any sum which may be due solely in respect of simple interest applicable to the written demand at the judgment rate prevailing in the relevant Australian jurisdiction at the date of the demand from the fifteenth day after the date of the presentation of the demand until payment by Partner Re Ireland Insurance DAC ("**Interest**").
5. Partner Re Ireland Insurance DAC's total liability under this Deed shall not exceed the lesser of either 50% of the Respondent's costs or the sum of AUD _____.
6. Subject to clause 5, Partner Re Ireland Insurance DAC shall have no liability to the Respondent under this Deed for an amount exceeding 50% of the Respondent's costs.
7. If Partner Re Ireland Insurance DAC fails to pay any amount in accordance with clause 2 of this Deed, Partner Re Ireland Insurance DAC hereby unconditionally and irrevocably undertakes:
 - i. to consent to judgment being entered against it in favour of the Respondent in the Federal Court of Australia to pay such amount subject to the total liability not exceeding the sum in clause 5 ("**Australian Judgment**");
 - ii. to consent to the Australian Judgment being registered in the High Court of Ireland
 - iii. not to seek to set aside the registration of the Australian judgment in the High Court of Ireland; and
 - iv. not to seek security for costs against the Respondent for proceedings for registration or enforcement of the Australian Judgment in the Republic of Ireland.



8. Partner Re Ireland Insurance DAC shall be deemed to be a principal debtor and not merely a surety and, accordingly, Partner Re Ireland Insurance DAC shall not be discharged nor shall its liability be affected by any act or thing or means whatsoever (including, without limitation, any defences to payment asserted by, insolvency of, or unenforceability as against the Claimant).
9. This Deed of Indemnity shall be in addition to and not in substitution for (and shall not be prejudiced by) any rights which the Respondent may have against the Claimant or any other person in respect of the sums indemnified under this Deed.
10. Partner Re Ireland Insurance DAC may not assign or transfer any of its rights or obligations under this Deed.
11. This Deed of Indemnity shall be governed by and construed in accordance with Australian Law and shall be subject to the exclusive jurisdiction of the Australian Courts.
12. All demands, notices and other communications, including service of any court process, hereunder shall be sent to Partner Re Ireland Insurance DAC, c/- Augusta Ventures Ltd, Level 1, 55 Grosvenor St, Neutral Bay NSW 2089 for the attention of _____ (without prejudice to any other mode or service).

Signed as a deed by [INPUT CONTACT NAME] for Partner Re Ireland Insurance DAC acting by an authorised signatory

Signature:-

for PartnerRe Ireland Insurance DAC

In the presence of:-

Name (BLOCK CAPITALS)

Address

Date