IN THE HIGH COURT OF JUSTICE **CLAIM NO. CL-2017-000348**
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

B E T W E E N :

SLATER & GORDON (UK) 1 LIMITED

Claimant

-and-

WATCHSTONE GROUP PLC
(formerly QUINDELL PLC)

Defendant

SUMMARY OF DEFENCE

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1. This summary is served by the Defendant ("Watchstone" or "Quindell") pursuant to the Order of Mr Justice Males dated 5 October 2017. It is to be read subject to the contents of the Defence, which remains the governing statement of the Defendant's defence.

2. Watchstone's position is that S&G's allegations of deceit and the associated breach of warranty claim are wholly without merit and should never have been advanced.

3. In late 2014, Quindell, a high-profile public company with well-publicised accounting policy issues and in a state of distress due to over-expansion, was approached by S&G and SGL, who wished to purchase its legal services businesses. S&G was a rival in the same market as Quindell and a self-professed global expert in both the business and the practice of personal injury litigation. Quindell, recently under new leadership, gave only limited warranties, in particular as to its accounting practices, which, as S&G was aware, were about to be radically overhauled. Instead it allowed S&G's and SGL's operatives – and their numerous banking, financial, legal and accountancy advisers from well-known professional firms – comprehensive access to its senior staff and its documents, and permitted 70 of its UK lawyers to review 8,000

case files, in order to scrutinise the business, and invited them to draw their own conclusions about it: *caveat emptor*.

4. S&G and SGL were content with this. Strategically, SGL's objective was to increase S&G's market share in the UK by taking advantage of the fact that one of S&G's major competitors was in distress, and it believed that it had the expertise and resources to succeed where Quindell had struggled. After five months of the most rigorous due diligence on the part of S&G and SGL, at a cost to S&G of A$51.6m (£31.7m) in external fees alone, the deal completed.

5. The price was agreed in horse-trading over the telephone between the respective boards. For many months after completion SGL told the market, and its investors, that it was happy with its purchase, and with the thoroughness and reliability of its due diligence. Some sixteen months later, days before the end of the warranty period and with S&G by now under serious financial and external pressures which had nothing to do with Quindell/Watchstone, it gave notice that it intended to commence a claim based around serious allegations of fraud which it had hitherto never mentioned to Quindell.

6. As to the detail of the deceit claim:

   (1) S&G pleads no primary facts amounting to fraud or dishonesty and instead seeks to make out its case by reliance upon inference, innuendo, email extracts presented out of context, and unparticularised conversations.

   (2) The claim is based on alleged representations in Quindell's management accounts for the period ended 31 December 2014 (referred to as the "**Management Accounts**"), and PowerPoint presentations that it sent to S&G, relating to 'dilution rates', which S&G groups together under the definition "the Stated Dilution Rates". This grouping wrongly conflates (intentionally or otherwise) two totally different concepts, in order to support an alleged continuing representation which otherwise would not hold water. Quindell's Management Accounts simply set out the assumptions that it had applied in order to generate a 'dilution provision' for the purposes of estimating the value of its WIP on its balance sheet pursuant to its stated revenue recognition policy at that time. Those are referred to in the Defence as "**Dilution Provision Assumptions**". By contrast, the figures contained in the PowerPoint presentations were, and were expressly presented as being, rates used to discount assumed future levels of gross case intake to achieve a projected net number of cases in a given scenario and for illustrative purposes only. They were expressly stated (and understood by it) to be something S&G could 'flex' in its modelling. These rates are referred to in the Defence as the "**PowerPoint Dilution Rates**".

(3) Quindell made no actionable representations in relation to the achievability of any dilution rates. The Dilution Provision Assumptions did not purport to be representations of any kind, and the PowerPoint slides featured prominent disclaimers to the effect that the information on the slide could not be relied upon and was provided as an illustration only. In any event, Quindell honestly believed that the rates on the PowerPoint slides were capable of being achieved.

(4) Since the Acquisition, S&G and SGL have made repeated public announcements that they did not need to, and did not, rely on the dilution rates or other assumptions provided by Quindell. Rather, they boasted publicly that they had carried out their own calculations and made their own judgments based on their comprehensive due diligence, and their own experience as a rival in the same market and in M&A in the UK and Australia.

(5) S&G's and SGL's public statements were true. S&G used no figures provided by Quindell in any of its valuation or financing models, and recalculated Quindell's financial information using its own, more conservative, accounting policies, and with the assistance of its own professional advisers. Extensive empirical data was provided to S&G in respect of the performance of historic cases so that it could formulate its own views in respect of its future dilution rate and other assumptions for its own forecasting. S&G makes no suggestion that any historic data provided by Quindell was inaccurate or incomplete.

(6) Despite now claiming that the alleged representations as to dilution rates were a fundamental inducement for it to enter into the deal, S&G sought no specific warranties, nor any price adjustment mechanism, in relation to them. On the contrary: it agreed to specific and extensive exceptions to the accounting warranties in the SPA in relation to the treatment of WIP and revenue recognition policies.

(7) All of the matters which S&G now claims are evidence of fraud – as set out in section E of the Particulars of Claim – were known to it at or shortly after completion yet no claim was brought until over 24 months later.

(8) The primary and alternative bases of loss pleaded by S&G are unfounded as a matter of law and/or fact.

7. As for the breach of warranty claim, in addition to the points made above:

(1) There was no breach of the Management Accounts Warranty. The Management Accounts were prepared with due care and attention, disclosed Quindell's financial

position with reasonable accuracy, were not misleading and did not materially overstate its assets or understate its liabilities.

(2) As for the Dilution Provision Assumptions, there is no basis for the allegation those were "*materially understated*" - the setting of such assumptions was an exercise involving a considerable amount of judgment and discretion; the rates used were reasonable and in any event were confirmed by several external audits and year-end 'truing-up' procedures.

(3) The Management Accounts Warranty was subject to and qualified by a number of relevant exceptions, which are directly applicable in this case, the effect of which is that Quindell gave no warranties in relation to the Dilution Provision Assumptions. They were also subject to the Disclosure given by Quindell under the SPA, including a large electronic data room which featured over 22,000 pages and details of every single case on its books. The Management Accounts themselves contained, on the pages either side of that which set out the Dilution Provision Assumptions, all of the information necessary for S&G and its advisers to evaluate them, namely: (i) a WIP balance sheet analysis which showed the remaining amount of the dilution provision at the date of the Management Accounts as a percentage of the remaining unbilled revenue; and (ii) actual, historic dilution details of every monthly cohort of cases acquired by it from February 2012 onwards broken down by case type.

(4) There were no matters of which S&G and SGL had not already been made aware from their due diligence and Quindell's disclosures, nor any matters of which Quindell was obliged to make S&G aware, in the period between the date on which the SPA was signed and Completion. Therefore, there was no breach of clause 11.3 of the SPA.

(5) Without prejudice to the points made above, any claim in breach of warranty is subject to limitations contained in schedule 6 of the SPA, including a cap on the value of the claim of £100 million.

RICHARD MILLETT Q.C.

WATSON PRINGLE

BIBEK MUKHERJEE