

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST

S CI 2017 02779

BETWEEN:

CASTOR MURILLO

Plaintiff

-and-

SKM SERVICES PTY LTD (ABN 55 130 867 220)

Defendant

ORDER

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| JUDGE: | The Honourable Justice John Dixon |
| DATE MADE: | 1 August 2019 |
| ORIGINATING PROCESS: | Writ |
| HOW OBTAINED: | On return of the plaintiff's summons filed 9 May 2019 |
| ATTENDANCE: | Mr G D Dalton QC with Ms C Nicholson, for the plaintiff No appearance for the defendant |
| OTHER MATTERS: | These orders are made pursuant to ss 33V, 33ZF, 33ZG and 33ZJ of the <i>Supreme Court Act 1986</i> and rr 28.05(2), 28A.06 and 50.04 of the <i>Supreme Court (General Civil Procedure) Rules 2005</i> |



THE COURT ORDERS THAT:

1. The Court adopts the special referee report of Ms Debra Paver dated 15 July 2019.
2. The Supplementary Opinion of Counsel dated 31 July 2019 and the affidavit of Kathryn Amy Emeny sworn 9 July 2019 and its exhibits:
 - (a) be kept confidential and sealed in an envelope marked 'Not to be opened without the leave of the Court or a Judge' and placed on the Court file; and
 - (b) be held on the Court file in accordance with (a) until further order of the Court.
3. The Court authorises the plaintiff *nunc pro tunc* on behalf of the Participating Group Members to enter into and give effect to the document titled 'Settlement deed - Coolaroo Recycling Plant Class Action' ('Deed') executed by the parties, and the transactions contemplated by the Deed, for and on behalf of the Participating Group Members ('PGMs') and each of them.

4. The settlement of the proceeding is approved by the Court upon the terms set out in:
 - (a) the Deed; and
 - (b) the Settlement Distribution Scheme exhibited at pages 131 to 146 of exhibit KAE-1 to the affidavit of Kathryn Amy Emeny sworn 9 July 2019.
5. Ms Kathryn Amy Emeny is appointed as Administrator of the Settlement Distribution Scheme.
6. The Common Benefit Legal Costs for the purposes of the Settlement Distribution Scheme:
 - (a) are fixed in the sum of \$725,000 (inclusive of GST); and
 - (b) are to be paid in accordance with the Settlement Distribution Scheme.
7. The amount of \$5,000 is approved as the Reimbursement Payment for the purposes of the Settlement Distribution Scheme.
8. The content of the 'Notice of Settlement Approval' in 'Annexure A' to this order is approved by the Court.
9. By 4pm on 14 August 2019, the 'Notice of Settlement Approval' ('Notice') be distributed to all PGMs by the plaintiff's solicitors:
 - (a) causing the Notice to be sent by ordinary pre-paid post to the postal address for each PGM and, where Maddens Lawyers has an email address for a PGM, by causing the Notice to be sent to the email address of each PGM;
 - (b) causing a copy of the Notice to be published on Maddens Lawyers website; and
 - (c) causing a copy of the Notice to be provided to the Common Law Class Actions Coordinator to be published on the Supreme Court of Victoria's website.
10. The plaintiff, the PGMs and the Administrator (as defined in the Settlement Distribution Scheme) have liberty to apply to the Court by not less than five days' notice to each other party for orders in respect of any issue that arises in the administration of the Deed or Settlement Distribution Scheme.
11. On 3 February 2020 or upon completion of the Settlement Distribution Scheme, whichever is earlier, the Administrator shall file with the Court and email to the



Common Law Class Actions Coordinator an affidavit reporting on the progress or, if appropriate, the completion of the administration.

12. All *inter partes* costs orders in the proceeding are vacated.
13. Upon completion of distributions pursuant to the Settlement Distribution Scheme, the proceeding is dismissed with no further order as to costs.

DATE AUTHENTICATED: 2 August 2019


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The Honourable Justice John Dixon



ANNEXURE A

NOTICE TO PGMS OF SETTLEMENT

"COOLAROO RECYCLING PLANT FIRE CLASS ACTION"

This notice relates to a class action commenced in the Supreme Court of Victoria as a result of the Coolaroo Recycling Plant Fire which started on or about 13 July 2017 at the SKM Recycling Plant, Maffra Street Coolaroo.

The Supreme Court has ordered that this notice be published to inform Participating Group Members (PGMs) that a settlement of the class action on behalf of victims of the Coolaroo Recycling Plant Fire has now been approved by the Court.

You are receiving this notice because you have registered with Maddens Lawyers, the plaintiff's solicitors, as a PGM in the class action. This notice is provided to you further to the 'Notice of Proposed Settlement' distributed in May 2019.

You should read this notice carefully as the matters set out below may affect your legal rights.

Settlement of the Class Action

The defendant to the class action is SKM Services Pty Ltd.

The parties have agreed to a settlement of the class action, under which the defendant has agreed to pay \$1,200,000.00 (\$1.2 million) inclusive of the plaintiff's legal costs without admission of liability and maintaining a denial of liability. The terms of the settlement of the proceeding are set out in a 'Deed of Settlement' that has been signed on behalf of the plaintiff and the defendant (deed).

On 1 August 2019, the Supreme Court approved the settlement. The Court approval means that the deed becomes binding on you and all other persons who fall under the definition of 'Participating Group Member' in the proceeding.

Distribution of the Settlement Sum

Legal Costs

The plaintiff's legal costs payable to Maddens Lawyers, including the costs of administering the Settlement Distribution Scheme, have been assessed by an independent costs solicitor acting as special referee and the Court and will be paid from the settlement sum. You will not have any additional liability for these costs.

Settlement Distribution Scheme

The plaintiff's solicitors have prepared a Settlement Distribution Scheme (Scheme) which details the process for assessing PGM's individual claims and sharing the settlement sum between them.

The Scheme provides for the lead plaintiff (Mr Murillo) to receive a payment of \$5,000.00 from the settlement sum which is intended to compensate him for the personal burden of being the lead plaintiff, a role which has benefitted all PGMs. This amount is in addition to any amount the plaintiff may be entitled to by way of compensation for loss suffered as a result of the Coolaroo Recycling Plant Fire.

A copy of the Scheme can be obtained via the website of Maddens Lawyers using the following web address: <https://maddenslawyers.com.au/protected-documents/coolaroo-settlement-distribution-scheme/>. Because the Scheme is confidential, access to the document is password protected. To obtain the password you will need to contact Bethany Evans of Maddens Lawyers on (03) 5560 2000.

PGMs will shortly have their claims assessed pursuant to the Scheme to determine their compensation entitlements. You will be contacted by Maddens Lawyers in relation to your compensation entitled under Scheme in due course.

Address for questions

If you have any questions about the settlement or this notice, you can contact Maddens Lawyers at any time, or seek your own independent legal advice.

Maddens Lawyers contact details are:

Attention: Kathryn Emeny
Coolaroo Recycling Plant Fire Class Action
Maddens Lawyers
219 Koroit Street
Warrnambool, Victoria 3280
Telephone: (03) 5560 2000

Email: bae@maddenslawyers.com.au