

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

S CI 2016 05027

**BETWEEN:**

MICHAEL KARL SCHMID

Plaintiff

- and -

ROGER JAMES SKIMMING & ORS  
(according to the attached schedule)

Defendants

**AND BETWEEN:**

AUTO & GENERAL INSURANCE COMPANY  
LIMITED (ACN 111 586 353)

Plaintiff by Counterclaim

- and -

MICHAEL KARL SCHMID

Defendant by Counterclaim

**GENERAL FORM OF ORDER**

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JUDICIAL REGISTRAR:           Judicial Registrar Clayton  
DATE MADE:                    24 April 2020  
ORIGINATING PROCESS:       Writ filed 8 December 2016  
HOW OBTAINED:               Plaintiff's summons filed 6 February 2020  
ATTENDANCE:                  On the papers  
OTHER MATTERS:               Nil

**THE COURT ORDERS BY CONSENT THAT:**

*Confidentiality*

1.     Until further order, publication of:
  - a)    the confidential exhibit 'KAE-3' to the affidavit of Kathryn Amy Emeny sworn on 24 March 2020;



- b) the confidential exhibit 'KAE-1' to the affidavit of Kathryn Amy Emeny sworn on 16 April 2020,

is prohibited other than to the defendants, group members, their external solicitors and counsel retained by the parties for the purpose of this proceeding.

*Notice of proposed settlement and claimant registration*

2. Pursuant to ss 33X and 33Y of the *Supreme Court Act 1986 (Act)*, the content of the notice to group members in the form set out in Annexure A to these orders, including the forms at Annexures B and C (**Notice of Proposed Settlement**), be approved by the Court.
3. Pursuant to s 33X of the Act, by 29 April 2020, notice of the hearing of the plaintiff's application for the orders in paragraphs 15 to 21 of the February Summons (**Settlement Approval Orders**) be given to group members by the plaintiff's solicitors (**Maddens Lawyers**):
  - a) causing the Notice of Proposed Settlement to be sent by ordinary pre-paid post to the postal address for each group member and where Maddens Lawyers has an email address for the person, by causing the Notice of Proposed Settlement to be sent by email to the group member;
  - b) causing a copy of the Notice of Proposed Settlement to be published on the website of Maddens Lawyers;
  - c) providing a copy of the Notice of Proposed Settlement to the class actions co-ordinator of the Supreme Court of Victoria for posting on the Court's website; and
  - d) sending a copy of the Notice of Proposed Settlement and this order to all insurers who have notified Maddens Lawyers of any claim they have by right of subrogation in respect of a group member (**Insurers**).
4. By 6 May 2020, Maddens Lawyers file and serve an affidavit as to compliance with order 3 above.
5. Pursuant to s 33ZF and s 33ZG of the Act and subject to further order:
  - a) any group member listed in Annexure A of the summons filed on 6 February 2020 (**February Summons**) shall be deemed to be a participating group member for the purposes of participation in the proposed settlement;
  - b) any group member not listed in Annexure A of the February Summons who wishes to claim compensation in the proposed settlement of the proceeding must, by no later than 4.00pm on 20 May 2020, deliver to Maddens Lawyers a completed Claimant Registration Form in the form set out in Annexure B to this Order; and



- c) any group member who is not registered in accordance with order 5(a) and/or (b) above shall remain a group member for all purposes, but in the event of the approval of the settlement of the proceeding shall not be permitted to participate in the proposed settlement.
6. By 4.00pm on 27 May 2020, Maddens Lawyers must:
- a) file with the court a list of the persons who have registered with Maddens Lawyers in accordance with order 5(b) above; and
  - b) serve a copy of the list on the defendants.

*Group member objections to settlement*

7. Any group member or Insurer who wishes to oppose the proposed settlement must by 4.00pm on 20 May 2020 deliver to Maddens Lawyers or the Supreme Court of Victoria Registry a completed ‘*Notice of Objection to Settlement*’ in the form at Annexure C.
8. Any group member or insurer who submits a Notice of Objection to Settlement (**Objector**) must, by no later than 4.00pm on 20 May 2020 deliver to Maddens Lawyers or the Supreme Court of Victoria Registry:
- a) a written statement not exceeding two pages in length, identifying the bases on which the Objector wishes to oppose the proposed settlement; and
  - b) any affidavit material upon which they wish to rely in support of their objection including whether the Objector is prepared to take on the role of representative plaintiff in the proceeding.
9. Maddens Lawyers have leave to inspect the Court file and copy any notice or other materials delivered to the Supreme Court in accordance with orders 7 or 8.
10. By 4.00pm on 27 May 2020, Maddens Lawyers file with the Court:
- a) where any materials have been submitted by Objectors in accordance with orders 7 and 8 above – a copy of such materials which:
    - i) shall pursuant to s 33ZF of the Act be confidential; and
    - ii) shall be delivered in a sealed pack marked ‘*Confidential – not to be opened save by leave of the Court or a Judge*’; alternatively
  - b) where no Objector materials have been submitted in accordance with orders 7 and 8 above, an affidavit deposing to the results of orders 7 and 8 above.



*Supplementary costs report*

11. Ms Cate Dealehr is to inquire into and report to the Court by 4.00pm on 10 June 2020 as to whether the plaintiff's claimed legal costs:
- a) from 26 February 2020 up to and including the hearing of the Settlement Approval Orders (being paragraphs 15 to 21 of the plaintiff's summons filed 6 February 2020); and
  - b) of the administration of a settlement distribution scheme;
- are fair and reasonable as to both the work done (or anticipated) and the amount claimed.
12. The reasonable costs of Ms Dealehr:
- a) are to be calculated in accordance with a fee proposal submitted to and accepted by the plaintiff's solicitors; and
    - i) in the event that the Court approved the proposed settlement, are to be paid from the settlement sum; or
    - ii) in the event that the Court does not approve the proposed settlement, are to be paid by the plaintiff's solicitors and are to be the plaintiff's costs in the proceeding.
13. The plaintiff shall provide to Ms Dealehr:
- a) access to Maddens Lawyers' hard copy and electronic files along with copies of any specific documentation or information requested throughout the course of the preparation of the costs report; and
  - b) a copy of this order.

*Settlement approval timetable*

14. The plaintiff:
- a) by 4.00pm on 3 June 2020 have leave to file with the registry on a confidential basis any further affidavit or exhibit to an affidavit in support of the plaintiff's application for the Settlement Approval Orders (**Confidential Tender**) and shall:
    - i) provide a copy of the Confidential Tender to Registry in a sealed envelope marked '*Confidential – not to be opened save by leave of the Court or a Judge*'; and
    - ii) provide a copy of any Confidential Tender to the associate to the judge hearing the application by direct email marked '*Judge's copy*'; and



- b) be excused from the requirement to serve any Confidential Tender.
15. By 4.00pm on 1 July 2020, Maddens Lawyers deliver to the associate to the judge hearing the application for the Settlement Approval Orders and to each Objector:
- a) any further affidavit or written submissions upon which the plaintiff proposes to rely at the hearing of his application for the Settlement Approval Orders;
  - b) the terms of any notice proposed to be given to group members in the event that the Settlement Approval Orders are made (**Notice of Settlement Approval**); and
  - c) proposed minutes of orders for the giving of the Notice of Settlement Approval to group members.

*Hearing of summonses*

16. The further hearing of the plaintiff's summonses filed 28 August 2019 and 6 February 2020 are listed before the Honourable Justice Forbes at 10.30am on 21 July 2020.
17. Costs are reserved.

DATE AUTHENTICATED: **24 April 2020**



JUDICIAL REGISTRAR CLAYTON



**SCHEDULE OF PARTIES**

**BETWEEN:**

MICHAEL KARL SCHMID Plaintiff

-and-

ROGER JAMES SKIMMING First Defendant

MAUREEN LYNETTE JOHNS Second Defendant

AUTO & GENERAL INSURANCE COMPANY LIMITED Third Defendant  
(ACN 111 586 353)

EL MINING SOLUTIONS PTY LTD (ACN 151 983 603) Fourth Defendant

**AND BETWEEN:**

AUTO & GENERAL INSURANCE COMPANY LIMITED Plaintiff by First  
Counterclaim  
(ACN 111 586 353)

EL MINING SOLUTIONS PTY LTD (ACN 151 983 603) Plaintiff by Second  
Counterclaim

-and-

MICHAEL KARL SCHMID Defendant by First  
Counterclaim

MICHAEL KARL SCHMID Defendant by Second  
Counterclaim



[ANNEXURE A]

SUPREME COURT OF VICTORIA  
SCOTSBURN FIRE CLASS ACTION

SCHMID v SKIMMING & ORS  
(S CI 2016 05027)

**NOTICE OF PROPOSED SETTLEMENT IN SCOTSBURN FIRE CLASS ACTION**

The Supreme Court has ordered that this notice be published to inform you about (a) the right to participate in a proposed settlement of the class action and (b) the right to object to the proposed settlement. You should read this notice carefully as the matters set out below may affect your legal rights.

This Notice applies to persons who suffered any injury or property or economic loss as a result of the Scotsburn bushfire that occurred on 19 December 2015. Please be advised that:

- A. Any group member who wishes to claim compensation for their injuries or property losses from any settlement of the proceeding **must** register their claims according to the procedure described in this Notice; and
- B. Any group member who wishes to object to the proposed settlement of the class action **must** complete and send a Notice of Objection according to the procedure described in this Notice.

**A failure to register a claim has serious consequences.** If the proposed settlement is approved by the Court, you will only be permitted to claim compensation from the settlement amount if you have registered your claim, and you will lose the right to sue the defendants separately.

**There is a deadline of 20 May 2020 to register a claim to participate in any settlement of the Scotsburn bushfire class action proceeding and/or to object to the proposed settlement of the class action.**

Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in this notice that you do not understand, you should seek your own independent legal advice or contact Maddens Lawyers.

**1. What is the class action about?**

Mr Michael Schmid (**plaintiff**) commenced the class action on his own behalf and on behalf of all those who suffered personal injury, or loss of or damage to property as a result of the fire which started at 260 Finns Rd, Scotsburn on 19 December 2015 (**Scotsburn Fire**).

The defendants to the class action are:

- (a) Mr Roger James Skimming, who was operating an "Agrison" branded tractor and slasher at 260 Finns Road, Scotsburn on 19 December 2015;



- (b) Ms Maureen Lynette Johns, who owned the property upon which Mr Skimming was operating the tractor and slasher;
- (c) Auto & General Insurance Company Limited (ACN 111 586 353), Mr Skimming's insurer; and
- (d) EL Mining Solutions Pty Ltd (ACN 151 983 603), the manufacturer of the tractor and slasher.

EL Mining Solutions Pty Ltd has also joined Harley Industrial Pty Ltd (ACN 115 230 905), the supplier of chain which allegedly failed on the slasher on the day of the Scotsburn Fire, as a party to the class action. The plaintiff makes no allegations against Harley Industrial Pty Ltd.

The full allegations and responses of the parties are set out in a statement of claim and defences which may be accessed at the website <http://maddenslawyers.com.au>.

## 2. Am I a group member?

You are a group member in the class action if you:

- (a) suffered personal injury (physical or psychiatric); and/or
- (b) suffered loss of or damage to property

as a result of the Scotsburn Fire.

You are also a group member if you are the legal personal representative of the estate of any deceased person who would otherwise have qualified as a Group Member.

## 3. What is the proposed settlement?

The parties have agreed to a settlement of the class action, under which EL Mining Solutions Pty Ltd has agreed to pay \$10,000,000.00 and Auto & General Insurance Company Limited has agreed to pay \$500,000.00, totalling \$10,500,000.00 (**Settlement Sum**) inclusive of the plaintiff's legal costs. The plaintiff will discontinue his claims against Mr Skimming and Ms Johns, with each party bearing their own legal costs incurred in the proceeding.

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 Ms Johns and a separate Settlement Agreement agreed between the plaintiff and the other defendants. The settlement cannot take effect without Court approval. The plaintiff has asked the Court to approve:-

- (a) the proposed settlement;
- (b) the payment of the plaintiff's legal costs from the Settlement Sum; and
- (c) a scheme for the distribution of the balance of the Settlement Sum to Registered Group Members (**Settlement Distribution Scheme**).

The Court will consider whether or not to approve the settlement, the plaintiff's legal costs and the Settlement Distribution Scheme on **21 July 2020**.

You may request a copy of the proposed Settlement Distribution Scheme or the settlement agreements from Maddens Lawyers on a confidential basis.





#### 4. Participation in the proposed settlement

If the settlement is approved, only those group members who have registered with Maddens Lawyers (**Registered Group Members**) will be entitled to participate in the settlement and receive compensation. Registered Group Members will be entitled to participate in the settlement in accordance with the terms of a Settlement Distribution Scheme approved by the Court. Registered Group Members will be bound by the settlement and will not be able to bring any further claim against the defendants for any loss suffered as a result of the Scotsburn Fire.

**Group members who suffered loss as a result of the Scotsburn Fire but who are not Registered Group Members will not be entitled to participate in the settlement or receive compensation under the Settlement Distribution Scheme.**

Those group members **will be** bound by the settlement and **will not** be entitled to bring a separate claim against the defendants for any loss suffered as a result of the Scotsburn Fire.

If you are unsure whether you are a Registered Group Member (and therefore entitled to participate in any settlement that may be approved) or a group member, please contact Maddens Lawyers on 1800 815 228 or seek your own legal advice immediately.

If you are not currently a Registered Group Member and you **do** want to participate in the settlement then you **must** complete the "Claimant Registration Notice" which is Annexure 1 to this Notice and you **must** return the Claimant Registration Notice to Maddens Lawyers before **4:00pm** on **20 May 2020**.

**If you do not submit a completed Claimant Registration Notice by the deadline you will lose the right to make any claim against the defendants in relation to the Scotsburn Fire.**

If you are a group member but you **do not** want to participate in the proposed settlement then there is nothing you need to do. After the deadline passes you will lose the right to make any claim against the defendants in relation to the Scotsburn Fire.

#### ***Legal costs***

If the settlement is approved, the plaintiff's legal costs payable to Maddens Lawyers, including the costs of Maddens Lawyers administering the Settlement Distribution Scheme, will be paid from the Settlement Sum. The plaintiff's costs will be assessed by an independent costs assessor and the assessment will be provided to the Court. Only costs approved by the Court will be payable.

If you want to seek your own advice on the proposed settlement, you are responsible for your own costs in obtaining that advice.

#### ***Plaintiff's reimbursement payment***

If the settlement is approved, the plaintiff will receive \$30,000.00 from the settlement sum. This payment is intended to compensate him for the personal burden of being the lead plaintiff, a role which has benefited group members as a whole. This amount



is in addition to any amount he may be entitled to by way of compensation under the Settlement Distribution Scheme for loss suffered as a result of the Scotsburn Fire.

### ***Distribution of the balance of the Settlement Sum***

If the settlement is approved, the balance of the settlement sum remaining after the deduction of the approved legal costs and reimbursement payment will be distributed to Registered Group Members in accordance with the approved Settlement Distribution Scheme.

Under the proposed Settlement Distribution Scheme, the assessed loss of the plaintiff and each Registered Group Member will be determined by the Administrator of the Settlement Distribution Scheme based on the information which Maddens Lawyers has received and obtained in relation to each Registered Group Member's loss and damage and personal injury.

Under the proposed Settlement Distribution Scheme all Registered Group Members will receive an equal proportion of their assessed loss.

## **5. Further information about the proposed settlement**

Registered Group Members can contact Maddens Lawyers on 1800 815 228 for further information in relation to the proposed settlement, including legal costs, on a confidential basis.

## **6. What you must do**

There are up to four options which you must consider.

Option 1 ***If you are not currently a Registered Group Member*** and you **do not** want to participate in the settlement then you do not need to do anything.

Option 2 ***If you are not currently a Registered Group Member*** and you **do** want to participate in the settlement then you **must** complete the "Claimant Registration Notice" which is Annexure 1 to this Notice. You must return the Claimant Registration Notice to Maddens Lawyers or the Supreme Court Registry before **4:00pm** on **20 May 2020**.

You may also wish to **object to the settlement** (see options 3 and 4 below).

Option 3 ***Registered Group Members who oppose the settlement*** and wish to object must complete the "Notice of Objection to Proposed Settlement" which is Annexure 2 to this Notice. You must return the Notice of Objection to Maddens Lawyers or the Supreme Court Registry before **4:00pm** on **20 May 2020**. You may be invited to come to Court on **21 July 2020** to argue your objection. You will be notified in advance of the exact date.

Option 4 ***Registered Group Members who support the settlement*** do not need to do anything.



If you are not sure what to do, you should contact Maddens Lawyers or seek independent legal advice. You must act quickly because the deadline to register with Maddens Lawyers and for objections is **4:00pm on 20 May 2020**.

***When will any objection(s) be considered***

The Court has ordered that any objections to the proposed settlement (made in accordance with Option 3 above) will be considered by the Court at the Supreme Court, Melbourne, Victoria on 21 July 2020.

If there are no objections, or the objections are overruled, then the proposed settlement may be given final approval by the Court. It will then take effect. When it takes effect, Registered Group Members will have their claims assessed in accordance with the Settlement Distribution Scheme to determine their compensation entitlements.

**7. Address for questions**

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

***Contact details for Maddens Lawyers***

Scotsburn Fire Class Action  
Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Telephone: (03) 5560 2000  
Email: lam@maddenslawyers.com.au

***Contact details for the Supreme Court of Victoria***

Note: Questions you have concerning the matters contained in this notice should not be directed to the Court.

Att: Class Actions Coordinator – Common Law  
Supreme Court  
Level 2, 436 Lonsdale Street, Melbourne 3000  
Telephone: 03 8600 2000  
Email: cldclassactions@supcourt.vic.gov.au



[ANNEXURE B]  
Annexure 1

Schmid v Skimming Ors S CI 2016 05027

*Scotsburn Fire Class Action*

**CLAIMANT REGISTRATION NOTICE**

Please complete a separate form for each group member who wishes to register.

**Details of the group member**

Full name of group member (print):

Address of group member: .....

Email of group member: .....

The abovenamed group member registers as a group member entitled to participate in any settlement of the proceeding.

**Details of the person completing this form**

Signed:

Name of person signing (print):

Telephone:

Postal address:

Dated: 2020

**Maddens Lawyers needs to receive this form by 4:00pm, 20 May 2020. Please send completed forms by post, fax or email to:**

Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Fax: 03 5560 2099  
Email: [lam@maddenslawyers.com.au](mailto:lam@maddenslawyers.com.au)



**[ANNEXURE C]  
Annexure 2**

**Schmid v Skimming Ors S CI 2016 05027**

*Scotsburn Fire Class Action*

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

The person identified below:

1. was affected by the Scotsburn Fire; and
2. is a Group Member in this class action; and
3. wishes to object to the proposed settlement of the class action.

The Group Member's contact details are as follows:

Name of Group Member:

Telephone number:

Postal address:

Email address:

Signed:

If nominating a contact person who is not the named Group Member, please state the contact's name and relationship to the Group Member:

The Group Member has read the "Notes for Objectors" below: Yes / No (circle one)

**Notes for Objectors:** The Court's Orders made on **22 April 2020** require that Objectors deliver to Maddens Lawyers or the Supreme Court, by **4.00 pm** on **20 May 2020**, any written submissions (not exceeding 2 pages in length) and any affidavit evidence the Objector wishes to rely on in support of their objection to the proposed settlement.

