

APPENDIX 8A

Report to Members regarding V8 Supertourers Limited claims against MotorSport New Zealand, Brian Budd and Martin Fine

1. This report follows earlier reports to Members and is intended to respond appropriately to Member queries and other related communications.

The V8 Supertourers Limited litigation and settlement

2. In November 2016 MotorSport New Zealand (**MSNZ**) settled a claim brought against it by V8 Supertourers Limited (**V8STs**). In addition, to paying the settlement sum MSNZ incurred significant legal and other costs totalling \$130,479 during the financial years 2015 and 2016.
3. The settlement sum was paid in two instalments, the first of \$80,000 to McElroys on 22 November 2016 for payment onto Bisson Moss (V8STs' lawyers) and the second of \$170,000 direct to Bisson Moss on 2 December 2016. A copy of the Settlement Deed is **attached** to this report and marked "**A**". As is apparent, from the Settlement Deed the balance of the settlement sum was provided by MSNZ's insurers Vero Liability under MSNZ's policy.
4. Although it denied the claim MSNZ elected to settle on the basis that had the matter proceeded to trial the costs of defending V8STs claim, together with contesting Vero's assertion that insurance cover was limited to \$500,000 would have exceeded the \$250,000 ultimately paid in settlement.
5. In order to further understand the claim and the rationale for settlement it is necessary to go back in time to February 2012. At that time, NZ Vee Eight Entrants Group Association Limited (VEEGA) commenced proceedings against five of its former directors alleging breaches of their obligations which they owed as directors to VEEGA. The directors denied the allegations.
6. The VEEGA proceedings came to an end when control of VEEGA passed from the directors who initiated the proceedings to new directors who elected to discontinue those proceedings. The allegations in those proceedings were never tested in the Courts.
7. On discontinuance the defendants claimed costs against MSNZ alleging that MSNZ had provided some funding and support to VEEGA for the purpose of the proceedings.
8. MSNZ was represented in the costs claim by Izard Weston (as its solicitors) and John Billington QC (initially, as counsel) and later by Bruce Gray QC (as counsel when John Billington QC was not available).
9. Whilst it denied liability, MSNZ settled the claim for costs in the VEEGA proceedings, interest and costs in the costs claim, on the basis that the costs of continuing to defend the claims would have exceeded the amount being claimed against it.
10. After this settlement V8STs commenced proceedings against MSNZ, Brian Budd and Martin Fine. These proceedings were amended in a Statement of Claim dated 30 June 2015. A copy of that Amended Statement of Claim is **attached** and marked "**B**", and a copy of the Statement of Defence to the Amended Statement of Claim is **attached** marked "**C**".

11. There were had initially been six causes of action pleaded, and a seventh was added in the amended statement of claim. They are set out below:
 - First cause of action against MSNZ - taking advantage of substantial market power - breach of s 36 of the Commerce Act;
 - Second cause of action against Brian Budd - procuring or being knowingly concerned with MSNZ taking advantage of substantial market power - breach of s 36 of the Commerce Act;
 - Third cause of action against MSNZ - MSNZ's arrangement with NZ Vee Eight Entrants Group Association Limited (**VEEGA**) - breach of s 27 of the Commerce Act;
 - Fourth cause of action against Brian Budd - procuring or being knowingly concerned with MSNZ's arrangement with Veega - breach of s 27 of the Commerce Act;
 - Fifth cause of action against Martin Fine - procuring or being knowingly concerned with MSNZ's arrangement with Veega - breach of s 27 of the Commerce Act;
 - Sixth cause of action against MSNZ - MSNZ's arrangements with V8 SuperCars Australia (VESA) - breach of s 27 of the Commerce Act;
 - Seventh cause of action against MSNZ - misleading or deceptive conduct regarding comments to Auckland Tourism Events & Economic Development Ltd (ATEED) - breach of s9 of the Fair Trading Act.
12. The essence of the allegations made by V8STs was that MSNZ acted in breach of the Anti-Competition Principles in the Commerce Act because it:
 - Supported and contributed to the funding of the VEEGA litigation.
 - Attempted to disrupt V8STs' Challenge Cup.
 - Interfered with the V8STs meeting at Manfeild in April 2012 by not permitting car number 12 to compete.
 - Interfered with V8STs funding applications.
 - Prevent V8STs from racing at the VESA event at Pukekohe in April 2013.
 - Decided that it would not hold a MSNZ V8 Championship event at Ruapuna circuit operated by the Canterbury Car Club because MSNZ believed that the Club and circuit had agreed to host a V8 Supertourers event.
 - Refused to issue an organising permit for the V8STs race meeting at Hampton Downs on the weekend of 25 and 26 May 2013.
13. As is apparent, apart from the allegation that MSNZ supported and contributed to the funding of the VEEGA litigation, the other allegations are that MSNZ, assisted by Brian Budd and Martin Fine, managed Motorsport's V8 competition in such a way as to prejudice the financial interests of V8STs.
14. The pleadings in respect of the legal proceedings attached to this report are to provide Members with the relevant information, and to put this report into context. Members should be aware that the contents of those documents contain allegations (claims and responses to claims) that have not been tested in the Courts. The overview of the proceedings in this report, and the copy documents are provided for Members' information, but not for wider dissemination.
15. V8STs claimed it had lost in excess of \$3.9 million. MSNZ understands that the amounts claimed could have increased significantly if the claim proceeded to a trial.

16. These proceedings were referred to MSNZ's insurers, Vero Liability who appointed McElroys Lawyers to act for MSNZ.
17. In May 2015, Vero confirmed that there was cover in relation to the claim for MSNZ under its PI policy and cover for Messrs Budd and Fine under its Associations Policy, but reserved its position if other issues arose. It also flagged the position that if there were uninsured losses MSNZ should obtain its own legal advice.
18. There were two attempts to mediate the dispute. That followed a without prejudice meeting on 15 June 2015 which had not resulted in a settlement.
19. The first mediation was held on 11 October 2016 and was attended for MSNZ by Wayne Christie, Raymond Bennett, and Brian Budd (also in his personal capacity), represented by Peter Hunt and Darren Turnbull of McElroys, and with Tony Stevens of IZARD WESTON also in attendance. Martin Fine (who was also represented by McElroys) was also present. The parties were unable to reach a settlement and the mediation was adjourned.
20. Prior to resumption of the adjourned mediation on 15 November 2016 Vero advised MSNZ that it would no longer meet MSNZ's defence costs and that Vero's liability was capped at \$500,000.
21. Arguments were put to Vero on MSNZ's behalf that the insurance cover for MSNZ was more than the \$500,000. Vero continued to dispute its liability beyond that amount.
22. Vero and MSNZ went to the second mediation on the joint understanding that if the matter did not settle there would also be a dispute as between Vero and MSNZ. Vero had determined it would not pay more than \$500,000 towards a settlement. That amount was assessed as being sunk costs, as in effect continuing to conduct the litigation would cost more than the \$500,000.
23. This left MSNZ in the position that if the matter could not be settled for \$500,000 then it would have to contribute either to the settlement, or to defend the V8STs claim and cross-claim for indemnity against Vero. The costs of doing so would have been extremely high.
24. Prior to the second mediation and in light of Vero's stated position MSNZ had determined that it would contribute a maximum of \$250,000 to a settlement. MSNZ had also made arrangements to confirm that should the matter not settle and proceed to trial one of New Zealand's leading competition lawyers was available to act for MSNZ.
25. MSNZ was represented at the second mediation by Wayne Christie, Norman Oakley, Brian Budd (also there personally), Peter Hunt and Darren Turnbull (McElroys) and Tony Stevens (IZARD WESTON). Again McElroys represented the defendants, including Martin Fine (who was also present), except in relation to the issues between MSNZ and Vero.
26. At the second mediation, the matter was settled for a total sum of \$850,000, with \$600,000 being contributed by Vero and the balance of \$250,000 by MSNZ.
27. MSNZ met its obligations from cash reserves paid as set out in paragraph 3 of this report. MSNZ is determined that Member Clubs and New Zealand motorsport in general are affected as little as possible from the V8STs litigation, including any current and future financial impact. To this end MSNZ does not anticipate or propose any increase in fees, levies or other charges as a direct result of this settlement. The cash reserves used to fund the settlement had not been set aside for any specific purpose. Any increase to

fees, levies or other charges will be as a result of normal increases in order for MSNZ to meet its business and financial objectives.

28. Vero covered the costs incurred through McElroys, comprising legal costs and expert fees, net of the relevant policy deductible (or excess) payable by MSNZ. The excess under the policy paid by MSNZ was \$2,000.
29. In addition to meeting the settlement costs MSNZ has from time to time been required to meet its own separate legal costs in relation to issues beyond the scope of McElroys' instructions, regarding insurance coverage issues and uninsured aspects of the claim. In that regard MSNZ was represented by Izard Weston and John Billington QC (with input from Neil Campbell QC regarding particular insurance issues). These are the costs advised in paragraph 2.

Confidentiality

30. A number of issues have been raised with regard to what further information MSNZ should disclose. There are a number of aspects to this matter which are and remain confidential. They are:
 - a. What was said at the mediation, to which confidentiality undertakings apply.
 - b. What is contained in the legal advice MSNZ received in respect of all matters.
 - c. Other inherently confidential business records.
 - d. Documents discovered for the purposes of the litigation, or exchanged in confidence for the purposes of the mediation, which cannot be used for other purposes outside and separate from the litigation (or mediation).
31. The obligation to disclose business records is governed by the provisions of the Incorporated Societies Act 1908 and by MSNZ's Constitution. The correct legal position in relation to disclosure of business records is that members are entitled to relevant information concerning the management of MSNZ and in particular in this case the conduct of the litigation. That does not include any obligation to disclose all business records, or to disclose documents in respect of which confidentiality (or legal privilege) attaches by operation of law.
32. On that basis, MSNZ's Board considers it is appropriate to provide members with this background report and the financial information relating to this V8STs settlement.
33. MSNZ's Board considers it would be detrimental to the interests of MSNZ, and Members, and the sport generally to disclose every document generated within the context of the proceedings, and in particular it cannot disclose documents which are subject to the strict confidentiality obligations outlined above. That includes matters discussed in the course of the mediations, correspondence passing between MSNZ and its lawyers, documents that are inherently confidential, and documents obtained in the course of the parties' compliance with their discovery obligations in the litigation.

Lessons to be learned / future MSNZ activity:

34. The events in issue in the V8STs Litigation date back a number of years. Increasingly MSNZ is in an environment in which at least some participants in motorsport are trying to operate on commercial terms.

35. It is still not yet clear whether, and to what extent, it will be possible for a promoter, event organiser or other participant to make a commercial return in the New Zealand environment. The fate of The MotorSport Company Limited (TMC as it was then known) is well known.
36. Whether V8STs would have been profitable could have been one of the issues in the now settled V8STs litigation, because if V8STs could prove there were breaches of competition law principles (which was denied) evidence of V8STs' projected profitability would have been critical to whether V8STs suffered (and could have claimed) any loss and/or damage. But clearly many entities continue to invest in motorsport, and although many do that for the love of the sport or marketing purposes, some entities appear to be seeking to turn a commercial profit.
37. In that environment, and without conceding that MSNZ was or is obliged to take such steps, MSNZ is seeking to conduct itself (and to be more clearly be seen to conduct itself) in a way that limits any involvement in activity that could construed as the commercial or potentially commercial aspects of motorsport. MSNZ has been taking various steps to seek to:
- focus on its core roles regarding motorsport in New Zealand under the authority of the MSNZ and the Federation Internationale de L'Automobile (FIA), in accordance with the laws of New Zealand, its Rules, the National Sporting Code (NSC) and the FIA International Sporting Code (ISC), and in particular its role as a sporting governance body delivering sporting fairness and safety;
 - continue to provide support to member clubs, and relevant events and series in that regard, in accordance with its obligations under the Rules, the NSC and the ISC, particularly where that involves bearing or helping to bear the obligations and responsibilities involved in delivery of motorsport (as opposed to any commercial opportunities in that regard); and
 - step back from activities that could be perceived to involve MSNZ in potentially commercial aspects of motorsport, unless under circumstances where a promoter was not available through a properly conducted appointment process or other cases of force majeure, and MSNZ was required to undertake a co-ordination role for a short time until a promoter could be appointed (or in similar circumstances), as happened in the period immediately following the demise of TMC.
38. That is resulting in a number of changes and initiatives:
- MSNZ is in the process of finalising amendments to the NSC to better reflect that MSNZ is to be confined to lawfully fulfilling its role as the sporting governance body supporting motorsport activities, requiring member clubs and participants to support that too, and seeking more clearly to distance MSNZ from involvement in potentially commercial aspects of motorsport.
 - MSNZ has, over the past two years, arranged for appointments to the role of Championship Promotor to be handled through a tender process, using an appointed panel.
 - MSNZ has engaged with Rally of New Zealand Limited (RNZ) and has secured RNZ's agreement that it will seek to make changes to its constitution to enable MSNZ to sell its historical RNZ shareholding as soon as possible. In the meantime, MSNZ has distanced itself from RNZ day to day activities pending the amendment of the RNZ constitution and the sale of MSNZ's shares.

39. In addition, MSNZ is seeking to procure more substantial insurance cover. At this stage, MSNZ has maintained the existing levels of cover, with no increase in premium. MSNZ has sought a quotation through its broker for a significant increase in the liability cover available to MSNZ, and hopes to have increased cover in place soon.
40. All matters in relation to the litigation actions have been settled: legally, fully and finally. MSNZ settled the claims on a commercial, costs avoidance basis, and maintains its position that there was no admission of liability. This report has been prepared to provide Members with an appropriate and honest appraisal of the events of the VEEGA and V8STs litigations, why MSNZ chose to settle the claims instead of defending them, and what the financial cost and implications have been from MSNZ's perspective.
41. Any continuation of the litigation through seeking disclosure of documents or attempting to re-litigate can only result in significant further expense to MSNZ, further time and energy diverted from attending to its objectives of good governance and management of motorsport in New Zealand, and will likely not result in providing any clearer answers than what we have now.
42. MSNZ has taken on board very carefully the events that led up to the V8STs litigation, the lessons that have been learned as a result of this action, and has made changes accordingly to ensure that it is better placed to operate in the current changing environment.
43. It is time for all parties, MSNZ, Member Clubs, V8STs and anyone else involved, to set aside their differences and move on for the general good of New Zealand motorsport and everyone involved in it. By moving on we can all start to once again enjoy the benefits of being involved in our sport that has such a great heritage, through positive reporting via media (including social media), greater interaction from sponsors, spectators and other stakeholders and most importantly increased participation from competitors and volunteers.

Wayne Christie
President
MotorSport New Zealand

"A"

BETWEEN

V8 SUPERTOURERS LIMITED, an incorporated company having its registered office at the offices of Bisson Moss, Tennyson Chambers, 54 Tennyson Street, Napier

Plaintiff

AND

MOTORSPORT NEW ZEALAND INCORPORATED, an incorporated society under the Incorporated Societies Act 1908 having its registered office at 69 Hutt Road, Thorndon, Wellington

First Defendant

AND

B A BUDD, of 105 The Ridgeway, Mornington, Wellington, Chief Executive Officer

Second Defendant

AND

M Q FINE, of 74A Pencarrow Road, RD 3, Hamilton, Director

Third Defendant

SETTLEMENT AGREEMENT
Dated 15 November 2016

McELROYS
LITIGATION LAWYERS

PO Box 835, Auckland 1140
DX CP20526 Upper Shortland Street
Tel 64 9 307 2003
Fax 64 9 309 7558

Solicitor Acting: Peter Hunt / Darren Turnbull
Email: peter.hunt@mcelroys.co.nz / darren.turnbull@mcelroys.co.nz

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SETTLEMENT AGREEMENT
Dated 15 November 2016

Parties

Between V8 Supertourers Limited (**V8ST**)
And MotorSport New Zealand Incorporated (**MSNZ**)
And Brian Arthur Budd (**Mr Budd**)
And Martin Quinton Fine (**Mr Fine**)
each a **Party** and together the **Parties**

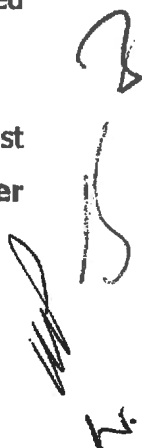
Background

- A. V8ST has filed a proceeding in the High Court at Auckland against MSNZ, Mr Budd and Mr Fine (collectively, the **Defendants**) for compensatory damages for alleged breaches of ss 27 & 36 Commerce Act 1986 and s 9 Fair Trading Act 1986 under (CIV 2012-404-3298) (**Proceeding**).
- B. The Parties have reached agreement as to the resolution of the Proceeding and all matters related to or arising out of the matters at issue in the Proceeding (**the underlying dispute**), which they record and set out below.

Agreement

1.0 Settlement Payment

- 1.1 MSNZ will pay a total sum of \$850,000, inclusive of interest, costs and GST (if any) to V8ST as follows:
- (1) Payment of the sum of \$680,000 into Bisson Moss' trust account by 5pm on 29 November 2016 in same day cleared funds (**First Payment**);
 - (2) Payment of the sum of \$170,000 into Bisson Moss' trust account in accordance with paragraph 1.2 below (**Further Payments**);

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1.2 MSNZ is to take all reasonable steps to obtain finance from a third party lender in order to make the Further Payment into Bisson Moss' trust account by 5pm on 6 December 2016 in same day cleared funds. In the event that MSNZ is unable to obtain finance by 6 December 2016, then MSNZ will pay the sum of \$170,000 due to V8ST, together with interest, as follows:

- (1) MSNZ will pay interest to V8ST on the outstanding amount of the Further Payments from 6 December 2016 at the rate of 5% per annum, calculated daily, accruing monthly.
- (2) MSNZ will make the following minimum annual payments of principal to V8ST, together with any interest accrued as at the date of any payment (**Minimum Payments**):

Due Date	Principal
1-Nov-17	\$40,000
1-Nov-18	\$40,000
1-Nov-19	\$40,000
1-Nov-20	\$50,000
Total	\$170,000

- (3) Payments are to be made into Bisson Moss' trust account (or as otherwise directed in writing by Bisson Moss), in cleared funds, by 5pm on the Due Date for payment (time and date of payment being of the essence).
- (4) In the event that MSNZ fails to make any of the Minimum Payments when due then the entire amount outstanding will become due and payable upon written demand by V8ST.
- (5) MSNZ is entitled to make payment to reduce the outstanding balance of Further Payments, over and above the Minimum Payments, at any time before the Due Dates, provided that such payment is made together with payment in respect of the interest accrued as at the date of early payment. Interest will

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continue to accrue on only the amount outstanding of the Further Payments.

- 1.3 This Agreement may be cancelled by V8ST in the event of a failure by MSNZ to make payment under clause 1.1(1) above but not otherwise.

2.0 Discontinuance of the Proceeding

- 2.1 Upon the making of the payment provided for in clause 1.1(1):

- (1) V8ST agrees to discontinue the Proceeding with no issue as to costs;
- (2) The Parties agree to sign, file and serve a joint memorandum confirming that costs may lie where they fall.

3.0 Joint Statement

- 3.1 Following entry into this Agreement, the Parties agree to issue a joint statement as follows:

V8ST, MSNZ, and the other defendants to the proceeding brought by V8ST are pleased to announce that they have reached an out of court settlement which will allow the litigation to end, and the parties to get back to focussing on the future of motorsport. There is no doubt that everyone involved loves motorsport in New Zealand, believes in it, and wants it to succeed. They are pleased to be able to close that chapter, and move on into the future.

4.0 Insurance

- 4.1 The Defendants have disclosed, in strict confidence, to V8ST, the existence of the liability policies set out in the annexed schedule to this Agreement. The Defendants are not aware of any additional liability insurance policies for the period specified in the schedule.

5.0 Full and Final Settlement

- 5.1 The Payment is in full and final settlement of V8ST's claims against the Defendants made in the Proceeding and all other claims, rights, remedies, complaints or causes of action of any nature between any of the Parties arising out of or in connection with the subject matter of

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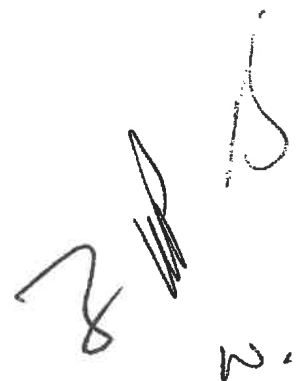
the Proceeding (including the underlying factual or legal allegations) however arising, whether such claims arise under statute, common law, or equity; are in existence now or may arise sometime in the future; are known or unknown; in the contemplation of the Parties or otherwise. This includes the discharge of any claim which may be brought by the Parties (or any directors, officers or shareholders) against any of the Parties (or any directors, employees, officers, office bearers, agents, shareholders, subsidiaries or related entities), whether or not that further claim has been notified to any of the Parties.

5.2 For the avoidance of doubt, this agreement is:

- (1) intended to confer a benefit on, and be enforceable by, the insurers for MSNZ, Mr Budd and Mr Fine, in accordance with the Contracts (Privity) Act 1982; and
- (2) intended to confer a benefit on the directors, employees, officers, office bearers, agents, shareholders, subsidiaries or related entities, who may plead the Agreement as a bar and complete and absolute defence in accordance with clause 5.3 below, in accordance with the Contracts (Privity) Act 1982, but who may not otherwise enforce the Agreement.

5.3 This Agreement may be pleaded as a bar and as a complete and absolute defence to any action or proceeding which may be instituted by a Party to this Agreement or by any person claiming under or through a Party to this Agreement in relation to the Proceeding and/or its subject matter

5.4 Settlement under this clause 5 does not prevent any of the Parties from taking action to enforce any of the Parties' obligations under this Agreement.



6.0 Liability for Costs

6.1 The Parties agree that costs in respect of the negotiation of this Agreement, and all costs incurred in or in connection with the Proceeding will lie where they fall.

7.0 Entire Agreement

7.1 This Agreement constitutes the entire agreement between the Parties relating to its subject matter, and supersedes all previous agreements between the Parties relating to that subject matter.

8.0 Independent Legal Advice

8.1 Each Party confirms that they have considered their respective positions and have taken independent legal advice. However, nothing in this clause shall limit or exclude liability for fraud.

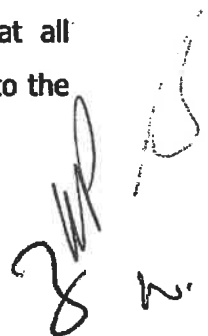
9.0 Counter-parts

9.1 This Agreement may be executed in any number of counter-parts all of which, when taken together, shall constitute one and the same agreement including counter-parts signed and transmitted by email. A Party may enter this Agreement by executing any counter-part.

10.0 Representation and Warranty

10.1 Each Party signing this Agreement confirms that, in agreeing to enter into this Agreement, that Party has not relied on any representation, warranty, or other assurance except any set out in this Agreement. To the extent that any previous representation, warranty, collateral contract or assurance was made to or with a Party, that Party waives all rights and remedies in respect of it.

10.2 The representative executing this Agreement on behalf of a Party warrants that they are duly authorised by that Party and that all necessary resolutions enabling the Party to enter into and agree to the terms of this Agreement have been signed.



11.0 No Admission of Liability

11.1 The Parties acknowledge and agree that the entering into and the terms of this Agreement are:

- (1) Without any admission of liability on the Defendants' behalf;
- (2) Without any concession by V8ST as to the liability of the Defendants or the quantum of damages caused by them.

12.0 Giving effect to this Agreement

12.1 Each Party must do anything (including execute any document) reasonably required to give full effect to this Agreement.

Execution

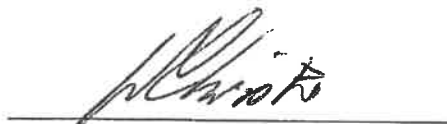
Signed by **V8 Supertourers Limited**



Mark Petch

Duly authorised officer and
director

Signed by **MotorSport New Zealand
Incorporated**



Wayne Christie

Duly authorised officer

Signed by **Brian Arthur Budd**



Brian Arthur Budd

Signed by **Martin Quinton Fine**

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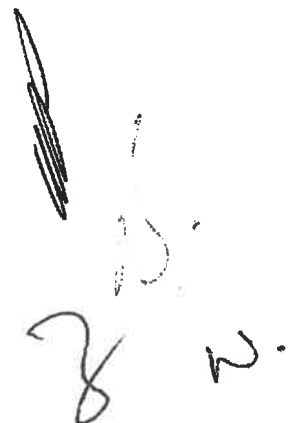
Martin Quinton Fine

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SCHEDULE

1. MSNZ Liability policies for the period 31 December 2011 to 31 December 2014:
 - a. Employers Liability;
 - b. Statutory Liability;
 - c. Public Liability
 - d. Employment Disputes Liability
 - e. Sports Lawsafe Liability
 - f. Associations Liability
 - g. Professional Indemnity (Sports Tribunal)
 - h. Professional Indemnity

2. Other liability policies covering claims made during the years 2011 – 2014 against Martin Fine:
 - a. Professional Indemnity

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"B"

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2014-404-3298

UNDER

The Commerce Act 1986

BETWEEN

V8 Supertourers Limited

Plaintiff

AND

MotorSport New Zealand Incorporated

First Defendant

AND

Brian Arthur Budd

Second Defendant

AND

Martin Quentin Fine

Third Defendant

**AMENDED STATEMENT OF CLAIM
30 June 2015**

BISSON MOSS

P O Box 549
54 Tennyson Street
NAPIER

Telephone: (06) 835 3159
Facsimile: (06) 835 3156
DX MP70030

Solicitor Acting: R J Bell
Counsel Acting: R J Hollyman / A J B Holmes, Auckland

The plaintiff: V8ST

1. The plaintiff V8 Supertourers Limited (**V8ST**) is an incorporated company having its registered office at the offices of Bisson Moss, Tennyson Chambers, 54 Tennyson Street, Napier.
2. Between September 2010 and 30 April 2013, V8ST operated a V8 touring car racing and promotion business. V8ST:
 - a. Owned the design and rights to manufacture a V8 touring car, known as a V8 Supertourer (**V8 Supertourer**);
 - b. Booked motor racing venues and ran a series of motorsport events and races featuring racing of the V8 Supertourers as the headline event at those venues (**V8 Supertourer Series**);
 - c. Ran a series of motorsport events and races called the V8 Challenge Cup as a support category at the V8 Supertourer Series;
 - d. Contracted with entities which owned the rights to other motor racing series to host, organise and promote rounds of their series at its V8 Supertourer Series;
 - e. Sold V8 Supertourer cars in kit-set form to persons or teams interested in assembling them and competing in the V8 Supertourer Series;
 - f. Sold replacement parts and consumable products for V8 Supertourers to the owners of those vehicles;
 - g. Promoted the V8 Supertourer Series to the public interested in attending the events as spectators;
 - h. Sold broadcast television rights for the V8 Supertourer Series;
 - i. Sold sponsorship rights to sponsors interested in promoting their own brands by association with the V8 Supertourer Series.
3. The first V8 Supertourer race was held at Hampton Downs on 17-19 February 2012.

Markets in which V8ST operated

4. Between September 2010 and 30 April 2013, V8ST conducted business activities in the following markets:
 - a. the market for V8 touring car motor sport in New Zealand;
 - b. the market for sales of V8 touring cars, and replacement and consumable components and products therefor;
 - c. The market for the organisation of motor sport events, competitions and series;
 - d. The market to host rounds of motor sport competitions or series run by other entities at its motor sport events and for entries in invitation races at those events;
 - e. The market for sponsors of V8 motor sport competitions and series;
 - f. The market for sponsors of motor sport events;
 - g. The market for public broadcast rights of motor sport events (including television broadcast);
 - h. The market for entrants and drivers for motor sport events;
 - i. The market for hire of motor racing circuits for the promotion of motor sport events;
 - j. The market to acquire the sporting organisation services performed by car clubs which are necessary to run motor sport events;
 - k. The market for spectators at motor sport events (including corporate-hosted spectators).

The first defendant: MSNZ

5. The first defendant, MotorSport New Zealand Incorporated (**MSNZ**), is an incorporated society under the Incorporated Societies Act 1908 having its registered office at 69 Hutt Road, Thorndon, Wellington.

6. MSNZ is the governing body for motor sport in New Zealand, and the sole authority appointed for New Zealand by the Federation Internationale de l'Automobile (FIA) to regulate motor sport in New Zealand.
7. The FIA is the governing body for world motor sport and administers the rules and regulations for all international four-wheel motor sport, including V8 touring car racing and delegates to one of its members in each country (the *l'Autorité Sportive National (ASN)*) the power to administer the rules and regulations for four-wheel motor sport in that country.
8. MSNZ regulates FIA-approved V8 touring car racing in New Zealand, and is the FIA's ASN for New Zealand and the only entity with the FIA's delegated power to:
 - a. issue FIA "organising permits" for V8 touring cars allowed to race in New Zealand;
 - b. grant FIA safety certifications and type approvals (called "homologations") for V8 touring cars allowed to compete in races authorised by MSNZ;
 - c. issue FIA venue licences to tracks and circuits where it allows those races are held; and
 - d. issue FIA licences to drivers, entrants and officials it allows to participate in and control those races.
9. MSNZ has adopted a "National Sporting Code" (NSC) as rules which govern both motor sport competitions in New Zealand and MSNZ's regulation of those competitions.
10. The NSC is expressed to operate as a code and it provides that MSNZ is bound by the NSC.

MSNZ's substantial market power

11. There are eight permanent motor sport circuits in New Zealand, each owned or operated by a motor sport club:
 - a. Hampton Downs, Waikato;
 - b. Highlands Motorsport Park, Cromwell;

- c. Manfeild Autocourse, Feilding;
 - d. Powerbullt Raceway at Ruapuna Park, Christchurch;
 - e. Pukekohe Park Raceway, Pukekohe;
 - f. Taupo Motorsport Park, Taupo;
 - g. Teretonga Park, Invercargill;
 - h. Timaru International Motor Raceway, Timaru.
12. Each of the permanent motor sport circuits in New Zealand holds an FIA licence issued by MSNZ to permit events authorised by the FIA and MSNZ to be held at that circuit.
13. The provisions of the FIA licence granted to each of the permanent motor sport circuits in New Zealand do not permit those circuits to hold competitive four wheel motor sport events without those events having a permit issued by MSNZ or the FIA.
14. At all material times, MSNZ held a substantial degree of market power in the following markets:
- a. the market for regulating motor sport in New Zealand;
 - b. the market for regulating V8 touring car motor sport in New Zealand;
 - c. the market for V8 touring car motor sport in New Zealand;
 - d. the market for the manufacture and sale of V8 touring cars, and replacement and consumable components and products for them in New Zealand;
 - e. the market for the organisation of motor sport events, competitions and series;
 - f. the market for promoters and organisers of V8 touring car motor sport series, competitions and events in New Zealand;
 - g. the market for hire of motor racing circuits for the promotion of motor sport events;

- h. the market to acquire the sporting organisation services performed by car clubs which are necessary to run motor sport events;
 - i. the market for the hosting of motor sport competitions or series run by other entities;
 - j. the market for sponsors of motor sport events;
 - k. the market for sponsors of V8 motor sport competitions and series;
 - l. the market for public broadcast rights of motor sport events (including television broadcast);
 - m. the market for entrants and drivers for motor sport events;
 - n. the market for spectators at motor sport events (including corporate-hosted spectators).
15. V8ST's business activities in the following markets depended upon V8ST obtaining the regulatory approval of MSNZ on behalf of the FIA:
- a. The market for sales of V8 touring cars, and replacement and consumable components and products for them.
 - b. The market for the organisation of motor sport events, competitions and series.
 - c. The market to host rounds of motor sport series run by other entities at its motor sport events.
 - d. The market for entrants and drivers for motor sport events.
 - e. The market for hire of motor racing circuits for the promotion of motor sport events.
 - f. The market to acquire the sporting organisation services performed by car clubs which are necessary to run motor racing events.
 - g. The market for sponsors of V8 motor sport competitions, events and series of events.
 - h. The market for public broadcast rights of motor sport events (including television broadcast).

- i. The market for spectators at motor sport events (including corporate-hosted spectators).
16. V8ST's business activities in the markets listed in paragraph 15 above were dependant upon the exercise by MSNZ of its powers in the markets listed in paragraph 14 above.

The second defendant: Brian Arthur Budd

17. The second defendant, Brian Arthur Budd, is the General Manager of MSNZ.

TMC (In liq)

18. Motorsport Promotions Limited (In liq), previously known as The Motorsport Company Limited (TMC), is an incorporated company having its registered office at 9 Victoria Road, Devonport, Auckland. A liquidator was appointed over TMC on 11 October 2012.
19. MSNZ held 60% of the shares in TMC, and the balance was held by six of the motor sport clubs which owned or operated motor racing circuits or controlled motor racing events at circuits in New Zealand.
20. Between 1992 and 2012, TMC held a contract with MSNZ to promote motor sport events and competitions.
21. At all material times TMC operated as a subsidiary of MSNZ and was controlled by MSNZ:
 - a. TMC's principal place of business was MSNZ's premises in Wellington;
 - b. TMC reported to the Executive Committee of MSNZ on a regular basis,
 - c. MSNZ's Executive Committee made decisions which TMC was required to implement;
 - d. MSNZ representatives represented TMC and reported to the MSNZ Executive Committee on TMC's operations and business;
 - e. MSNZ directly undertook the commercial negotiation of matters which it had contractually licensed to TMC.

The third defendant: Martin Quentin Fine

22. The third defendant, Martin Quentin Fine, was:
- a. the Chief Executive Officer and a director of TMC; and
 - b. a co-opted member and longstanding adviser of the MSNZ Executive Committee.

Montego

23. Montego Developments Limited (**Montego**) is an incorporated company having its registered office at 69 Hutt Road, Pipitea, Wellington. Montego was incorporated on 18 September 2012.
24. The sole shareholder of Montego is MSNZ. Montego has two directors:
- a. Brian Arthur Budd, the second defendant and General Manager of MSNZ; and
 - b. Wayne James Christie, the Vice President of MSNZ.
25. Since September 2012, Montego has performed the role previously performed by TMC under its contract with MSNZ to promote motor sport events and competitions.
26. At all material times, Montego operated as a subsidiary of MSNZ, and was controlled by MSNZ:
- a. Montego's registered office and principal place of business is MSNZ's premises in Wellington;
 - b. Montego reports to the Executive Committee of MSNZ on a regular basis,
 - c. MSNZ's Executive Committee makes decisions which Montego is required to implement;
 - d. MSNZ representatives represented Montego and reported to the MSNZ Executive Committee on Montego's operations and business;

MSNZ V8 Championship

27. One of the competitions promoted by MSNZ, TMC and later, Montego, was, and is, a series of V8 touring car races known as the Motorsport New Zealand NZ V8 National Championship (**MSNZ V8 Championship**).
28. The NSC reserves the name "Championship" to a motor race event or series of events which are authorised by either the FIA, MSNZ or, with the consent of MSNZ, by TMC or Montego.
29. Prior to the racing season commencing in January 2013 the only V8 vehicles permitted to compete in the MSNZ V8 Championship were known as TL class cars.
30. From February 2012 to April 2013, V8ST promoted and organised:
 - a. the V8 Supertourer Series; and
 - b. a series of V8 touring car races for TL class cars known as the V8 Challenge Cup;both of which competed against the MSNZ V8 Championship.
31. From 11 January 2013, MSNZ also permitted a newer type of vehicle known as TLX cars to race in the MSNZ V8 Championship.

VEEGA (In liq)

32. NZV8s Limited (In liq), previously known as NZ Vee Eight Entrants Group Association Limited (**VEEGA**), is an incorporated company having its registered office at the offices of Map & Associates Limited, 14 Knox Street, Hamilton. The third defendant, Martin Fine, was appointed as liquidator of VEEGA on 19 May 2014.
33. The shareholders of VEEGA owned V8 touring cars which competed in the MSNZ V8 Championship.
34. Between May 2011 and December 2011, VEEGA engaged Mitchell Race Xtreme Limited (**MRX**) to develop a new type of V8 touring car, which became known as the TLX car (**TLX Car**).

35. Between May and December 2011, VEEGA and MSNZ entered into an arrangement or understanding that:
- a. the TLX Car would be promoted by MSNZ as the premier V8 touring car for V8 touring car motor sport in New Zealand;
 - b. the TLX Car would be homologated and approved by MSNZ to compete in the MSNZ V8 Championship.

Particulars

It was entered into during communications between representatives of those parties, including Brian Budd, Martin Fine, Kerry Cooper, Shayne Harris, Ian Tulloch and/or other members of the Board of VEEGA, and the MSNZ Executive, the form, content and details of which is known to the defendants but which cannot be given prior to discovery, but which include communications that occurred prior to, at and around, and following the:

- i. meetings of the VEEGA Board or its Committees, on 5,6 May 2011, 21 June 2011, 14 July 2011, 7 September 2011, 15 September 2011, 26 October 2011, 1 December 2011; and
 - ii. meetings of the MSNZ Executive on 24, 25 June 2011, 26, 27 August 2011, 14,15 October 2011, 16, 17 December 2011.
36. Between May and December 2011, VEEGA and MSNZ entered into an arrangement or understanding by which MSNZ would purchase the design and rights to the TLX Car and:
- a. Approve TLX cars for racing in the MSNZ V8 Championship;
 - b. Sell components for TLX Cars to parties interested in racing in the MSNZ V8 Championship;
 - c. Sell replacement parts and consumable products for TLX Cars to the owners of those vehicles.

Particulars

It was entered into during communications between representatives of those parties, including Brian Budd, Martin Fine, Kerry Cooper, Shayne Harris, Ian Tulloch and/or other members of the Board of VEEGA, and the

MSNZ Executive, the form, content and details of which is known to the defendants but which cannot be given prior to discovery, but which include the Agreement of 10 December 2011 between MSNZ, NZV8s, MRX and others, and communications that occurred prior to, at and around, and following the:

- i. meetings of the VEEGA Board or its Committees, on 5,6 May 2011, 21 June 2011, 14 July 2011, 7 September 2011, 15 September 2011, 26 October 2011, and 1 December 2011; and
 - ii. meetings of the MSNZ Executive on 24, 25 June 2011, 26, 27 August 2011, 14,15 October 2011, and 16, 17 December 2011.
37. At all material times MSNZ was in control of, or exerted substantially influence over, VEEGA:
- a. The second defendant, Brian Arthur Budd was a director of VEEGA from 26 October 2011 until 19 June 2012, as well as being the General Manager of MSNZ. He attended all material meetings of the VEEGA Board (including meetings prior to his formal appointment as director), being those of 5,6 May 2011, 14 July 2011, 15 September 2011, 26 October 2011 and 1 December 2011.
 - b. Mr Ian Tulloch was a director of VEEGA and at all material times was a director of TMC having been appointed by MSNZ.
 - c. Mr Martin Fine was the CEO and a Director of TMC, and, attended both MSNZ Executive Committee and VEEGA Board meetings as an adviser.
38. Mr Budd aided, counselled, and procured MSNZ and VEEGA to enter into the arrangements described in paragraphs 35 and 36 above, or was otherwise directly or indirectly, knowingly concerned in, the arrangements.

Particulars

He did so during his communications with representatives of VEEGA and MSNZ, including Martin Fine, Kerry Cooper, Shayne Harris, Ian Tulloch and/or other members of the Board of VEEGA, and the MSNZ Executive, the form, content and details of which is known to him but which cannot be

given prior to discovery, but which includes his signing the Agreement of 10 December 2011 between MSNZ, NZV8s, MRX, and others, and his communications prior to, at and around, and following the:

- a. meetings of the VEEGA Board or its Committees, on 5,6 May 2011, 21 June 2011, 14 July 2011, 7 September 2011, 15 September 2011, 26 October 2011, and 1 December 2011; and
 - b. meetings of the MSNZ Executive on 24, 25 June 2011, 26, 27 August 2011, 14,15 October 2011, and 16, 17 December 2011.
39. Mr Fine aided, counselled, and procured VEEGA to enter into the arrangements described in paragraphs 35 and 36 above, or was otherwise directly or indirectly, knowingly concerned in, the arrangements.

Particulars

He did so during his communications with representatives of VEEGA and MSNZ, including Brian Budd, Kerry Cooper, Shayne Harris, Ian Tulloch and/or other members of the Board of VEEGA, and the MSNZ Executive, the form, content and details of which is known to him but which cannot be given prior to discovery, but which includes his directions to Kerry Cooper of TMC, in respect of Mr Cooper's emails of 3 May 2011, and his attendance at meeting of the MSNZ Executive on 24,25 June 2011, 26, 27 August 2011, and the VEEGA Board on 14 July 2011, 26 October 2011, and Mr Fine's communications prior to, at and around, and following the:

- a. meetings of the VEEGA Board or its Committees, on 5,6 May 2011, 21 June 2011, 14 July 2011, 7 September 2011, 15 September 2011, 26 October 2011, and 1 December 2011; and
- b. meetings of the MSNZ Executive on 24, 25 June 2011, 26, 27 August 2011, 14,15 October 2011, and 16, 17 December 2011.

The Canterbury Car Club - Ruapuna Circuit race

40. Traditionally the MSNZ V8 Championship Calendar has included races every season at the Ruapuna Circuit in Christchurch, owned and operated by The Canterbury Car Club Inc.

41. Prior to March 2011, MSNZ and TMC believed that The Canterbury Car Club would be hosting a V8 Supertourers event.
42. On 21 March 2011, MSNZ's subsidiary TMC wrote to The Canterbury Car Club to advise that:
 - a. In consultation and discussion with MSNZ, the Championship Calendar for 2011/2012 had been confirmed;
 - b. No race date would be allocated for the Ruapuna Circuit;
 - c. The Canterbury Car Club – Ruapuna Circuit was probably in the best position to manage the situation given that it had already announced that it would be hosting V8 Supertourers at the circuit.
43. The belief by MSNZ and TMC that The Canterbury Car Club would be hosting a V8 Supertourers event was the reason that MSNZ and TMC decided not to hold a Championship race day at the Ruapuna Circuit.
44. The purpose and effect of the letter was to damage the business of V8ST by discouraging the Ruapuna Circuit from hosting a V8 Supertourers race.
45. After a number of discussions between The Canterbury Car Club and MSNZ, a race date for 2011/2012 at Ruapuna was reinstated.

NZV8TC

46. New Zealand V8 Touring Cars Limited (**NZV8TC**) is an Incorporated company having its registered office at the offices of MAP & Associates Limited, 14 Knox Street, Hamilton.
47. Prior to December 2011, the sole shareholder of NZV8TC was TMC.
48. In or before December 2011, MSNZ and TMC agreed that TMC would transfer its shares in NZV8TC to MSNZ. Notice of the share transfer was given to the Companies Office in August 2012.
49. Between 15 August 2012 and 13 March 2013, Mr Budd, was one of two directors of NZV8TC. From 12 September 2012 to 13 March 2013, the other director was Wayne James Christie, the Vice President of MSNZ.

MSNZ's ownership of TLX Car design

50. In June 2011, MSNZ decided to propose to VEEGA that it purchase the designs, specifications and intellectual property rights in the TLX Car, and put that proposal to VEEGA at meeting of VEEGA's board in July 2011.
51. In December 2011 MSNZ obtained the designs, specifications and intellectual property rights in the TLX Car from VEEGA, VEEGA's subsidiary New Zealand V8's Limited, and MRX.
52. In or around December 2011, MSNZ granted licences to use its designs, specifications and intellectual property rights in the TLX car to:
 - a. NZV8TC for the purpose of selling parts for TLX cars to persons or teams interested in competing in the MSNZ V8 Championship;
 - b. MRX for the purpose of manufacturing TLX cars.
53. In purchasing the designs, specifications and intellectual property rights in the TLX car, MSNZ intended that:
 - a. the TLX car would become the premier V8 touring car for V8 motor sport in New Zealand;
 - b. the TLX car would be homologated and approved to compete in the MSNZ V8 Championship; and
 - c. would be purchased by persons intending on competing in its MSNZ V8 Championship.

MSNZ, TMC, NZV8TC & Montego's competition with V8ST

54. From December 2011, MSNZ and NZV8TC became competitors of V8ST in the markets for sales of V8 racing touring cars and replacement and consumable components and products for those cars.
55. Between February 2012 and April 2013, MSNZ, TMC, and Montego, in promoting the MSNZ V8 Championship, competed with V8ST's promotion of the V8 Supertourer series, in the following markets:
 - a. the market for sponsors of V8 motor sport competitions and series;
 - b. the market for sponsors of motor sport events;

- c. the market for public broadcast rights of motor sport events (including television broadcast);
- d. the market for entrants and drivers for motor sport events;
- e. the market for hire of motor racing circuits for the promotion of motor sport events;
- f. the market to acquire the sporting organisation services performed by car clubs which are necessary to run motor sport events;
- g. the market for spectators at motor sport events (including corporate-hosted spectators).

MSNZ's attempts to disrupt V8 Challenge Cup

- 56. In September 2011, V8ST announced that it was organising the V8 Challenge Cup as a support race series for the V8 Supertourer Series for the owners and drivers of TL class cars to race their vehicles.
- 57. In November 2011, Mr Budd for MSNZ wrote to V8ST and:
 - a. required it not to use the terms "NZV8" or "Schedule TL" in the V8 Challenge Cup;
 - b. threatened to withhold the organising permit for race meetings which included races for the V8 Challenge Cup.
- 58. MSNZ had no entitlement to withhold an organising permit for a race meeting on that basis. MSNZ's NSC expressly:
 - a. forbld it from withholding an organising permit on such grounds; and
 - b. provide that the NSC operates as a code and that MSNZ is bound by its own rules.
- 59. The purpose and effect of the letter was to damage the business of V8ST by preventing it from running V8 Challenge Cup races.
- 60. On 9 January 2012, MSNZ threatened all owners of Schedule TL compliant cars with unspecified disciplinary consequences if they entered their cars in V8 Challenge Cup races.

61. On 14 January 2012, MSNZ wrote to competitors entered in the V8 Challenge Cup and stated that:
 - a. MSNZ would not approve their vehicles for racing in the V8 Challenge Cup unless those competitors removed parts from the vehicles which they had purchased from a subsidiary of VEEGA; and
 - b. MSNZ would not permit those vehicles from racing in either the MSNZ V8 Championship, or at the street race event to be held in Hamilton, known as the Hamilton 400.
62. There was no proper basis for MSNZ to insist on either requirement.
63. The purpose and effect of these letters was to damage the business of V8ST by preventing it from running V8 Challenge Cup races.
64. Following objections by car owners, MSNZ withdrew its improper requirements.
65. In March 2012, MSNZ announced that MSNZ was committed to the TL class cars as its Premier Championship Class for a further 3 years, and with a renewal right of 3 years, and was firmly committed to the development of the class with MSNZ's new car.

MSNZ's funding and control of VEEGA proceeding

66. From May 2011 until October 2012, the Chief Executive Officer of MSNZ's subsidiary TMC, Martin Fine advised VEEGA and controlled VEEGA's communications with its solicitors regarding VEEGA's proposed proceedings against the then shareholders of V8ST.

Particulars

He did so during communications between Mr Fine, Mr Budd, David Slater, Mr Tulloch, and/or other members of VEEGA's Board, the form, content and details of which is known to Mr Fine but which cannot be given prior to discovery, but includes communications prior to, at and around the following:

- a. meetings of the VEEGA Board or its Committees, on 5,6 May 2011, 21 June 2011, 14 July 2011, 7 September 2011, 15 September 2011, 26

October 2011, 1 December 2011, 28 March 2012, 18 April 2012, 28 June 2012, 19 July 2012, 27 August 2012;

- b. meetings between Mr Fine and VEEGA's solicitors Kensington Swan on 14 June 2011, 15 September 2011, 1 May 2012, 9 September 2012, 10 October 2012, and on unknown dates in December 2011 and January/February 2012; and
- c. meetings with Kensington Swan and Mr Billington QC on an unknown date but prior to 2 February 2012

It also includes communications that Mr Fine made directly with VEEGA's solicitors that are known to Mr Fine, but for which the form, content and details cannot be given prior to discovery, regarding VEEGA's proposed proceeding against the then shareholders of V8ST, including emails on 19 July 2011, 19 September 2011, 13 December 2011, 21 December 2011, 17 August 2012, 25 August 2012, and various telephone discussions including on 20 February 2012.

- 67. In or around December 2011, MSNZ:
 - a. Agreed with VEEGA that it would contribute \$15,000 towards the cost of VEEGA bringing proceedings against the then shareholders of V8ST;
 - b. Agreed with VEEGA that its subsidiary TMC would contribute \$15,000 towards the cost of VEEGA bringing proceedings against the then shareholders of V8ST;
 - c. Engaged its legal adviser to review the draft proceeding prepared by VEEGA's solicitors and provide comments to VEEGA's solicitors on behalf of MSNZ.
- 68. On or about 15 February 2012, VEEGA issued proceedings in the High Court (CIV 2012-404-740) against the then shareholders of V8ST, including Messrs Petch and Abbott (**VEEGA proceeding**).
- 69. Mr Budd counselled, and procured VEEGA to bring and pursue the VEEGA proceeding, or was otherwise knowingly concerned in VEEGA doing so.

Particulars

He did so during communications between Mr Budd, and Mr Fine, Mr Tulloch, or Mr Slater and/or other members of VEEGA's Board, the form, content and details of which is known to Mr Budd but which cannot be given prior to discovery, but includes:

- a. meetings with Kensington Swan on 15 September 2011, 19 September 2011, and 9 September 2012;
 - b. communications with VEEGA representatives, including emails on 19 September 2011, 8 December 2011, 21 December 2011, 22 December 2011, 23 August 2012;
 - c. meetings with the VEEGA Board or its committees on 5,6 May 2011, 14 July 2011, 15 September 2011, 26 October 2011, 1 December 2011, 18 April 2012, 28 June 2012, 27 August 2012;
 - d. advice given to the VEEGA Board and/or Mr Tulloch on various dates including 18 April 2012, 23 August 2012, and 27 August 2012 that MSNZ and TMC had each agreed to provide \$15,000 to VEEGA to partially fund the VEEGA proceeding;
 - e. communications with MSNZ's legal adviser John Billington QC prior to 11 October 2011, which led to Mr Billington's letter of advice dated 11 October 2011 on action which MSNZ could take to inhibit V8ST's business, and again in December 2011 to request that Mr Billington provide his opinion to VEEGA's legal advisers, and to provide his input on behalf of MSNZ input on the draft claim that VEEGA was preparing.
70. Mr Fine counselled, and procured VEEGA to bring and pursue the VEEGA proceeding, or was otherwise knowingly concerned in VEEGA doing so.

Particulars

He did so during communications between Mr Fine, and Mr Budd, Mr Tulloch, or Mr Slater and other members of VEEGA's Board, and with VEEGA's legal advisers Kensington Swan, the form, content and details of which is known to Mr Fine but which cannot be given prior to discovery, but includes communications prior to, at and around the following:

- a. meetings of the VEEGA Board or its Committees, on 5,6 May 2011, 21 June 2011, 14 July 2011, 7 September 2011, 15 September 2011, 26 October 2011, 1 December 2011, 28 March 2012, 18 April 2012, 28 June 2012, 19 July 2012, 27 August 2012;
- b. meetings between Mr Fine and VEEGA's solicitors Kensington Swan on 14 June 2011, 15 September 2011, 1 May 2012, 9 September 2012, 10 October 2012, and on unknown dates in December 2011 and January/February 2012; and
- c. meetings with Kensington Swan and Mr Billington QC on an unknown date but prior to 2 February 2012

It also includes communications that Mr Fine made directly with VEEGA's solicitors that are known to Mr Fine, but for which the form, content and details cannot be given prior to discovery, regarding VEEGA's proposed proceeding against the then shareholders of V8ST, including emails on 19 July 2011, 19 September 2011, 13 December 2011, 21 December 2011, 17 August 2012, 25 August 2012, and various telephone discussions including on 20 February 2012.

- 71. On or about 12 June 2012, VEEGA applied to join V8ST as a defendant to the proceedings.
- 72. On 22 August 2012, VEEGA invoiced MSNZ \$30,000 plus GST for its share of costs in the VEEGA Proceeding and emailed the invoice to MSNZ.
- 73. On 23 August 2012, Mr Budd for MSNZ replied that it was MSNZ's understanding that MSNZ would contribute \$15,000 and TMC would contribute \$15,000.
- 74. On 28 August 2012 MSNZ made payment of the sum of \$17,250 (being \$15,000 plus GST) to a wholly owned subsidiary of VEEGA.
- 75. On 21 December 2012, VEEGA decided to abandon its claims against the defendants, and VEEGA and the defendants to the VEEGA proceeding entered into a settlement agreement.

MSNZ interference in Manfeild Race April 2012

76. On 19 April 2012, one of the V8 Supertourer cars was inspected by the MSNZ Technical Officer, Julian Leach, following repairs to its safety roll cage.
77. Mr Leach was accompanied at the inspection on 19 April 2012 by Brian Budd, who was the General Manager of MSNZ and, at that time, a director of VEEGA. Mr Budd has no qualifications to conduct vehicle inspections and does not have an official's license from MSNZ to conduct vehicle inspections.
78. At or following the inspection on 19 April 2012, Mr Leach approved the repairs to the vehicle.
79. On 27 and 28 April 2012, V8ST arranged for V8 Supertourers races to be held at the Manfeild Circuit, Feilding (the **Manfeild Race Meeting**).
80. The Manfeild Race Meeting was run by the Manawatu Car Club for V8ST.
81. On 27 April 2012, after the start of the Manfeild Race Meeting but before official qualifying, Mr Budd on behalf of MSNZ sent a letter to the Stewards and the Clerk of the Course of the Manfeild Race Meeting which asserted that:
 - a. The vehicle referred to at paragraph 76 above, Car No 12, was not permitted to enter competition;
 - b. Repairs to the safety roll cage of Car no 12 had not been approved or re-certified;
 - c. Car No 12 must not be permitted to compete.
82. MSNZ's letter of 27 April 2012 was:
 - a. based on incorrect assertions that the repairs had not been approved by Mr Leach;
 - b. sent in circumstances where, under the NSC, only the Stewards, Clerk of the Course and Chief Scrutineer of the Meeting had the power to determine which vehicles were permitted to race;

- c. sent at time which was intended to cause disruption to the Manfeld Race Meeting, damage the running of the Manfeld Race Meeting, and embarrassment and economic harm to V8ST;
- d. the cause of disruption and delay while the Stewards and the Clerk of the Course discussed the issue with the Chief Scrutineer of the Meeting and determined that the vehicle was permitted to enter the competition.

MSNZ's arrangements with VESA

- 83. In 2012, V8 Supercars Australia Ltd (**VESA**) was interested in holding a V8 touring car event at the Pukekohe circuit in Auckland to race vehicles known as V8 Supercars (**Supercars Event**).
- 84. In order for VESA to hold the Supercars Event, VESA was required by the FIA to have obtained an organising permit from MSNZ.
- 85. In 2012, MSNZ entered into a contract, arrangement or understanding with VESA, under which:
 - a. MSNZ would provide the necessary organising permit to VESA for the Supercars Event
 - b. MSNZ would support VESA's organisation and promotion of the Supercars Event;
 - c. MSNZ was entitled to determine what support classes could or could not compete at VESA's Supercars Event;
 - d. MSNZ was able to prevent VESA from allowing V8 Supertourers from competing at VESA's Supercars Event.

MSNZ Interfered with V8ST funding applications

- 86. In June 2012, V8ST sought sponsorship funding of \$250,000 from an Auckland Council operated organisation Auckland Tourism Events & Economic Development Limited (**ATEED**) for the conduct of a V8 Supertourer race meeting at the Pukekohe circuit.
- 87. ATEED consulted MSNZ on V8ST's application in MSNZ's capacity as the regulator of motorsport in New Zealand.

88. MSNZ did not support the application by V8ST.
89. MSNZ made submissions to ATEED in support of the competing application by VESA for the Supercars Event.
90. MSNZ stood to benefit substantially if the application by VESA was approved:
- a. MSNZ had arrangements with VESA under which MSNZ was entitled to determine what support classes could or could not compete at the Supercars Event;
 - b. MSNZ had arrangements with VESA whereby it would receive financial benefits from VESA and/or the Supercars Event if it were to be approved and its subsidiaries would receive fees for procuring entries for support races at the Supercars Event;
 - c. MSNZ could use its arrangements with VESA to encourage V8 touring car entrants to enter the MSNZ V8 Championship as a pre-qualification to entry to the Supercars Event, to the commercial detriment of V8ST and its V8 Challenge Cup support category for similar cars;
 - d. MSNZ could use its arrangements with VESA to ensure that V8ST would be prevented from organising V8 Supertourer support races at VESA's Supercars Event.
91. MSNZ's submissions misrepresented V8ST's position:
- a. MSNZ's submission wrongly implied that races for V8ST's V8 Supertourers Series were not approved by MSNZ, whereas in fact they were.
 - b. MSNZ's submission wrongly asserted that V8ST had raced at Pukekohe before, whereas in fact it had not.
92. The purpose and effect of these submissions was to:
- a. damage the business of the V8ST by preventing it from receiving funding from ATEED; and
 - b. advantage the business interests of MSNZ and its subsidiaries.

93. V8ST's application was not approved by ATEED.

MSNZ prevented V8ST from racing at VESA's event

94. On 28 November 2012, V8ST requested an invitation from VESA for V8ST to organise V8 Supertourer races at VESA's Pukekohe event.

95. VESA declined the request on the basis that:

- a. VESA's arrangements with MSNZ require VESA to run support races for classes that MSNZ wants VESA to run;
- b. MSNZ wanted VESA to run races for MSNZ's TL class cars and TLX V8 touring car class to the exclusion of races for V8ST's Supertourers; and
- c. If VESA was to permit V8 Supertourers to race at the event, that would cause major issues for VESA under its arrangements with MSNZ.

Refusal to issue organising permit for May 2013 event

96. On 16 November 2012, V8ST sought authorisation from MSNZ for a V8 Supertourer event to be held at the Hampton Downs circuit in the North Waikato District on the weekend of 25 to 26 May 2013.

97. On 22 November 2012, Mr Budd for MSNZ wrote to V8ST to advise that MSNZ had declined to authorise the Hampton Downs event citing a clash of date with MSNZ's annual conference being held in Wellington on the same weekend.

98. MSNZ had no entitlement to withhold an organising permit for a race meeting on policy grounds or on the grounds that the event would be on the same weekend as the MSNZ conference. MSNZ's NSC expressly:

- a. forbid it from withholding an organising permit on those grounds; and
- b. provide that the NSC operates as a Code and that MSNZ is bound by its own rules.

99. MSNZ's annual conference may only be attended by representatives of member-clubs of MSNZ and it may not be attended by others such as

drivers, entrants or officials of race meetings unless they are also representatives of member-clubs.

- a. No V8 Supertourer driver or entrant is a representative of a MSNZ member-club.
 - b. Suitably qualified and experienced officials who are not member-club representatives were available to officiate at a race meeting in the North Waikato on the same weekend as the MSNZ annual conference.
100. The purpose and effect of MSNZ's refusal to decline an organising permit for a V8 Supertourer event at Hampton Downs on the weekend of 25 and 26 May 2013 was to damage the business of V8ST by preventing it from running that event.

V8ST forced to sell its business

101. In April 2013, V8ST sold its business assets and trade creditor liabilities to Nagoon Limited, now known as V8 Supercars 2013 Limited, for the purchase price of \$1.
102. V8ST lost all of the funds it has invested in its business, in total some \$2,306,000.

**FIRST CAUSE OF ACTION AGAINST FIRST DEFENDANT:
TAKING ADVANTAGE OF SUBSTANTIAL MARKET POWER
BREACH OF S 36 OF THE COMMERCE ACT 1986**

V8ST repeats paragraphs 1 to 102 above and says further:

103. MSNZ took advantage of its substantial market power when it:
- a. determined that it would not hold a MSNZ V8 Championship event at the Ruapuna Circuit operated by The Canterbury Car Club because MSNZ believed that Club and Circuit had agreed to host a V8 Supertourer event, as set out in paragraphs 40 to 45 above;
 - b. sought to prevent owners of TL class cars from competing in the V8 Challenge Cup organised by V8 Supertourers, as set out in paragraphs 56 to 65 above;

- c. sought to disrupt the V8 Supertourers event at Manfeild Park, as set out in paragraphs 81 to 82 above;
 - d. Interfered in the application by V8 Supertourers to ATEED for funding, as set out in paragraphs 86 to 92 above;
 - e. declined a permit for V8 Supertourers to hold an event at Hampton Downs without any proper basis for doing so, as set out in paragraphs 96 to 100 above;
 - f. prevented V8ST from running Supertourer support races at VESA's Supercars Event, as set out in paragraphs 94 to 95 above.
104. Through its actions referred to in paragraph 103 above, MSNZ took advantage of its substantial market power for the purpose of:
- a. Restricting the entry of V8ST into the V8 touring car racing market and the markets listed in paragraph 15 above;
 - b. Preventing or deterring V8ST from engaging in competitive conduct in the V8 touring car racing market and the markets listed in paragraph 15 above;
 - c. Eliminating V8ST from the V8 touring car racing market and the markets listed in paragraph 15 above.
105. Through its actions referred to in paragraphs paragraph 103 above, MSNZ has caused V8ST to suffer loss and damage by engaging in conduct which was in contravention of section 36 of the Commerce Act 1986.

Particulars

MSNZ took advantage of its substantial market power by its actions set out in paragraph 103 above, for the purposes set out in paragraph 104 above, and caused V8ST to suffer loss and damage by:

- a. preventing V8ST from running V8 Supertourer support races at VESA's Supercars Event;
- b. preventing V8ST from obtaining revenue from category sponsorship and sales of consumables at VESA's Supercars Event;

- c. preventing V8ST from obtaining sponsorship from ATEED for the proposed V8ST Supertourer event at Pukekohe;
- d. preventing V8ST from obtaining revenue at the proposed V8ST Supertourer event at Pukekohe from sponsorships, sales of consumables, spectators fees, entrants fees, and broadcasting opportunities;
- e. damaging V8ST's commercial and public reputation;
- f. increasing V8ST's operating costs;
- g. absorbing V8ST's management time;
- h. adversely affecting V8ST's ability to obtain new sponsorships, attract new competitors, sell new cars to new competitors, and sell consumable parts to new competitors, and attract spectators to its events;
- i. discouraging and disrupting V8ST's existing relationships with motor racing venues and circuits, motor racing organisers and promoters, motor racing officials, motor racing competitors, motor racing sponsors and broadcasters;
- j. diminishing the value of V8ST's business and the price achieved on sale, by diminishing the projected revenue from the event sought to be scheduled for May 2013 at Hampton Downs.

106. The loss suffered by V8ST and caused by the actions of MSNZ referred to in paragraph 105 above includes:

- a. Lost profit from running V8 Supertourer support races at VESA's Supercars Event, estimated at \$100,000 in potential category sponsorship and sales of consumables (tyres, brakes and spares) at that event;
- b. Losses and lost profit as a result of ATEED declining to sponsor V8ST's Supertourer event at Pukekohe, estimated at \$170,000 from lost sponsorship, lower spectator numbers, lost entrants fees, and broadcast opportunities;

- c. Damage to the commercial and public reputation of V8ST and to the smooth running of its events;
- d. Reduction in value of its business and the price achieved on sale.
- e. Reduction in value of its business and the price achieved on sale by reason of it not having an event scheduled for May 2013 at Hampton Downs.

Wherefore the plaintiff claims from the first defendant:

- A. Damages in an amount to be quantified, but estimated at \$1,000,000;
- B. Exemplary damages under Section 82A of the Commerce Act in the sum of \$500,000.

**SECOND CAUSE OF ACTION AGAINST SECOND DEFENDANT:
PROCURING OR BEING KNOWINGLY CONCERNED WITH MSNZ TAKING
ADVANTAGE OF SUBSTANTIAL MARKET POWER: BREACH OF S. 36 OF
THE COMMERCE ACT 1986**

V8ST repeats paragraphs 1 to 106 above and says further:

107. Mr Budd procured, was knowingly concerned in, or otherwise a party to the actions of MSNZ in:
- a. seeking to prevent owners of TL class cars from competing in the V8 Challenge Cup organised by V8 Supertourers, as set out in paragraphs 56 to 65 above;

Particulars

By his own actions, and during communications between Mr Budd and (i) other representatives of MSNZ; (ii) Mr Fine, Mr Tulloch, or Mr Slater and other members of VEEGA's Board; (iii) VEEGA's legal advisers Kensington Swan; (iv) MSNZ's legal adviser John Billington QC; and/or (v) the owners of TL class cars, the form, content and details of which is known to Mr Budd but which cannot be given prior to discovery, but

includes his actions and communications prior to, at and around the following:

- i. Mr Budd's meeting with Kensington Swan, Mr Fine, Mr Tulloch and members of the VEEGA Board on 15 September 2011;
 - ii. communications by Mr Budd or other MSNZ representatives with MSNZ's legal adviser John Billington QC prior to 11 October 2011, which led to Mr Billington's letter of advice dated 11 October 2011 on action which MSNZ could take to inhibit V8ST's business and to prevent owners of TL class cars from competing at V8ST events;
 - iii. meetings of the MSNZ Executive on 14/15 October 2011 and 16/17 December 2011 which Mr Budd attended;
 - iv. meetings of the VEEGA Board or its Committees, on 15 September 2011, 26 October 2011, and 1 December 2011 which Mr Budd attended;
 - v. Mr Budd's authorship of the MSNZ letters dated 9 November 2011 and 10 January 2012 sent to V8ST;
 - vi. Mr Budd's communication with owners of TL class cars on 9 January 2012;
 - vii. Mr Budd's authorship of the MSNZ Memorandum dated 14 January 2012 sent to all owners of TL class cars.
- b. seeking to disrupt the V8 Supertourers event at Manfeild Park, as set out in paragraphs 81 to 82 above;

Particulars

By his own actions, and during communications between Mr Budd and (i) other representatives of MSNZ; and (ii) the organisers of the V8 Supertourers event at Manfeild Park, the form, content and details of which is known to Mr Budd but which cannot be given prior to discovery, but includes his actions and communications prior to, at and around the following:

- i. Mr Budd's attendance at the inspection of the vehicle on 19 April 2012;

- ii. Mr Budd's letter/memorandum to the Stewards and the Clerk of the Course of the Manfeild Race Meeting dated 27 April 2012;
- c. declining a permit for V8 Supertourers to hold an event at Hampton Downs without any proper basis for doing so, as set out in paragraphs 96 to 100 above.

Particulars

By his own actions, and during communications between Mr Budd; and: (i) other representatives of MSNZ including Mr Harris; and (ii) the organisers of the Hampton Downs event, the form, content and details of which is known to Mr Budd but which cannot be given prior to discovery, but includes his actions and communications prior to, at and around the following:

- i. Mr Budd's email of 22 November 2012 to V8ST;
 - ii. meetings of the MSNZ Executive between 16 November 2012 and May 2013;
 - iii. MSNZ's amendment of the NSC on 22 January 2013 to allow it to be able to decline any application for a permit for an event on a date which conflicts with an MSNZ annual conference or with any other competing MSNZ event.
 - iv. Mr Budd's communications with Mr Harris in respect of MSNZ's communications with New Zealand International Grand prix (Inc) which was to host the event.
108. Through his actions referred to in paragraph 107 above, Mr Budd procured MSNZ to, or was directly or indirectly, knowingly concerned in having MSNZ, contravene section 36 of the Commerce Act 1986, and caused V8ST to suffer loss and damage.

Particulars

Mr Budd procured MSNZ to, or was directly or indirectly, knowingly concerned in having MSNZ, contravene section 36 of the Commerce Act 1986, by his actions set out and particularised at paragraph 107 above, for the purposes set out in paragraph 104 above, and caused V8ST to suffer

the loss and damage referred to and particularised at paragraphs 105 and 106 above.

109. The loss suffered by V8ST and caused by the actions of Mr Budd is set out in paragraph 105 above.

Wherefore the plaintiff claims from the second defendant:

- A. Damages in an amount to be quantified, but estimated at \$1,000,000;
- B. Exemplary damages under Section 82A of the Commerce Act in the sum of \$500,000.

**THIRD CAUSE OF ACTION AGAINST FIRST DEFENDANT:
MSNZ'S ARRANGEMENT WITH VEEGA:
BREACH OF S. 27 OF THE COMMERCE ACT 1986**

V8ST repeats paragraphs 1 to 109 above and says further:

110. MSNZ entered into an arrangement or understanding with VEEGA for VEEGA to bring and pursue the VEEGA proceeding and for MSNZ to support and contribute to funding the VEEGA proceeding, as set out in paragraphs 66 to 75 above.
111. Through its actions referred to in paragraph 110 and paragraphs 66 to 75 above, MSNZ entered into an arrangement or understanding which had the purpose, and effect, of substantially lessening competition in the V8 touring car racing market and the markets listed in paragraph 15 above.

Particulars

The arrangement or understanding had that effect by:

- a. damaging V8ST's commercial and public reputation;
- b. increasing V8ST's operating costs;
- c. absorbing V8ST's management time;
- d. diminishing V8ST's revenue from existing sponsors;

- e. adversely affecting V8ST's ability to obtain new sponsorships, attract new competitors, sell new cars to new competitors, and sell consumable parts to new competitors, and attract spectators to its events;
 - f. discouraging and disrupting V8ST's existing relationships with motor racing venues and circuits, motor racing organisers and promoters, motor racing officials, motor racing competitors, motor racing sponsors and broadcasters.
112. Through its actions referred to in paragraph 110 above, for the purposes set out in paragraph 111 above, MSNZ has caused V8ST to suffer loss and damage by engaging in conduct which was in contravention of section 27 of the Commerce Act 1986.

Particulars

The loss and damage suffered by V8ST which was caused by MSNZ's actions includes:

- a. damaging V8ST's commercial and public reputation;
- b. increasing V8ST's operating costs;
- c. absorbing V8ST's management time;
- d. discouraging V8ST's existing sponsors from renewing their sponsorship contracts, and diminishing V8ST's further revenue from its existing sponsors
- e. adversely affecting V8ST's ability to obtain new sponsorships, and revenue from such new sponsorships;
- f. adversely affecting V8ST's ability to attract new competitors, sell new cars to new competitors, and sell consumable parts to new competitors, and revenue from the same
- g. discouraging and disrupting V8ST's existing relationships with motor racing venues and circuits, motor racing organisers and promoters, motor racing officials, motor racing competitors, motor racing sponsors and broadcasters.

113. The loss suffered by V8ST caused by MSNZ's actions as referred to in paragraph 112 above includes:

- a. Non-renewal of sponsorship contracts due to the sponsors' concerns at the fact of and the potential outcome of the VEEGA proceedings, of some \$60,000;
- b. Loss of potential sponsorship due to the potential sponsors' concerns at the fact of and the potential outcome of the VEEGA proceedings, of approximately \$500,000;
- c. Lost profit from sales of V8 Supertourer cars and components therefor, and the franchise fees that would have been paid by interested entrants in V8 Supertourer competitions, due to their concerns at the fact of and the potential outcome of these legal proceedings, of approximately \$135,000;
- d. Damage to the commercial and public reputation of V8ST.
- e. Reduction in value of its business and the price achieved on sale.

Wherefore the plaintiff claims from the first defendant:

- A. Damages in an amount to be quantified, but estimated as \$695,000;
- B. Exemplary damages under Section 82A of the Commerce Act in the sum of \$500,000.

**FOURTH CAUSE OF ACTION AGAINST SECOND DEFENDANT:
PROCURING OR BEING KNOWINGLY CONCERNED WITH MSNZ'S
ARRANGEMENT WITH VEEGA:
BREACH OF S 27 OF THE COMMERCE ACT 1986**

V8ST repeats paragraphs 1 to 113 above and says further:

114. Mr Budd procured, was knowingly concerned in, or otherwise a party to the actions of MSNZ and VEEGA in MSNZ entering into an arrangement or understanding with VEEGA for VEEGA to bring and pursue the VEEGA proceeding and for MSNZ to support and contribute to funding the VEEGA proceeding, as set out in paragraphs 66 to 75 above.

Particulars

Mr Budd did so during communications, the form, content and details of which is known to Mr Budd but which cannot be given prior to discovery, but includes those set out at paragraph 69 above.

115. Through his actions referred to in paragraph 114 above, Mr Budd procured MSNZ to, or was directly or indirectly, knowingly concerned in having MSNZ, contravene section 27 of the Commerce Act 1986, and caused V8ST to suffer loss and damage.

Particulars

Mr Budd did so by his actions set out in paragraph 114 above and particularised at paragraph 114 above, and caused V8ST to suffer the loss and damage set out in paragraphs 106, 115 and 116 above as particularised at paragraph 112 above.

116. The loss suffered by V8ST and caused by the actions of Mr Budd is set out in paragraph 105 above.

Wherefore the plaintiff claims from the second defendant:

- A. Damages in an amount to be quantified, but estimated as \$660,000;
- B. Exemplary damages under Section 82A of the Commerce Act in the sum of \$500,000.

**FIFTH CAUSE OF ACTION AGAINST THIRD DEFENDANT:
PROCURING OR BEING KNOWINGLY CONCERNED WITH MSNZ'S
ARRANGEMENT WITH VEEGA:
BREACH OF S 27 OF THE COMMERCE ACT 1986**

V8ST repeats paragraphs 1 to 116 above and says further:

117. Mr Fine procured, was knowingly concerned in, or otherwise a party to the actions of MSNZ and VEEGA in MSNZ entering into an arrangement or understanding with VEEGA for VEEGA to bring and pursue the VEEGA proceeding and for MSNZ to support and contribute to funding the VEEGA proceeding, as set out in paragraphs 66 to 75 above.

Particulars

Mr Fine did so during communications, the form, content and details of which is known to Mr Fine but which cannot be given prior to discovery, but includes those set out at paragraph 70 above.

118. Through his actions referred to in paragraph 117 above, Mr Fine procured MSNZ to, or was directly or indirectly, knowingly concerned in having MSNZ, contravene section 27 of the Commerce Act 1986, and caused V8ST to suffer loss and damage.

Particulars

Mr Fine did so by his actions set out and particularised in paragraph 117 above, and caused V8ST to suffer the loss and damage set out in paragraphs 106 and 112 above.

119. The loss suffered by V8ST and caused by the actions of Mr Fine is set out in paragraph 105 above and 112 above.

Wherefore the plaintiff claims from the second defendant:

- A. Damages in an amount to be quantified, but estimated as \$660,000;
- B. Exemplary damages under Section 82A of the Commerce Act in the sum of \$500,000.

**SIXTH CAUSE OF ACTION AGAINST FIRST DEFENDANT:
MSNZ'S ARRANGEMENTS WITH VESA:
BREACH OF S 27 OF THE COMMERCE ACT 1986**

V8ST repeats paragraphs 1 to 119 above and says further:

120. MSNZ entered into an arrangement or understanding with VESA in which MSNZ would provide a permit to VESA for its proposed Supercars Event and would be entitled to determine which support classes could compete at VESA's Supercars Event, as set out in paragraphs 83 to 85 above.
121. Through its actions referred to in paragraphs 94 to 95 and 0 above, MSNZ entered into an arrangement or understanding which had the purpose, and

effect, of substantially lessening competition in the V8 touring car racing market and the markets listed in paragraph 15 above.

Particulars

The arrangement or understanding referred to in paragraphs 120 and 121 above had that effect by:

- a. damaging V8ST's commercial and public reputation;
 - b. increasing V8ST's operating costs;
 - c. absorbing V8ST's management time;
 - d. adversely affecting V8ST's ability to obtain new sponsorships, attract new competitors, sell new cars to new competitors, and sell consumable parts to new competitors, and attract spectators to its events;
 - e. preventing V8ST from running V8 Supertourer support races at VESA's Supercars Event;
 - f. preventing V8ST from obtaining revenue from category sponsorship and sales of consumables at VESA's Supercars Event;
 - g. preventing V8ST from obtaining sponsorship from ATEED for the proposed V8ST Supertourer event at Pukekohe;
 - h. preventing V8ST from obtaining revenue at the proposed V8ST Supertourer event at Pukekohe from sponsorships, sales of consumables, spectators fees, entrants fees, and broadcasting opportunities.
122. Through its actions referred to in paragraphs 0 and 121 above, MSNZ engaged in conduct which is in contravention of section 27 of the Commerce Act 1986 and which caused V8ST to suffer loss and damage.

Particulars

MSNZ's arrangement or understanding with VESA referred to in paragraph 120 above, had the purpose, and the effect, referred to in paragraph 121 above, and was conduct which was in contravention of section 27 of the

Commerce Act 1986. MSNZ's actions caused V8ST to suffer the loss and damage referred to in paragraphs 122 above and 123 below, by:

- a. damaging V8ST's commercial and public reputation;
- b. increasing V8ST's operating costs;
- c. absorbing V8ST's management time;
- d. adversely affecting V8ST's ability to obtain new sponsorships, attract new competitors, sell new cars to new competitors, and sell consumable parts to new competitors, and attract spectators to its events;
- e. preventing V8ST from running V8 Supertourer support races at VESA's Supercars Event;
- f. preventing V8ST from obtaining revenue from category sponsorship and sales of consumables at VESA's Supercars Event;
- g. preventing V8ST from obtaining sponsorship from ATEED for the proposed V8ST Supertourer event at Pukekohe;
- h. preventing V8ST from obtaining revenue at the proposed V8ST Supertourer event at Pukekohe from sponsorships, sales of consumables, spectators fees, entrants fees, and broadcasting opportunities.

123. The loss suffered by V8ST and caused by the actions of MSNZ includes:

- a. Lost profit from running V8 Supertourer support races at VESA's Supercars Event, estimated at \$100,000 in potential category sponsorship and sales of consumables (tyres, brakes and spares) at that event;
- b. Losses and lost profit as a result of ATEED declining to sponsor V8ST's Supertourer event at Pukekohe, estimated at \$170,000 from lost sponsorship, lower spectator numbers, lost entrants fees, and broadcast opportunities;
- c. Damage to the commercial and public reputation of V8ST.

- d. Reduction in value of its business and the price achieved on sale.

Wherefore the plaintiff claims:

- A. Damages in an amount to be quantified, but estimated as \$400,000;
- B. Exemplary damages under Section 82A of the Commerce Act in the sum of \$500,000.

**SEVENTH CAUSE OF ACTION AGAINST FIRST DEFENDANT:
MSNZ'S MISLEADING AND DECEPTIVE CONDUCT:
BREACH OF S 9 FAIR TRADING ACT 1986**

V8ST repeats paragraphs 1 to 123 above and says further:

124. MSNZ is in trade.
125. MSNZ's comments and submissions to ATEED, as described in paragraphs 86 to 92 above, were misleading and deceptive, or were likely to mislead or deceive:
 - a. MSNZ's comments and submissions wrongly implied that races for V8ST's V8 Supertourers Series were not approved by MSNZ, whereas in fact they were.
 - b. MSNZ's comments and submissions wrongly asserted that V8ST had raced at Pukekohe before, whereas in fact it had not.
126. MSNZ's conduct referred to in paragraph 125 above caused V8ST to suffer loss and damage.
127. The loss suffered by V8ST and caused by the actions of MSNZ includes:
 - a. Losses and lost profit as a result of ATEED declining to sponsor V8ST's Supertourer event at Pukekohe, estimated at \$170,000 from lost sponsorship, lower spectator numbers, lost entrants fees, and broadcast opportunities;
 - b. Damage to the commercial and public reputation of V8ST and to the smooth running of its events;

c. Reduction in value of its business and the price achieved on sale.

Wherefore the plaintiff claims:

A. An order directing MSNZ to pay V8ST the amount of the loss and damage under section 43 of the Fair Trading Act 1986 in an amount to be quantified, but estimated as \$400,000.

This **AMENDED STATEMENT OF CLAIM** is filed by Robin Joseph Bell, Solicitor for the Plaintiff. The address for service of the Plaintiff is Bisson Moss, Solicitors, Tennyson Chambers, 54 Tennyson Street, Napier.

Documents for service on the above-named Plaintiff may be left at that address for service or may be:

- (a) Posted to the Solicitor at P O Box 549 Napier; or
- (b) Transmitted to the Solicitor by facsimile at (06) 8353156.

"C"

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV-2014-404-3298

UNDER THE COMMERCE ACT 1986

BETWEEN

V8 SUPERTOURERS LIMITED

Plaintiff

AND

MOTORSPORT NEW ZEALAND INCORPORATED

First Defendant

AND

B A BUDD

Second Defendant

AND

M Q FINE

Third Defendant

**DEFENDANTS' STATEMENT OF DEFENCE TO AMENDED STATEMENT
OF CLAIM DATED 30 JUNE 2015
DATED: 17 JULY 2015**

McELROYS
LITIGATION LAWYERS

PO Box 835, Auckland 1140
DX CP20526 Upper Shortland Street
Tel 64 9 307 2003
Fax 64 9 309 7558

Solicitor Acting: Peter Hunt / Darren Turnbull
Email: peter.hunt@mcelroys.co.nz / darren.turnbull@mcelroys.co.nz

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**DEFENDANTS' STATEMENT OF DEFENCE TO AMENDED STATEMENT
OF CLAIM DATED 30 JUNE 2015
DATED: 17 JULY 2015**

THE DEFENDANTS by their solicitor say:

The plaintiff: V8ST (3124785)

1. They admit paragraph 1.
2. They admit that the plaintiff, V8 Supertourers Ltd (**V8ST**), operated a V8 touring car racing and promotion business between September 2010 and 30 April 2013. They have insufficient knowledge of and therefore deny subparagraphs 2(a) – (i).
3. They admit paragraph 3.

Allegations regarding markets in which V8ST operated

4. They have insufficient knowledge of and therefore deny paragraph 4.

The first defendant: MSNZ

5. They admit paragraph 5.
6. They admit paragraph 6 and say further that the first defendant, Motorsport New Zealand Inc (**MSNZ**), has the sole authority to run, or delegate the running of a "Championship" (as that term is defined in its National Sporting Code (**NSC**)).
7. They:
 - (1) Admit that the Federation Internationale de l'Automobile (**FIA**) is recognised as the governing body for world motorsport;
 - (2) Say further that:
 - (a) The **FIA** recognises one national automobile club or other national body in each country known as the

"Sporting Power" or "l'Autorité Sportive National" (ASN);

- (b) The ASN is the direct motorsport representative of its country within the FIA. The ASN remains responsible to the FIA. It is entrusted with enforcement of FIA's International Sporting Code (ISC) and control of motorsport in its country;
 - (c) The ASN in each country has the power to administer the rules and regulations for all 4-wheel motorsport in that country for which it has delegated authority, other than the FIA Championships;
 - (d) The ISC is a set of rules covering all motor racing events that are governed by the FIA;
 - (e) MSNZ is FIA's representative in New Zealand;
 - (f) MSNZ has adopted the NSC, which is based on and reflects the requirements of the ISC;
 - (g) FIA rules apply to FIA World Championships not V8 touring car racing in New Zealand;
- (3) Otherwise deny paragraph 7.
8. They:
- (1) Admit that MSNZ:
 - (a) Is the FIA's ASN for New Zealand;
 - (b) Issues permits for motorsport events in New Zealand in accordance with the NSC;
 - (c) Grants safety certifications and type approvals (called "homologations") for (inter alia) V8 touring cars allowed to compete in races authorised by MSNZ in accordance with the NSC;

- (d) Issues licences to tracks and circuits for V8 touring cars and all racing in accordance with the NSC;
 - (e) Issues licences to drivers, entrants and officials to participate in V8 touring car races in accordance with the NSC;
- (2) Says further that:
- (a) MSNZ regulates New Zealand Championships and approved sanctioned series articles for motorsport in New Zealand including other V8 classes;
 - (b) Prior to January 2014, MSNZ did not issue a sanctioning permit for any event or series operated or promoted by V8ST;
 - (c) V8ST did not apply for a MSNZ NZ Championship, or Sanctioned Series Status, or to become a MSNZ promoter, prior to 7 January 2013;
 - (d) The V8 Supertourer events or series were still required, as non-sanctioned events or series, to comply with the requirements of the NSC and any applicable category rules;
 - (e) MSNZ issued a sanctioning permit for the V8ST race series in January 2014;
 - (f) All V8 classes are required to comply with the NSC;
 - (g) FIA does not issue permits for V8 touring car racing in New Zealand;
 - (h) A FIA international permit is required for Australian V8 supercar events for licensing reasons to enable foreign drivers not covered by the Trans Tasman Agreement to score points in a series;

- (i) All tracks and circuits in New Zealand hold both FIA and MSNZ circuit licences;
- (j) A FIA circuit licence is required for the running of any race meeting run under a FIA international permit;
- (k) In New Zealand, New Zealand V8 touring cars do not need to run under either a FIA international permit or on circuits with FIA licences;

(3) Otherwise deny paragraph 8.

9. They:

- (1) Admit paragraph 9;
- (2) Say further that clauses 3(1) & (2) of the NSC provide:

3. Application:

- (a) This Code governs all Competitions Meetings and Events for automobiles (except International Series, International Meetings and International Events) for which MotorSport NZ has been recognised by the FIA as the sole sporting power in New Zealand.
- (b) No International Event may be conducted without an International Permit. All applications for an International Permit and all correspondence to and communication with FIA in connection with International Event or International Permit must be made by and through MotorSport NZ at all times. All International Events must be conducted in accordance with the International Sporting Code, any breach of which shall be deemed a breach of this Code and vice versa.

(3) Rely on the NSC as if pleaded in full.

10. They admit paragraph 10.

Allegations regarding MSNZ's market power

11. They:

(1) Admit:

(a) There are eight permanent motorsport circuits in New Zealand (**Circuits**);

(b) The following motorsport circuits are owned by a MSNZ Affiliated Motorsport Club:

(i) Powerbuilt Raceway at Ruapuna Park, Christchurch;

(ii) Teretonga Park, Invercargill;

(iii) Timaru International Motor Raceway, Timaru;

(2) Say further that the following motorsport circuits are either privately owned or held by Trusts:

(a) Hampton Downs, Waikato;

(b) Highlands Motorsport Park, Cromwell;

(c) Manfeild Park, Fielding;

(d) Pukekohe Park Raceway, Pukekohe;

(e) Taupo Motorsport Park, Taupo;

(3) Otherwise deny paragraph 11.

12. They deny paragraph 12 and say further that:

(1) Each of the Circuits hold two licences:

(a) A FIA licence;

(b) A MSNZ licence.

(2) These two licences permit events authorised by both the FIA and MSNZ to be held at the Circuits.

13. They:

(1) Say:

(a) All motorsport events run at each of the Circuits must be run under a MSNZ permit;

(b) The Circuits are not required to hold a FIA licence;

(2) Repeat paragraph 8 above;

(3) Otherwise deny paragraph 13.

14. They:

(1) Repeat paragraph 7;

(2) Admit that MSNZ, in its role as the governing body for motorsport in New Zealand:

(a) Regulates pursuant to the NSC:

(i) Motorsport events in New Zealand;

(ii) Events and series for V8 touring cars;

(iii) The events and series operated and promoted by V8ST;

(b) Issues permits, licences, safety certifications and homologations pursuant to the NSC for:

(i) Motorsport events in New Zealand;

(ii) Events and series for V8 touring cars;

(iii) The events and series operated and promoted by V8ST;

(c) Approves homologations and safety certifications pursuant to the NSC for:

(i) Motorsport events in New Zealand;

- (ii) Events and series for V8 touring cars;
 - (iii) The events and series operated and promoted by V8ST;
 - (3) Otherwise deny paragraph 14.
15. They:
- (1) Repeat sub-paragraphs 14(1) & (2) above;
 - (2) Otherwise deny paragraph 15.
16. They deny paragraph 16 and repeat sub-paragraphs 14(3) & 15(2) above.

The second defendant: Brian Arthur Budd

17. They admit paragraph 17 and say further that Brian Arthur Budd was appointed MSNZ's general manager on 28 April 2009.

TMC (in liquidation) (560324)

18. They admit paragraph 18.
19. They admit paragraph 19 and say further that:
- (1) At all material times the six motorsport clubs who held the balance of 40 shares in The MotorSport Company Limited (**TMC**) were:
 - (a) NZIGP (Pukekohe Park Raceway);
 - (b) Manawatu Car Club (Manfeild Park);
 - (c) Taupo Car Club (Taupo Motorsport Park);
 - (d) Canterbury Car Club (Powerbuilt Tools International Raceway – now known as Mike Pero Motorsport Park);
 - (e) South Canterbury Car Club (Timaru International Motor Raceway);

(f) Southland Sports Car Club (Teretonga Park).

20. They deny paragraph 20 and say further that:

- (1) TMC was incorporated in 1992 with the intention that it should:
 - (a) Become MSNZ's commercial arm;
 - (b) Become the promoter of the MSNZ declared Championships;
 - (c) Hold the commercial rights to those events;
- (2) TMC promoted the Race Championship events since 1992 and the Rally Championship events since 2006 and it was formed as a separate organisation for that purpose;
- (3) MSNZ and TMC entered into a written agreement dated 1 December 2007 (**MSNZ/TMC Agreement**) to formalise the delegation of the commercial rights in relation to the New Zealand Championship categories;
- (4) TMC was a separate commercial enterprise with its own board of directors and management, which operated independently of MSNZ;
- (5) From 1 December 2007, TMC paid a rights fee to MSNZ of \$100,000 per annum for the assignment of the commercial rights to organise and promote various MSNZ Championship events including the MSNZ NZV8 Championship pursuant to clause 4 of the MSNZ/TMC Agreement;

Particulars of the payments from TMC to MSNZ

- (a) The payments were made on an annual basis usually in December;
- (b) The payments were signed off between the general manager of TMC, Kerry Cooper, and MSNZ's finance manager;

(c) The amounts TMC paid to MSNZ each year for the period 2007 to 2012 for the assignment of the commercial rights was:

(i) 2007: \$100,000 plus GST;

(ii) 2008: \$100,000 plus GST;

(iii) 2009: \$100,000 plus GST;

(iv) 2010: \$100,000 plus GST;

(v) 2011: \$65,000 plus GST;

(vi) 2012: \$65,000 plus GST;

(6) Since around 1999, MSNZ has paid TMC an administration fee for administering MSNZ's New Zealand Championship events pursuant to a resolution of MSNZ's Executive to support the development of the Championship events;

Particulars of the payments from MSNZ to TMC

(7) The amounts MSNZ paid to TMC as an administration fee each year for the period 2007 to 2012 was:

(i) 2007: \$90,000 plus GST;

(ii) 2008: \$90,000 plus GST;

(iii) 2009: \$90,000 plus GST;

(iv) 2010: \$90,000 plus GST;

(v) 2011: \$65,000 plus GST;

(vi) 2012: \$65,000 plus GST;

21. They deny paragraph 21 and say further that:

(1) TMC rented the first floor level of MSNZ's premises at MotorSport House at 69 Hutt Road Wellington from MSNZ on a

commercial rental basis under an informal unwritten agreement between the parties;

Particulars of the informal unwritten agreement

- (a) The agreement was entered into by MSNZ's Executive and TMC's Board on or about 2005;
 - (b) TMC paid MSNZ a rental of \$30,000 per annum plus GST (in monthly instalments by automatic payment) during the period 2005 to 1 May 2012;
 - (c) The rent was determined prior to the lease commencing based on a review by TMC of comparable commercial rentals in the area at the time;
 - (d) TMC made a contribution towards MSNZ's operating expenses such as power and cleaning. TMC was responsible its own communication and data costs;
 - (e) The lease was not varied during its term;
- (2) TMC reported to the MSNZ Executive as it was the contracted promoter of MSNZ's Championships as required, and as a shareholder once a year at MSNZ's Annual General Meeting **(AGM)**;
- (3) TMC was required to implement any decisions made by MSNZ around the management of the sporting rules associated with its Championships. MSNZ had no involvement with commercial or other decisions relating to TMC's business. TMC was a separate organisation with its own management and Board of Directors;
- (4) As a shareholder in TMC, MSNZ appointed directors on the TMC Board. Under TMC's constitution, MSNZ was permitted to appoint two out of the six directors on the TMC Board. Only

TMC management and/or directors reported back to the MSNZ Executive;

- (5) The six motorsport clubs that were shareholders in TMC had a significant say in TMC's operations;
- (6) Prior to being placed into liquidation on or about 12 October 2012, TMC was solely responsible for all the commercial negotiations associated with the running of the MSNZ Championships;
- (7) Representatives from MSNZ met with representatives from TMC on an annual basis to review the previous season activities regarding the MSNZ Championships and to discuss the racing programme for the next year. Those discussions did not involve MSNZ seeking to reach agreement with TMC regarding TMC's promotional programme for the forthcoming season. TMC's promotional programme was a matter for TMC alone;
- (8) As the owners of the MSNZ Championships by virtue of the delegation from the FIA (NSC, Section One, Article 2), MSNZ was and is responsible for ratifying which Championship categories would run at each meeting, and at which circuits the Championship events would be run;
- (9) MSNZ determines its Championship events and dates just prior to its AGM in around May of each year. The dates are then inscribed into the motorsport calendar.

The third defendant: Martin Quinton Fine

22. They admit paragraph 22 and say further that the third defendant, Martin Fine:

- (1) Was elected to the Executive of MSNZ in 1998;
- (2) Was appointed vice president of MSNZ in 1999;

- (3) Remained vice president of MSNZ until 2007, but vacated that position when he was appointed CEO of TMC;
- (4) Was a director of TMC from 26 April 1999 until 16 June 2012;
- (5) Was a co-opted member of MSNZ's Executive from 2007 until 2012.

Montego Developments Ltd (4005938)

23. They admit paragraph 23.
24. They admit paragraph 24, save that they say Mr Christie's middle name is John not James.
25. They deny paragraph 25 and say further that:
 - (1) At about the time TMC went into liquidation (on or about 12 October 2012), Montego Developments Ltd (**Montego**), was incorporated (on 18 September 2012) as a vehicle for the performance of administration co-ordination tasks in connection with the running of certain MSNZ's Championship events, which had been previously agreed and inscribed into the motorsport calendar;
 - (2) There was no contract between MSNZ and Montego;
 - (3) Montego did not act as a promoter of MSNZ's Championship events. Following the liquidation of TMC on or about 12 October 2012, informal co-hosting arrangements were entered into between MSNZ and the member clubs and circuits for the operation and promotion of certain Championship events, which had been previously agreed and inscribed into the motorsport calendar;

Particulars of the informal co-hosting arrangements

- (a) The co-hosting arrangements involved an exchange of oral and email communications between MSNZ and the member clubs and circuits;
 - (b) All discussions on MSNZ's behalf were conducted by Amanda Tollemache who had MSNZ's authority to co-ordinate the running of the MSNZ Championship events with the clubs and circuits;
 - (c) Once an agreement for running a MSNZ Championship had been reached, MSNZ would provide the clubs and circuits with a document setting out each party's responsibilities;
- (4) Montego's role was limited to performing administration co-ordination tasks. It was created as a vehicle to keep MSNZ's Championship income and costs separated from its accounts.

26. They:

- (1) Admit that Montego's registered office and principal place of business is MSNZ's premises at 69 Hutt Road, Pipitea, Wellington;
- (2) Say further that MSNZ holds all of the shares in Montego;
- (3) Otherwise deny paragraph 26.

MSNZ V8 National Championship

27. They admit paragraph 27, save for the allegation that Montego promoted MSNZ's V8 National Championship. They say further that:

- (1) MSNZ's V8 National Championship has been continuously running since 2002 and continues to do so;
- (2) It was and remains MSNZ's premier Championship awarding a gold star and MSNZ's most prestigious Trophy to the winner.

28. They:

- (1) Admit that under the NSC, the name "Championship" is reserved to a motor race event or series of events which are authorised by MSNZ, or by TMC provided it has MSNZ's consent;
- (2) Otherwise deny paragraph 28.

29. They admit paragraph 29 and say further that:

- (1) Schedule TL cars were the designated MSNZ NZV8 Championship category;
- (2) Schedule TL refers to a set of technical regulations which MSNZ developed and own, and which determine the eligibility of a V8 touring car to race in the MSNZ NZV8 Championship.

30. They:

- (1) Admit V8ST and/or entities and persons associated with it promoted and organised during the period 2012/2013:
 - (a) The V8 Supertourer series; and
 - (b) A series of V8 touring car races for Schedule TL class cars known as the V8 Challenge Cup;
- (2) Otherwise they have insufficient knowledge and therefore deny paragraph 30.

31. They admit paragraph 31.

VEEGA (in liquidation) (2192461)

32. They admit paragraph 32 and say further that:

- (1) NZ Vee Eight Entrants Group Association Ltd (**VEEGA**) (2192461) was incorporated on 19 December 2008 for the principal purpose of giving effect to a joint venture agreement

between TMC and VEEGA's subsidiary, New Zealand V8's Ltd (1130117);

(2) VEEGA's shareholders were the entrants in MSNZ's NZV8 Championship. The shareholders included Mark James Wayne Petch, Christopher John Abbott, Wayne Anderson, John Donald McIntyre and Garry Allen Pedersen (either individually or through entities associated with them);

(3) The defendants in the proceeding brought by VEEGA against the directors of V8ST (*CIV-2012-404-740: NZ Vee Eight Entrants Group Association Ltd v MJW Petch & Ors*) (**VEEGA proceeding**) were Messrs Petch, Abbott, Anderson, McIntyre and Pedersen. V8ST was joined as the sixth defendant on or about 13 September 2013. The individuals were directors of VEEGA during the following periods:

(a) Mr Petch: 19 December 2008 to 5 March 2011;

(b) Mr Abbott: 17 July 2010 to 11 March 2011;

(c) Mr Anderson: 12 June 2010 to 21 February 2011;

(d) Mr McIntyre: 17 July 2010 to 21 February 2011;

(e) Mr Pedersen: 12 June 2010 to 11 March 2011;

(4) On or about 13 March 2013:

(a) VEEGA and its subsidiary, New Zealand V8's Ltd, amalgamated; and

(b) VEEGA changed its name to NZV8's Ltd (**NZV8's**);

(5) NZV8's was placed into liquidation on 19 May 2014.

33. They admit paragraph 33 and say further that those V8 touring cars were Schedule TL cars.

34. They:

- (1) Admit that on or about May 2011, VEEGA engaged Mitchell Race Xtreme Ltd (**MRX**) to develop a new generation V8 touring car to contest MSNZ's NZV8 Championship. This prototype car is colloquially referred to as "the car of the future" (**COF**). The designated technical regulation for this car is Schedule TLX;
- (2) Say further that:
 - (a) In around 2008, VEEGA's shareholders began to discuss the development of a new prototype car to be constructed by Paul Cepronich of Pace Innovations Pty Ltd (**Pace Innovations**). The intention was that this car would contest MSNZ's NZV8 Championship. This prototype car is colloquially referred to as "the car of tomorrow" (**COT**);
 - (b) The COT project was managed by a COT committee comprising Messrs Petch, Pedersen and Anderson;
 - (c) In around 2010, Mr Petch, the then chairman of VEEGA, had proposed that MSNZ and TMC contribute \$30,000 towards the costs of the prototype build. MSNZ indicated that it would contribute some funds to the COT car project. However, the arrangement was never formalised;
 - (d) The joint venture agreement between TMC and VEEGA's subsidiary, New Zealand V8's Ltd, was terminated in around mid-2010 as a result of a shareholders' dispute;
 - (e) On 16 September 2010, Messrs Petch, Pedersen and Anderson incorporated V8ST and were appointed directors and shareholders at that time;
 - (f) On or about 30 October 2010, a conference call took place between various VEEGA directors including Messrs Petch, Abbott, Anderson, McIntyre and Pedersen. The

directors resolved with immediate effect to transfer the COT project to V8ST. The transfer was not reported to VEEGA's shareholders until 2011;

(g) VEEGA alleged in the VEEGA proceeding that:

(i) The defendants, Messrs Petch, Abbott, Anderson, McIntyre and Pedersen, had breached their duties as directors of VEEGA under sections 131, 134, 140 & 145 Companies Act 1993 and fiduciary duties to it in connection with conflicts of interests due to undisclosed dual directorships (VEEGA and V8ST) and their actions regarding the transfer of the IP in the COT project to V8ST and breaches of confidentiality;

(ii) V8ST had received the COT design with actual or constructive knowledge that the defendants had breached those statutory and fiduciary duties to VEEGA;

(3) Otherwise deny paragraph 34.

35. They:

(1) Admit that the TLX Car was homologated under a type homologation to compete in the MSNZ V8 Championship;

(2) Otherwise deny paragraph 35.

36. They deny paragraph 36 and say further that:

(1) MSNZ purchased the design and intellectual property (**IP**) in the TLX car from MRX and Derek Leslie Mitchell for the purchase price of \$41,300 pursuant to an agreement dated 10 December 2011;

(2) MSNZ took ownership of the IP on the condition that MSNZ would grant two licenses to use the IP to:

- (a) MRX to for the purpose of using the IP to carrying out chassis installation work;
 - (b) New Zealand V8 Touring Cars Ltd (**NZV8TC**) for the purpose of bringing vehicles up to specification so they could be used in the MSNZ V8 Championship;
- (3) Pursuant to an informal unwritten arrangement with MSNZ, New Zealand V8's Ltd sold controlled parts and components to the owners and drivers of Schedule TLX cars in the same way as it had been doing for the Schedule TL cars since 2002. MSNZ had no involvement in the sale of the controlled parts for either the Schedule TL or the Schedule TLX cars. MSNZ received a \$2,000 chassis levy built into the purchase price of the TLX car to recoup its IP purchase cost;

37. They:

(1) Admit that:

(a) Mr Budd:

- (i) Was a director of VEEGA from 26 October 2011 until 19 June 2012;
- (ii) Has been MSNZ's general manager since 28 April 2009;
- (iii) Attended meetings of the VEEGA Board on 14 July 2011, 15 September 2011, 26 October 2011 and 1 December 2011;

(b) Company office records show that Mr Ian Tulloch was a director of:

- (i) VEEGA from 5 April 2011 until 9 December 2012;
- (ii) TMC between 8 May 2003 until 1 July 2005 and 16 May 2012 until 12 September 2012;

(c) Mr Fine was:

- (i) CEO of TMC between 2007 and 2012;
- (ii) A director of TMC between 16 April 1999 and 16 June 2012;

(2) Say further that:

- (a) Mr Budd was appointed a director of VEEGA at the invitation of VEEGA's Board;
- (b) MSNZ's Executive Committee resolved at a meeting on 24 and 25 June 2011 that MSNZ should have a representative on VEEGA's Board given its investment in the COF project. Mr Budd was selected for this purpose;
- (c) The meetings of the VEEGA Board which Mr Budd attended on 14 July 2011, 15 September 2011, 26 October 2011 and 1 December 2011 were in his capacity as a director of VEEGA. Mr Budd did not attend the VEEGA board meeting on 5-6 May 2011. Mr Budd was invited by the VEEGA Board to be a member of a panel which met on 5-6 May 2011 to consider presentations and proposals from various parties and to represent MSNZ's interests in respect of the COF project;

(3) Otherwise deny paragraph 37.

38. They deny paragraph 38.

39. They deny paragraph 39.

The Canterbury Car Club – Ruapuna Circuit race

40. They:

(1) Admit that:

- (a) The MSNZ V8 Championship Series often included an event at the Ruapuna Circuit in Christchurch in November of each year;
 - (b) The Ruapuna Circuit was owned and operated by the Canterbury Car Club Inc;
 - (2) Repeat sub-paragraphs 21(7), (8) & (9) above;
 - (3) Say further that:
 - (a) TMC as the promoter of the MSNZ Championship Series was responsible for the decisions around rounds and where they would be run;
 - (b) TMC presented the proposed dates for the 2011/2012 Championship season at the MSNZ AGM in May 2011 and at MSNZ's Executive Meeting held on 24 and 25 June 2011;
 - (4) Otherwise deny paragraph 40.
41. They:
- (1) Admit that MSNZ received a promotional email in early March 2011 that contained the dates for the V8 Supertourer season in 2012, and which included an event to be hosted by The Canterbury Car Club at Ruapuna;
 - (2) Otherwise deny paragraph 41.
42. They:
- (1) Admit that TMC wrote a letter to the Canterbury Car Club regarding the MSNZ's 2011/2012 Championship calendar on 21 March 2011;
 - (2) Otherwise deny paragraph 42.
43. They deny paragraph 43.

44. They deny paragraph 44.

45. They admit paragraph 45.

New Zealand V8 Touring Cars Ltd (NZV8TC) (1194899)

46. They admit paragraph 46 and say further that:

- (1) NZV8TC was incorporated by TMC on 8 March 2002 for the purposes of protecting the name for future use. The shares were originally held by TMC;
- (2) NZV8TC was a shelf company for a number of years. When MSNZ acquired the IP in the TLX car from 10 December 2011, MSNZ agreed to purchase the shares in NZV8TC from TMC. MSNZ acquired NZV8TC as a vehicle to hold the IP in the TLX car. The share acquisition was not lodged at Companies Office until August 2012.

47. They admit paragraph 47.

48. They:

- (1) Admit the shares in NZV8TC were transferred from TMC to MSNZ and notice of that transfer was given to the Companies Office on 15 August 2012;
- (2) Repeat sub-paragraphs 46(1) & (2) above;
- (3) Otherwise deny paragraph 48.

49. They admit paragraph 49, save that they say Mr Christie's middle name is John not James.

Allegations regarding MSNZ's ownership of TLX Car Design

50. They admit paragraph 50 and say further that:

- (1) VEEGA wanted MSNZ to purchase the IP in the COF prototype car to ensure there was a new updated car available for

entrants in future MSNZ V8 Championships and to remove the possibility that the IP would be lost, as had been the case with the COT prototype car;

- (2) MSNZ agreed because it believed this step met its objective of promoting the interests of motorsport generally;
- (3) A number of leading V8 entrants opted to remain with the existing MSNZ V8 Championship;
- (4) The Schedule TL car provided a cost effective option for young drivers to step up to V8 racing;

51. They admit paragraph 51.

52. They admit paragraph 52.

53. They admit paragraph 53, save that they deny the allegation that in purchasing the designs, specifications and IP in the TLX car, MSNZ's intention was that the TLX car would become the premier V8 touring car for V8 motorsport in New Zealand.

Allegations regarding MSNZ, TMC, NZV8TC and Montego's competition with V8ST

54. They:

- (1) Admit that NZV8TC sold controlled parts (e.g. brakes, rear wings and nose clips) to owners of Schedule TLX cars from 10 December 2011;
- (2) Say further that NZV8TC accepted orders from competitors wishing to purchase Schedule TLX cars. These orders were then placed with MRX who held the build contract for the chassis and who also supplied the controlled parts associated with the chassis;
- (3) Otherwise deny paragraph 54.

55. They:

- (1) Admit that:
 - (a) TMC's business activities involved:
 - (i) The promotion of the MSNZ Championship series, which included the MSNZ V8 Championship;
 - (ii) Trying to attract drivers and entrants, sponsors, broadcasters, motor racing circuits and clubs and spectators to the events it promoted;
 - (b) V8ST operated a V8 touring car racing and promotion business between September 2010 and 30 April 2013 that included events for the V8 Supertourers;
 - (c) MSNZ issued permits and/or licences to:
 - (i) The entrants and drivers of motorsport events in New Zealand, as well as safety certifications and homologations;
 - (ii) Conduct motorsport events at motor racing circuits;
- (2) Repeat sub-paragraph 25(4) above and say further that Montego did not operate or conduct business activities in any market for motorsport in New Zealand;
- (3) Otherwise deny paragraph 55.

Allegations regarding MSNZ's attempts to disrupt V8 Challenge Cup

56. They admit paragraph 56.

57. They:

- (1) Admit Mr Budd wrote to V8ST's solicitors, Bisson Moss, by a letter 9 November 2011;

- (2) Rely on that letter as if pleaded in full;
 - (3) Otherwise deny paragraph 57.
58. They deny paragraph 58 and say further that:
- (1) Pursuant to Part II Article 8(2) of the NSC, MSNZ was required to consider and grant or decline all applications for Permits for Series, Meetings or Events solely on the grounds set out in Article 12 of the NSC;
 - (2) Article 12 required MSNZ to consider each application for a Permit taking into account the matters set out at Articles 12(1)(a) & (b).
59. They deny paragraph 59 and say further that the purpose of the letter was to confirm to V8ST that it had no right to use Schedule TL. This was because Schedule TL is the technical rules for MSNZ's V8 Championship, which MSNZ owned.
60. They deny paragraph 60.
61. They:
- (1) Admit MSNZ sent a memorandum to all competitors entered in the V8 Challenge Cup dated 14 January 2012 regarding restrictions in their ability to run in races outside of MSNZ's V8's Championship due to MSNZ's ownership of the IP in the Schedule TL logbooks;

Particulars of MSNZ's ownership

- (a) MSNZ owns the MSNZ Championship under the NSC (Section One, Article Two). The MSNZ Championship is governed by the articles of the Championship including the technical regulations. In the case of the MSNZ NZV8 Championship, the relevant technical regulation was Schedule TL.

- (2) Rely on that memorandum as if pleaded in full;
 - (3) Repeat sub-paragraph 29(2) above;
 - (4) Otherwise deny paragraph 61.
62. They deny paragraph 62 and repeat sub-paragraph 61(2) above.
63. They deny paragraph 63 and say further that the purpose of MSNZ's 14 January 2012 memorandum was to confirm to all competitors entered in the V8 Challenge Cup that they were restricted in their ability to run in races outside of MSNZ's V8's Championship due to MSNZ's ownership of the IP in the Schedule TL logbooks.
64. They:
- (1) Admit MSNZ withdrew its objection set out in its memorandum dated 14 January 2012;
 - (2) Say further that:
 - (a) On 14 January 2012, after sending its memorandum of that date, MSNZ's management discovered that not all of the Schedule TL cars had Schedule TL logbooks;
 - (b) MSNZ therefore decided to withdraw its objection on 14 January 2012. Mr Budd and MSNZ's technical manager, Julian Leach, took that decision. There is no written record of their decision;
 - (3) Otherwise deny paragraph 64.
65. They admit paragraph 65.

Allegations regarding MSNZ's funding and control of VEEGA proceeding

66. They:

- (1) Admit that Mr Fine, in his capacity as chairman of TMC, had some dealings with VEEGA's solicitors, Kensington Swan, regarding the transfer of the IP in the COT prototype car from VEEGA to V8ST;
 - (2) Say further that:
 - (a) The VEEGA Board resolved at the VEEGA Board meeting on 5 – 6 May 2011 to instruct Kensington Swan lawyers;
 - (b) MSNZ did not have any control or influence over that decision;
 - (c) At all times, Mr Fine reported to and took instructions from the VEEGA Board;
 - (3) Otherwise deny paragraph 66.
67. They deny paragraph 67 and say further that:
- (1) By an email sent on 8 December 2011, VEEGA requested that MSNZ and TMC each provide a contribution of \$15,000 towards the costs of a proposed proceeding against the directors of V8ST;
 - (2) Shayne Harris, the president of MSNZ, replied on MSNZ's behalf by an email of 8 December 2011 that said:

I will have to take this to the Executive meeting in two weeks.
 - (3) The VEEGA request for funding was discussed at MSNZ's Executive Meeting on 16 & 17 December 2011;
 - (4) MSNZ did not provide any funds to VEEGA to assist with the funding of the VEEGA proceeding because MSNZ's Executive did not approve that request;
 - (5) Kensington Swan had some communications with MSNZ's counsel, John Billington QC, in late December 2011/early 2012 about the possibility of Mr Billington QC acting as counsel for

VEEGA in the VEEGA proceeding. However, Mr Billington QC sent a letter to Kensington Swan on 2 February 2012 declining instructions to act because MSNZ, as the regulator of motorsport, did not want to involve itself in the dispute between two commercial organisations, and Mr Billington QC was MSNZ's legal adviser.

68. They admit paragraph 68 and repeat sub-paragraph 34(2)(g) above.
69. They deny paragraph 69.
70. They deny paragraph 70.
71. They admit paragraph 71.
72. They admit paragraph 72 and say further that:
 - (1) On 22 August 2012 Mr Tulloch sent an email to Mr Harris forwarding some recent communications with Kensington Swan regarding the funding of the VEEGA proceeding. Attached to that email was a VEEGA invoice to MSNZ for \$30,000 plus GST;
 - (2) Mr Harris sent an email to Mr Tulloch on 27 August 2012 confirming that MSNZ did not want to be a party to the proceeding from the start and that it would not be underwriting any of the legal costs of that action;
 - (3) Mr Harris' 27 August 2012 email also confirmed that MSNZ had advanced \$15,000 to New Zealand V8's (1130117), but he confirmed those funds were not provided for the purpose of funding the VEEGA proceeding;
 - (4) On 28 August 2012, MSNZ made a loan of \$15,000 plus GST to New Zealand V8's in accordance with an existing MSNZ Executive approval to assist that company with cash flow for the purchase of controlled parts for the new Schedule TLX cars;

- (5) New Zealand V8's repaid MSNZ's loan of \$15,000 plus GST on or about 5 December 2012 by the transfer of assets to MSNZ.

73. They:

- (1) Admit that Mr Budd sent an email on 23 August 2012 to Messrs Tulloch and Harris which referred to previous discussions regarding MSNZ and TMC contributing to the VEEGA proceeding;

Particulars of the previous discussions

- (a) The previous discussions took place at MSNZ's Executive meeting held at Motorsport House, 69 Hutt Road, Thorndon, Wellington on 16 & 17 December 2011;
- (b) The relevant discussions took place between Shayne Harris, Raymond Bennett, Wayne Christie, David Kirk, Norman Oakley, Janet Phipps, Wayne Scott and Brian Budd;
- (c) The gist of the discussion regarding VEEGA's request for MSNZ's support with funding was that VEEGA was looking to take legal action against a number of its previous directors and shareholders who had formed V8ST and was looking for a financial contribution from MSNZ and TMC of \$15,000 each;
- (d) MSNZ Executive decided against providing VEEGA with assistance with funding the proposed VEEGA proceeding;
- (2) Say further that MSNZ's Executive resolved that it would make a \$15,000 loan to New Zealand V8's to assist it to purchase of controlled parts for the new Schedule TLX cars, subject to a call from that company for assistance;
- (3) Repeat sub-paragraphs 72(4) & (5) above.

(4) Otherwise deny paragraph 73.

74. They:

(1) Repeat sub-paragraph 72(4) above;

(2) Otherwise deny paragraph 74.

75. They admit paragraph 75 and say further that the VEEGA proceeding was discontinued and the parties to that proceeding entered into the settlement agreement dated 21 December 2012. This followed the retirement of the existing directors on 9 December 2012 and appointment of new directors to VEEGA on 6 December 2012.

Particulars of the existing directors

(1) Andrew Robin Porter;

(2) Michael John Ross;

(3) Ian Tulloch;

Particulars of the new directors

(1) Stephen Hamilton Gillard;

(2) Gregory Lancaster;

(3) Lyall James Williamson.

Allegations regarding MSNZ interference in Manfeild Race April 2012

76. They admit paragraph 76 and say further that:

(1) The vehicle that suffered damage to its safety roll cage was Supertourer chassis #12 (Geoff Emery);

(2) Pace Innovations performed the repairs in Hamilton on 16 April 2012;

(3) Under Article 4.6(1) (safety structure: roll protection) of Schedule A of the NSC (Driver and Vehicle Safety), a safety roll

cage is classified as a "safety critical" item in a racing car and is required to be designed, fabricated and maintained to the highest standards;

- (4) The repairs to the safety roll cage were required to be carried out in accordance with Article 4.6(5) of Schedule A of the NSC. Article 4.6(5) provides:

Modifications and/or repairs: Any modification and/or repairs to a homologated safety structure will invalidate the certification until an extension or repair homologation certificate is issued. The following procedure shall be followed:

- a) In the first instance contact the MotorSport NZ Technical Department relative to the proposed changes and/or repair of a homologated safety structure, and
 - b) Modifications and/or repairs may only be performed by their original constructor or with their written permission or as authorised by MotorSport NZ, and
 - c) Form T004 shall be used to revalidate any extensions/modifications to a homologated structured or Form T005 to revalidate a damaged structure.
- (5) Before the repairs to Supertourer chassis #12 were undertaken, MSNZ ought to have approved how the repairs were to be carried out in accordance with Article 4.6(5) of Schedule A of the NSC;
- (6) On 19 April 2012 while in Hamilton for the Hamilton 400, MSNZ's Technical Manager, Julian Leach, carried out an inspection of Supertourer chassis #12;
- (7) Mr Leach requested that Pace Innovations provide a report regarding the repairs they had carried out;
- (8) Following his review of Pace Innovations' repair report dated 20 April 2012, Mr Leach sent an email to Troy Russell of the Melbourne Performance Centre on 24 April 2012 in which he said that the repairs performed were not considered to be

standard practice (because it would be usual for the safety cage to be replaced not repaired). Mr Leach set out in his email two options that could be considered, namely (a) the replacement of the main roll bar as a single member; or (b) obtaining a report from the original certifying engineers, Opus International Consultants Ltd (**Opus**), that took into account the repairs performed to recertify that structure;

- (9) Mr Leach travelled overseas on leave on 25 April 2012. Before leaving, he left instructions with Mr Budd that Supertourer chassis #12 was not permitted to compete until its main roll bar had been replaced, or Opus had certified that the repairs were satisfactory.

77. They:

(1) Admit that Mr Budd:

- (a) Accompanied Mr Leach to the inspection on 19 April 2012, but this was only because he had been in Hamilton at the Hamilton 400 event with Mr Leach at the time;
- (b) Does not have any licenses or qualifications to conduct vehicles inspections;

(2) Say further that Mr Budd had no involvement in Mr Leach's inspection of Supertourer chassis #12;

(3) Repeat paragraph 76 above;

(4) Otherwise deny paragraph 77.

78. They deny paragraph 78 and repeat paragraphs 76 & 77 above.

79. They admit paragraph 79.

80. They admit paragraph 80.

81. They:

- (1) Admit that Mr Budd sent a memorandum on MSNZ's behalf addressed to "Clerk of the Course and Stewards" of the Manfeild Race Meeting dated 27 April 2012;
- (2) Rely on that 27 April 2012 memorandum as if pleaded in full;
- (3) Repeat paragraphs 76 & 77 above;
- (4) Say further that:
 - (a) MSNZ's organising permit for the Manfeild Race Meeting dated 13 April 2012 commenced at 8am on Friday, 27 April 2012 and concluded at 8pm on Sunday, 29 April 2012;
 - (b) Cars that do not comply with MSNZ's rules are not permitted to be on the circuit during the time of the permit;
 - (c) MSNZ understood that V8 Supertourer chassis #12 had taken part in a practice/testing session on 27 April 2012 in breach of MSNZ's permit for the event;
 - (d) Mr Budd's 27 April 2012 memorandum was sent by email to Julian Hardy, the organiser/secretary of the Manfeild Meeting, at 3.26pm on 27 April 2012. Mr Budd asked Mr Hardy to hand his memorandum to the clerk of the course and the stewards;
 - (e) At 4.26pm on 27 April 2012, Mr Leach sent an email to Mr Budd and Mr Hardy attaching a copy of a letter he had received from Opus addressed to Mr Russell dated 27 April 2012. Opus' letter confirmed that the repaired roll cage conformed to Opus' original homologation certificate dated 19 January 2012. The result of this communication was that Supertourer chassis #12 was able to compete in the Manfeild Race Meeting;

(5) Otherwise deny paragraph 81.

82. They:

(1) Repeat paragraphs 76, 77 & 81 above;

(2) Say further that MSNZ has obligations to enforce the NSC in relation to the running of race meetings including issues of safety, and that its actions in relation to the Manfeild meeting were in furtherance of those obligations;

(3) Otherwise deny paragraph 82.

Allegations regarding MSNZ's arrangements with VESA

83. They admit paragraph 83 and say further that:

(1) In around 2005 negotiations took place between MSNZ and the Confederation of Australian MotorSport for V8 Supercars Australia Ltd (**VESA**) to run a round of its V8 Super Car Championship in New Zealand (**Supercars Event**);

(2) In subsequent years, MSNZ entered into various facilitation agreements that permitted VESA to run a round of the Supercars Event in New Zealand;

(3) Under the facilitation agreements, MSNZ provided the sanctioning permit and TMC providing the services (such as providing personnel) for the Supercars Event;

(4) The facilitation agreements provided that MSNZ had the right to choose the support categories. This was because the event was a "showcase" for motorsport in New Zealand, which met one of MSNZ's objectives of promoting the sport;

(5) The Supercars Event was well established by 2012.

84. They admit paragraph 84.

85. They:

- (1) Admit that MSNZ entered into a facilitation agreement with VESA dated 7 February 2013 (**2013 facilitation agreement**) for the Supercars Event at Pukekohe in April 2013 under which:
 - (a) MSNZ agreed to provide the necessary organising permit and officials to VESA for the Supercars Event;
 - (b) MSNZ agreed to support VESA's organisation and promotion of the Supercars Event;
- (2) Say further that the 2013 facilitation agreement was substantially in the same form as agreements that had been in place for previous Supercars Events run over earlier years;
- (3) Otherwise deny paragraph 85.

Allegations regarding MSNZ interference with V8ST funding application

86. They:

- (1) Admit that V8ST submitted an application for sponsorship of \$250,000 to ATEED to assist with the conduct of a V8 Supertourer race meeting at the Pukekohe circuit on 26-28 October 2012;
- (2) Say further that:
 - (a) ATEED had adopted a Major Events Strategy and Auckland Visitor Plan to determine which "major events" it would include in its portfolio to support and sponsor;
 - (b) ATEED carried out a feasibility assessment into V8ST's funding request and then prepared a feasibility assessment report. That report recommended that ATEED decline V8ST's funding request because the event did not represent a good investment for ATEED.

The rationales for this conclusion were summarised on the final page of the report as follows:

- (i) The projected contribution to GDP of \$840,000 fell short of the expected return based on the level of investment of \$250,000;
 - (ii) The projected visitor nights which would be low;
 - (iii) The event was unlikely to make a significant contribution to ATEED's Major Event Strategy outcome of liveability;
 - (iv) The event timing conflicted with an existing event on the Auckland Major Events calendar;
 - (v) The event would still be held in the absence of ATEED funding and the additional returns expected to be generated by the ATEED sponsorship did not justify the investment required;
- (c) ATEED confirmed to V8ST that it was not in a position to sponsor V8ST's proposed Supertourer event by a letter dated 24 July 2012;
- (d) In March 2012 ATEED received a competing investment proposal from VESA for an annual V8 Supercars Event to take place at the Pukekohe circuit. The investment request was for an annual sponsorship fee of \$1 million and a contribution to capital upgrades to the Pukekohe circuit estimated to cost between \$6.644 million and \$8,624 million;
- (e) ATEED carried out a feasibility assessment into VESA's funding request and then prepared a feasibility assessment report. That report recommended that ATEED accept VESA's funding proposal because it

aligned positively with ATEED's Major Events Strategy and Auckland Visitor Plan. The report recommended that ATEED invest \$10,655,821 over a five year term, subject to certain key conditions;

- (3) Otherwise have insufficient knowledge and therefore deny paragraph 86.

87. They:

- (1) Admit that ATEED consulted MSNZ regarding the accuracy of a statement made by VESA in its Investment Proposal to the effect that V8 Supertourers was not currently "sanctioned" by MSNZ;

- (2) Say further that MSNZ sent an email to ATEED regarding this matter on 16 July 2012. They rely on that email as if pleaded in full;

- (3) Otherwise deny paragraph 87.

88. They admit paragraph 88 and say further that MSNZ was under no obligation to support V8ST's funding application.

89. They deny paragraph 89.

90. They deny the allegation in paragraph 90 that MSNZ stood to benefit substantially if VESA's application was approved. They say further that the financial benefits MSNZ received under the 2013 facilitation agreement with VESA were limited to:

- (1) Management fee of \$30,000 plus GST for performing the services set out in the agreement including providing marshalls;
- (2) Inscription fee of \$5,350 plus GST to inscript the date and arrange an event permits with FIA;
- (3) Circuit inspection fee of \$1,650 plus GST;

(4) Support class levies of \$12,000 including GST.

91. They deny paragraph 91.

92. They deny paragraph 92.

93. They admit paragraph 93, repeat sub-paragraphs 86(2)(a)-(e) above and say further that V8ST still held its proposed event at the Pukekohe race circuit on 26-28 October 2012.

Allegations that MSNZ prevented V8ST from racing at the VESA's event

94. They have insufficient knowledge of and therefore deny paragraph 94.

95. They have insufficient knowledge of and therefore deny paragraph 95.

Allegations regarding refusal to issue organising permit for May 2013 event

96. They admit paragraph 96 and say further that V8ST acknowledged in their request of 16 November 2012 that the proposed Supertourer event at Hampton Downs on the weekend of 25/26 May 2013 would clash with MSNZ's AGM in Wellington.

97. They:

(1) Admit paragraph 97;

(2) Rely on MSNZ's letter dated 22 November 2012 as if pleaded in full;

(3) Say further that after reconsidering their original decision, MSNZ did issue an organising permit for the event at Hampton Downs on the weekend of 25/26 May 2013, and that event proceeded.

98. They deny paragraph 98.

99. They:

- (1) Admit that:
 - (a) MSNZ's annual conference may only be attended by representatives of member-clubs of MSNZ;
 - (b) Drivers, entrants or officials of race meetings are not permitted to attend unless they are also representatives of member-clubs;
- (2) Say further that V8ST's competitors and MSNZ's senior officials could be:
 - (a) Representatives of their respective clubs;
 - (b) The recipients of awards at the Annual Motorsport Awards held at the same time as the conference;
- (3) Otherwise deny paragraph 99.

100. They deny paragraph 100.

Allegations that V8ST was forced to sell its business

101. They have insufficient knowledge of and therefore deny paragraph 101.

102. They deny paragraph 102.

Defence to first cause of action against first defendant – taking advantage of substantial market power – breach of s 36 Commerce Act 1986 – denial

The defendants repeat paragraphs 1 – 102 above and say further:

103. They deny paragraph 103.

104. They deny paragraph 104 and repeat paragraph 82 above.

105. They deny paragraph 105.

106. They deny paragraph 106. They repeat sub-paragraphs 86(2)(a)-(e) & paragraph 93 above and say further and/or in the alternative that, even if MSNZ has breached s 27 Commerce Act 1986 (which is denied), ATEED would always have declined to sponsor V8ST's proposed Supertourer event at Pukekohe in any event because, inter alia, unlike VESA's funding proposal, that competing event failed to meet the criteria under ATEED's Major Event Strategy and Auckland Visitor Plan.

Defence to second cause of action against second defendant – procuring or being knowingly concerned with MSNZ taking advantage of substantial market power – breach of s 36 Commerce Act 1986 – denial

The defendants repeat paragraphs 1 – 106 above and say further:

107. They deny paragraph 107.

108. They deny paragraph 108.

109. They deny paragraph 109.

Defence to third cause of action against first defendant – MSNZ's arrangement with VEEGA – breach of s 27 Commerce Act 1986 – denial

The defendants repeat paragraphs 1 – 109 above and say further:

110. They deny paragraph 110.

111. They deny paragraph 111.

112. They deny paragraph 112.

113. They deny paragraph 113.

**Defence to fourth cause of action against second defendant –
procuring or being knowingly concerned with MSNZ’s arrangement
with VEEGA – breach of s 27 Commerce Act 1986 – denial**

The defendants repeat paragraphs 1 – 113 above and say further:

114. They deny paragraph 114.

115. They deny paragraph 115.

116. They deny paragraph 116.

**Defence to fifth cause of action against third defendant – procuring
or being knowingly concerned with MSNZ’s arrangement with VEEGA
– breach of s 27 Commerce Act 1986 – denial**

The defendants repeat paragraphs 1 – 116 above and say further:

117. They deny paragraph 117.

118. They deny paragraph 118.

119. They deny paragraph 119.

**Defence to sixth cause of action against the first defendant – MSNZ’s
arrangement with VESA – breach of s 27 Commerce Act 1986 –
denial**

The defendants repeat paragraphs 1 – 119 above and say further:

120. They deny paragraph 120.

121. They deny paragraph 121.

122. They deny paragraph 122.

123. They deny paragraph 123 and repeat sub-paragraphs 106(2) & (3)
above.

Defence to seventh cause of action against the first defendant – MSNZ’s alleged misleading and deceptive conduct – breach of s 9 Fair Trading Act 1986 – denial

The defendants repeat paragraphs 1 – 123 above and say further:

124. They deny paragraph 124.
125. They deny paragraph 125 and repeat paragraphs 86 – 93 above.
126. They deny paragraph 126.
127. They deny paragraph 127. They repeat sub-paragraphs 86(2)(a)-(c) & paragraph 93 above and say further and/or in the alternative that, even if MSNZ has breached s 9 Fair Trading Act 1986 (which is denied), ATEED would always have declined to sponsor V8ST’s proposed Supertourer event at Pukekohe in any event because, inter alia, unlike VESA’s funding proposal, that competing event failed to meet the criteria under ATEED’s Major Event Strategy and Auckland Visitor Plan.

THIS DOCUMENT is filed by **PETER JOHN LINDSAY HUNT** solicitor for the first and second defendants of the firm of McElroys. The address for service of the first and second defendants is Level 15, Tower Centre, 45 Queen Street, Auckland 1010.

Documents for service on the filing party may be left at that address for service or may be:

- (1) Posted to the solicitor at PO Box 835, Auckland 1140; or
- (2) Left for the solicitor at a document exchange for direction to DX CP20526, Upper Shortland Street; or
- (3) Transmitted to the solicitor by fax to (09) 309-7558; or
- (4) Emailed to the solicitor at peter.hunt@mcelroys.co.nz.