



ARRIUM CLASS ACTION

BOGAN & WALTON v SMEDLEY & FOUR OTHERS

(Supreme Court of Victoria case number No. S ECI 2020 03281)

Case: S ECI 2020 03281

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FURTHER AMENDED FUNDING INFORMATION SUMMARY STATEMENT

1. How is the Arrium Limited class action being funded?

The Plaintiffs in the Arrium Class Action entered into have litigation funding agreements (**Litigation Funding Agreements**) with Equite Capital No 1 Pte Ltd (**Funder**), which is a litigation funding company registered in Singapore. The Funder ~~has~~ entered into litigation funding agreements with the Plaintiffs and a number of group members, and the contract sets out the terms on which the Funder provides~~d~~ funding, including ~~the terms on which that funding may cease to be provided that if the Arrium Class Action was unsuccessful, the Funder would pay any order made against the Plaintiffs to pay the Defendants' costs. Subsequently, the Court made a Group Costs Order (GCO), under s 33ZDA(1) of the Supreme Court Act 1986 (Vic) (Act) and the litigation funding agreements entered into with the Plaintiffs and certain group members were terminated by the Funder and they no longer apply. The GCO is further explained below.~~

In the event that the Plaintiffs' funding arrangements change again, the Plaintiffs will amend this Funding Information Summary Statement.

2. When will litigation funding costs be charged to Plaintiffs or group members?

~~Under the funding agreements with the Funder, the reasonably incurred legal costs of the class action will be paid by the Funder on behalf of the Plaintiffs. If there is a successful outcome to the class action (whether by settlement or judgment), the funding agreements provide for the Funder to be reimbursed the legal costs it has paid, and paid a funding commission. The Court may order all group members to share in the legal costs to be reimbursed to, and funding commission paid to, the Funder.~~

In May 2022, the Plaintiffs applied for and were granted a Group Costs Order (**GCO**) under s 33ZDA(1) of the Supreme Court Act 1986 (Vic) (Act). Further details of the GCO are set out below.

No litigation funding costs will be charged to the Plaintiffs or group members prior to a successful resolution of the proceeding, either by settlement (if approved by the Court), or judgment. The amount paid to the Funder Banton Group will never exceed the total amount of the recovery to group members.

3. How will the amounts payable to the Funder be calculated?

Banton Group is now financing all of its legal costs and disbursements in the Arrium Class Action and intends to enter into a Costs Sharing Agreement with the Funder.

A GCO is an order of the Court that all legal costs and disbursements payable to Banton Group be calculated as a percentage of any damages award or settlement if the class action is successful – that is, if money is paid by the Defendants to resolve the claims of the Plaintiffs and the Group Members in the case. This can happen if (a) the Plaintiffs and the Defendants settle the case in principle at a mediation and the Court approves the settlement, or (b) through a judgment after the case is heard by the Court in a trial, or otherwise.

If the Arrium Class Action is successful:

- (a) Subject to any variation of the existing GCO, Banton Group will be paid 40% (inclusive of GST) of any damages awarded or any settlement sum approved by the Court in accordance with that GCO, and 60% of those damages or that settlement sum will be distributed to Group Members;
- (b) The Court will assess whether the costs proposed to be deducted from any settlement sum are fair and reasonable. You will be given a notice at that time informing you of the amount which it is proposed to be deducted and given an opportunity to tell the Court if you agree or disagree with what is proposed.

If the Arrium Class Action is unsuccessful:

- (a) Group Members will NOT pay any costs;
- (b) An adverse costs order cannot be made against you as a Group Member. In litigation the Court will typically order the losing party to pay a proportion of the legal costs of the successful party. The effect of the GCO is that, if the class action is unsuccessful, Banton Group will be liable to pay any costs payable to the Defendants in the Arrium Class Action and will not be entitled to recover from the Plaintiffs or Group Members any legal costs or disbursements incurred or paid on their behalf in relation to the class action.

~~The GCO provides that the legal costs payable to the Banton Group be calculated as 40% (inclusive of GST) of the amount of any award or settlement obtained in the class action, subject to further court order.~~

~~The GCO is inclusive of all legal fees and disbursements incurred in conducting the class action. If an award or settlement is obtained, the liability for these legal costs will be shared among the Plaintiffs and all group members. No litigation funding costs will be charged to the Plaintiffs or group members prior to a successful resolution of the class action, either by settlement (if approved by the Court), or judgment. The total amount paid to Banton Group will never exceed the total amount of the recovery to group members, but the percentage of the GCO i.e. 40%, may be amended by the Court.~~

~~The GCO is conditional on the Plaintiffs satisfying the Court that (a) the Litigation Funding Agreements have been terminated and (b) that the Funder has provided a written undertaking to the Court that it will not seek to enforce its rights pursuant to the Litigation Funding Agreements entered into with the Plaintiffs and group members. The Plaintiffs must comply with this order within 14 days after the determination by the High Court of Australia (High Court) of the Fifth Defendant's application (KPMG Application) to transfer the proceedings to the Supreme Court of New South Wales. The KPMG Application was heard by the High Court in November 2024 but the High Court has not yet published its judgment. Further information will be provided when that judgment is published.~~

~~If the above conditions are not met, the Litigation Funding Agreements provide, the amounts payable to the Funder by the Plaintiffs and group members who have entered into those contracts are the following amounts (exclusive of any GST):~~

- ~~3.1 — a share of common legal costs — this is their pro rata share of any legal costs incurred in the class action proceedings in respect of “common benefit work” (that is, legal work investigating, preparing, prosecuting and resolving issues for the common benefit of all claimants making claims in the proceeding); plus~~
- ~~3.2 — individual legal costs — this will be any legal costs incurred by the Funder in relation to their specific individual claim, which are not “common benefit legal work”; plus~~
- ~~3.3 — appeal costs (if there is an appeal) — this is their pro rata share of costs in preparing and prosecuting any appeal arising out of the proceeding (if there is an appeal)~~
- ~~3.4 — Funder's Commission — being 45% of the Resolution Sum obtained for or on behalf of them, including as a result of a settlement or judgment.~~

~~The Plaintiffs may ask the Court to order all group members who benefit from the class action to share in the costs payable to the Funder referred to in 3.1, 3.2 and 3.4 above as part of considering whether to approve any settlement of the class action.~~

~~The Plaintiffs may also ask the Court to order all group members who benefit from the class action to make payments to the Funder of legal costs and a reasonable funding commission at a rate equal to or less than the rate set out in the Litigation Funding Agreements (regardless of whether those group members had in fact entered into a Litigation Funding Agreement).~~

~~Group members will be notified before any amounts are deducted and paid to the Funder, and given an opportunity to tell the Court their views about this. The Court will scrutinise the reasonableness of the legal costs incurred, and the litigation funding commission proposed to be deducted, as part of that process.~~

4. Who can I contact for more information?

In order to obtain further information about the litigation funder and the terms of the funding agreements, Group Members can contact the Funder by email at qxsong12@gmail.com.

For further information about the class action generally, group members may contact Banton Group on +61 (2) 8076 8090 or by email at arrium@bantongroup.com. Group members will not be charged for these enquiries.