



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
COMMERCIAL LIST**

Case: S ECI 2020 02853
No. S ECI 2020 02853
Filed on: 31/08/2020 06:14 PM

BETWEEN

TRACY-ANN FULLER

Plaintiff

and

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850) and another

Defendants

FUNDING INFORMATION SUMMARY STATEMENT

Date of Document: 31 August 2020

Filed on behalf of: The Plaintiff

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ALLIANZ CLASS ACTION

TRACY-ANN FULLER V ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)
& ALLIANZ AUSTRALIA LIFE INSURANCE LIMITED (ACN 076 033 782)

SUPREME COURT OF VICTORIA S ECI 2020 02853

FUNDING INFORMATION SUMMARY STATEMENT

How is the Allianz Class Action funded?

The Allianz Class Action was initially funded by Balance Legal Capital I UK Ltd (**Balance**) directly (**Balance Funding**) and was commenced by Ms Tracy-Ann Fuller, the Representative Plaintiff (**Plaintiff**) on that basis. The Plaintiff has elected to enter into an arrangement and enter into a further Retainer that will enable her to make an application for a group costs order (**GCO**) (as explained below) (**JWS Retainer**).

While the Balance Funding has not terminated, the terms of the JWS Retainer are now governing the funding of the Allianz Class Action. If there are any changes to the funding arrangements summarised below, including reversion to the Balance Funding, we will notify group members in an updated Funding Information Statement.

The JWS Retainer arrangement provides that JWS will represent the Plaintiff in the Allianz Class Action, and will only be paid by the Plaintiff and Group Members for its fees and expenses incurred in the Allianz Class Action in the event of a (i) settlement of the Allianz Class Action and the recovery of the settlement sum from the defendant(s) or another party or part of them; or (ii) an award of damages in the Plaintiff's favour in respect of the Allianz Class Action (including any appeal) (**Successful Outcome**).

A Successful Outcome will not be binding on the Plaintiff and Group Members until it is approved by the Court. As part of that approval process, the Court will also approve the amount payable to JWS, which will be calculated as explained below.

In order for us to represent the Plaintiff and Group Members in the Allianz Class Action and only to seek payment as ordered by the Court in the event of a Successful Outcome, JWS has been issued with a limited recourse loan by Balance Legal Capital I UK Ltd (**Loan**). This Loan allows JWS to provide the legal services and pay for any expenses over the course of the Allianz Class Action. Balance is not entitled to claim repayment of the Loan from JWS unless there is a Successful Outcome, and any amount paid to Balance will be limited to the amount ordered to be paid to JWS by the Court. Balance has no contractual recourse against the Plaintiff or Group Members for repayment of its Loan with JWS.

What are JWS' responsibilities under the Retainer?

Under the JWS Retainer, JWS has agreed to represent the Plaintiff as the representative plaintiff in the Allianz Class Action and incur its legal fees and expenses (including for example, barristers' fees and experts' fees) in the Allianz Class Action and only seek payment from the Plaintiff and Group Members in the event of a Successful Outcome and subject to order of the Court, which will be calculated as explained below.

JWS has also provided the Plaintiff, as the representative of the group, with an indemnity for any costs orders made against her (and will not charge the Plaintiff if a costs order is made against JWS) (**Adverse Costs Order**). Insurance will be taken out which will enable JWS to provide this indemnity and pay for any Adverse Costs Order. Group Members are not parties and are not required to contribute to any costs orders made against the Plaintiff.

What funding costs is JWS entitled to if the Class Action is successful?

If there is a Successful Outcome, then subject to Court order, JWS may be paid its fees and expenses incurred in the Allianz Class Action from any proceeds recovered on the Plaintiff and Group Members' behalf calculated using one of the following methods:

- (a) calculated using time based billing for professional fees, with expenses (for example, fees for experts and barristers and the costs of taking out insurance to cover payment of any costs order made in the Allianz Class Action) charged at cost; OR
- (b) the Plaintiff may make an application for JWS as the lawyers running the Allianz Class Action to receive payment for its fees and expenses calculated as a percentage of the amount of any award or settlement. This is known as a group costs order (**GCO**), where the liability for payment of the percentage is shared among the Plaintiff and all Group Members. The percentage paid under the GCO is determined by the Court and the Court would have the power to adjust the percentage at any time over the course of the Allianz Class Action, including on a Successful Outcome.

If a GCO is made, the Court in the SC GEN 10 *Conduct Of Group Proceedings (Class Actions)(First Revision)* states that the GCO should cover:

- (a) all services provided by the law firm;
- (b) provision for security for costs if required;
- (c) disbursements [expenses]; and
- (d) an indemnity for adverse costs (which has been given as noted above).

Group Members will never have to pay anything upfront and will only contribute to the costs of the Plaintiff through a deduction from any settlement or judgment amount they receive as ordered by the Court.

What happens if there is no Successful Outcome?

If there is no Successful Outcome, the Plaintiff and Group Members will not be required to pay anything to JWS or the defendants.

As noted above, JWS has agreed to pay any Adverse Costs Order on the Plaintiff's behalf if one is made. Group Members are not parties and are not required to contribute to any costs orders made against the Plaintiff.

JWS will not be required to repay Balance for any amounts drawn under the Loan.

Who can group members contact for further information about the funding of the Allianz Class Action?

Group Members may obtain further information about the funding of the Allianz Class Action by visiting <https://www.allianzclassaction.com.au> and by contacting JWS, at no cost, through one of the following:

Email: allianzclassaction@jws.com.au
Post: Johnson Winter & Slattery
Allianz Class Action
GPO Box 9831, MELBOURNE VIC 4001

SCHEDULE OF PARTIES

TRACY ANN-FULLER

Plaintiff

and

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850)

First Defendant

ALLIANZ AUSTRALIA LIFE INSURANCE LIMITED (ACN 076 033 782) Second Defendant