

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. 4788 of 2009

BETWEEN:

CAROL ANN MATTHEWS

Plaintiff

and

SPI ELECTRICITY PTY LTD (ACN 064 651 118)
& ORS (according to the schedule of parties)

Defendants

(by original proceeding)

AND BETWEEN:

SPI ELECTRICITY PTY LTD (ACN 064 651 118)

Plaintiff by Counterclaim

and

(ACN 060 674 580)
& ORS (according to the schedule of parties)

Defendants by Counterclaim

(by counterclaim)

AFFIDAVIT OF ANDREW JOHN WATSON

| | |
|-------------------------------|-----------------------|
| Date of Document: | 31 October 2016 |
| Filed on behalf of: | The Plaintiff |
| Prepared by: | |
| Maurice Blackburn Lawyers | Solicitor's Code: 564 |
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| | Ref: AW/3004166 |

I, Andrew John Watson, Solicitor, of Level 10, 456 Lonsdale Street, Melbourne in the State of Victoria, make oath and say as follows:

1. I am a Principal in the firm of Maurice Blackburn Pty Ltd (**Maurice Blackburn**), the solicitors for the Plaintiff in this proceeding (**the proceeding**) and pursuant to Orders of this Court dated 23 December 2014, I am the Scheme Administrator.

Andrew John Watson

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2. I make this affidavit from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my information and belief after due enquiry and I have set out the source of my information.
3. I make this affidavit for the purpose of:
 - (a) providing the Court with an update in relation to the progress made in establishing the processes and mechanisms for the assessment of group member claims under the Settlement Distribution Scheme (**SDS**);
 - (b) providing the Court with an update in relation to work performed by the Scheme Administrator and the Settlement Distribution Scheme team (**SDS Team**);
 - (c) providing the Court with an update in relation to the number of assessments completed and/or underway;
 - (d) providing the Court with an update in relation to interim payments;
 - (e) providing the Court with an update in relation to final settlement distribution payments;
 - (f) providing the Court with an update in relation to group member communications;
 - (g) subject to the outcome of the review of such costs by the Special Referee, Costs, appointed by the Court, seek approval of Scheme Administration Costs; and
 - (h) providing the Court with notice of an application made in the Murrindindi settlement administration proceedings for a transfer payment to be made from the Murrindindi settlement fund to the Kilmore settlement fund to ensure equitable payment of setup costs by Kilmore and Murrindindi claimants.

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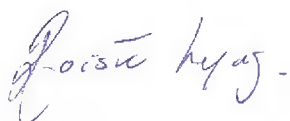
PERSONAL INJURY AND DEPENDENCY CLAIMS

A. OVERVIEW OF THE PERSONAL INJURY AND DEPENDENCY CLAIMS ASSESSMENT PROCESS

4. As at 26 October 2016, there are in total 1905 personal injury and dependency group members.
5. The steps taken to assess each of these 1905 personal injury and dependency claims are detailed in my previous affidavits dated 13 April 2015, 9 October 2015, 25 February 2016, 17 June 2016 and 7 September 2016.

B. THE SDS TEAM

6. Since the last Case Management Conference (**CMC**) and my affidavit dated 7 September 2016, the following change has been made to the SDS Team:
 - (a) Paralegal staff numbers have reduced from seven to six.
7. The SDS Team responsible for the administration for personal injury and dependency claims assessment under the SDS in this proceeding is currently comprised of:
 - (a) Andrew Watson, Scheme Administrator. Approximately 10 per cent of his time is directed towards the Kilmore settlement administration.
 - (b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 50 per cent of her time is directed towards the Kilmore settlement administration.
 - (c) Elizabeth Mukherji, Senior Associate, engaged three days per week. Approximately 50 per cent of her time is directed towards the Kilmore settlement administration.
 - (d) Simba Makoni, Associate, engaged on a full-time basis. Approximately 60 per cent of his time is directed towards the Kilmore settlement administration.
 - (e) Megan Greaves, Lawyer, engaged on a full time basis. Approximately 50 per cent of her time is directed towards the Kilmore settlement administration.



- (f) Timothy Dionyssopoulos, Principal, engaged on a full time basis. Approximately 50 per cent of his time is directed towards the Kilmore settlement administration.
- (g) Patricia McMullan, Associate, engaged on a full time basis. Approximately 60 per cent of her time is directed towards the Kilmore settlement administration.
- (h) Six paralegals working an equivalent of four full time positions. Approximately two thirds of their time is directed towards the Kilmore settlement administration.
- (i) Four full time administrative assistance. Approximately two thirds of their time is directed towards the Kilmore settlement administration.

C. CHANGES TO THE TEAM OF ASSESSORS

8. I refer to paragraph 8 of my affidavit dated 7 September 2016. Since the swearing of that affidavit no changes have been made to the team of assessors and all assessments have been submitted.

D. SUMMARY OF ASSESSMENT PROCESS TO DATE

9. As at 26 October 2016, 1,757 of the 1,905 registered personal injury and dependency group members are proceeding with the assessment of their claim. The remaining 148 group members have either instructed us that they do not wish to proceed with their claim or are uncooperative. Of the 1,757 group members proceeding with the assessment of their personal injury and dependency claims:
- (a) 1,757 detailed personal injury questionnaires have been completed which equates to 100 per cent of registered personal injury and dependency group members.
 - (b) 1,757 group members have attended a conference with assessing counsel which equates to 100 per cent of registered personal injury and dependency group members.
 - (c) All Notices of Assessments and Statements of Reasons have been received from assessing counsel and sent to group members.

10. 39 requests for review have been received from group members to date. Of these, 26 are quantum reviews and 13 are threshold reviews. All quantum reviews have been determined, with 18 being in favour of the group member and 8 upholding the original assessment. 12 of the 13 threshold reviews have been determined, with 7 being in favour of the group member and 5 upholding the original assessment. 1 threshold review remains to be determined by a medicolegal specialist.

E. PROGRESS OF ASSESSMENTS

11. Since my affidavit dated 7 September 2016, all assessments have now been received from assessing counsel, reviewed by the SDS Team and sent to group members.
12. The final day for a group member to submit a review was 26 October 2016, being 28 days from the date the last assessment was sent. As at 28 October 2016, all initial assessments have been finalised. The only assessments that remain to be finalised are review assessments.

F. GROUP MEMBERS WHO HAVE INSTRUCTED THEY DO NOT WISH TO PROCEED

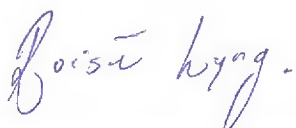
13. I refer to paragraph 17 of my affidavit dated 7 September 2016. Since the swearing of that affidavit there are no updates regarding group members who do not wish to proceed.

G. UNCOOPERATIVE GROUP MEMBERS

14. I refer to paragraphs 18 – 20 of my affidavit dated 7 September 2016. Since the swearing of that affidavit there are no updates regarding uncooperative group members.

H. STEPS TAKEN TO PREPARE FOR DISTRIBUTION

15. Since swearing my last affidavit on 7 September 2016, in order to prepare for final distribution the following processes are now being undertaken:



The Victorian WorkCover Authority, the Transport Accident Commission & the Country Fire Authority

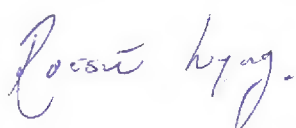
16. I refer to paragraph 23 of my affidavit dated 7 September 2016. Pursuant to the terms of agreements with the Victoria WorkCover Authority, the Transport Accident Commission and the Country Fire Authority, the SDS team provided the Notice of Assessments and Statement of Reasons for relevant group members to the authorities on 27 October 2016.

Centrelink

17. I refer to paragraph 17 of my affidavit dated 7 September 2016. Since the swearing of that affidavit the SDS Team continues to remain in contact with Centrelink in preparation for final distribution.
18. The SDS Team continues to provide Centrelink with information regarding interim payments made to any relevant group members.

Private Health Insurers

19. I refer to paragraphs 26 and 27 of my affidavit dated 7 September 2016. Since the swearing of that affidavit requests have been sent to all relevant group members and private health insurers to provide updated information relating to bushfire-related medical treatment. The SDS Team have now finalised the pay back figures to be made on behalf of relevant group members to their private health insurers.
20. The SDS Team have now met with, spoken to or emailed all identified private health insurers for the purposes of updating them on the settlement distribution process, providing them with the payback information related to their customers and reaching agreement that the payback figures held on the Matter Centre data base in relation to their customers will not be subject to any further change. The majority of private health insurers have agreed that the payback figures as currently recorded on the Matter Centre data base are now finalised.
21. The SDS Team have now met with, spoken to or emailed all identified private health insurers for the purpose of requesting that they accept repayment figures which are proportionately reduced to reflect group members' recovery. To date, eight private health insurers have agreed to reduce their payback in line with the



group members' recovery. The SDS Team is hopeful that the remaining private health insurers will also agree to accept a reduced payback.

Department of Veteran's Affairs (DVA)

22. I refer to paragraphs 28 to 35 of my affidavit dated 7 September 2016.
23. We continue to be in regular contact with the DVA in regards to expediting the process for affected group members.
24. At the time of swearing this Affidavit, the DVA has not formally responded to a proposal forwarded under cover of letter dated 2 September 2016.
25. We have pursued the DVA for a response by way of multiple telephone calls and emails. The DVA has indicated:
 - (a) That it is unlikely that agreements can be reached given the small number of DVA claimants;
 - (b) They need to consider all claims on an individual basis;
 - (c) They have an appreciation of the need for urgency and dealing with these claims efficiently;
 - (d) They are currently also looking to consolidate the process; and
 - (e) An internal DVA meeting in relation to this matter has been arranged for the week commencing 24 October 2016.
26. The total number of affected group members is nine. The SDS Team has provided the DVA with the following in relation to all affected group members:
 - (a) Signed consent forms (provided by the DVA); and
 - (b) Details of the assessed losses and likely in-hand amount.
27. We have not received a response from the DVA in respect of one of the affected group members. In a further three of the matters we have provided the DVA with further material as requested but are yet to receive further response. We have received two final notices of charge in relation to medical expenses only. We are awaiting further instructions from three group members.

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IT reporting and infrastructure

28. I refer to paragraph 36 of my affidavit date 7 September 2016. The SDS Team continues to work with Maurice Blackburn's IT department to ensure that the reporting and infrastructure systems are ready for final distribution. This includes ongoing review of various reports to assist with the auditing process and developing a report to determine the pro-rated distribution rate to facilitate the final distribution.

Contacting all creditors re outstanding invoices

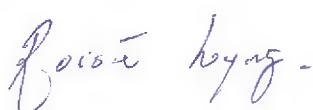
29. Since my affidavit dated 7 September 2016, the SDS Team has written to all external providers used over the course of the settlement administration process and requested that all outstanding invoices be submitted by 26 October 2016 in preparation for final distribution. These providers have been advised by the SDS Team that any invoices not submitted prior to this date will not be able to be paid.
30. Notwithstanding this letter, based on Maurice Blackburn's experience in relation to other class actions and class action settlement administrations, I anticipate that a number of invoices will be submitted after this date.

Engagement of external mailing house to effect final distribution

31. The SDS Team have engaged external mailing house Dynamic Direct to print and distribute settlement cheques and the letters enclosing such cheques to group members.
32. The SDS Team is expecting to provide the data required by Dynamic Direct by the end of November 2016. The SDS Team have been advised that provided that bank approval for the cheques has been obtained prior to this time, it will take approximately three to four weeks from the provision of the data for the settlement money to be sent and received by group members. The SDS Team is presently working with Dynamic Direct to obtain the requisite bank approval with a view to ensuring that I-D claimants receive the settlement monies prior to the end of 2016.

Contacting all group members living overseas

33. The SDS Team has identified and contacted all those group members currently living overseas to whom we will not be able to pay settlement money by cheque. These group members will receive payment of settlement monies by electronic



funds transfer. The SDS Team is currently liaising with Maurice Blackburn's finance department in order for the necessary information and arrangements to be made.

Auditing processes

34. I refer to paragraphs 37 and 34 of my affidavit dated 7 September 2016. All internal auditing of the assessment data in the Matter Centre client data base has now been completed.
35. The SDS Team continue to conduct internal audits on an as needs basis when new data such as updated assessment data following a successful review assessments is added to the Matter Centre data base.

External review of assessment data

36. I refer to paragraphs 39 to 42 of my affidavit dated 7 September 2016 in which I described the steps being taken to engage KPMG to undertake a review of the proposed schedule of payments to ensure its accuracy prior to final distribution occurring.
37. Since the last Case Management Conference:
- (a) I have retained Mr Kompos as an independent expert to provide a report in this settlement administration. Now produced and shown to me marked 'AJW-1' is a copy of the letter containing the retainer agreement and instructions to provide an expert report;
 - (b) Senior members of the SDS Team have met with George Kompos, Director in KPMG's Forensics department, and members of his team on multiple occasions to discuss the assessment process and his review of the assessment data and accounting data for the settlement fund;
 - (c) Mr Kompos has provided an updated budget (exclusive of GST) in relation to the provision of an expert report in the Kilmore and Murrindindi settlement administrations. Now produced and shown to me marked 'AJW-2' is a copy of the updated budget;

Rosie King

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- (d) Mr Kompos and members of his team have supervised the extraction of group member assessment data from Maurice Blackburn's Matter Centre database for the purpose of preparing the expert report in this proceeding;
- (e) Mr Kompos and members of his team have requested and been provided with assessment data reports and extracts from Maurice Blackburn's accounting database and further information regarding such data and reports for the purpose of preparing the expert report in this proceeding; and
- (f) Mr Kompos has been requested to provide his report on the personal injury assessment data to me in mid-November 2016.

I. ESTIMATED COMPLETION

38. Based on the information set out in this affidavit, unless an unforeseen delay occurs in the processing of the settlement monies by the banks and/or the external mailing house, the SDS Team remains confident that the distribution of personal injury and dependency settlement monies will take place in December 2016.

ECONOMIC LOSS AND PROPERTY DAMAGE (ELPD) CLAIMS

A. THE SDS TEAM

39. The SDS Team members who are responsible for the administration of ELPD claims assessment under both the Murrindindi SDS and under the SDS in this proceeding is currently comprised of:
- (a) Andrew Watson, Scheme Administrator. Approximately 10 per cent of his time is directed towards the Kilmore settlement administration.
 - (b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 50 per cent of her time is directed towards the Kilmore settlement administration.
 - (c) Helen Leaf, Senior Associate, engaged on a part-time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
 - (d) Claire Brown, Associate, engaged on a full-time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.

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- (e) Patricia McMullan, Associate, engaged on a full-time basis. Approximately 60 per cent of her time is directed towards the Kilmore settlement administration.
- (f) Lily O'Neill, Lawyer, engaged on a part-time basis. 100 per cent of her time is directed towards the Kilmore settlement administration.
- (g) Samantha Camilleri, Lawyer, engaged on a full-time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
- (h) Roisin Lyng, Lawyer, engaged on a full-time basis. Approximately 65 per cent of her time is directed towards the Kilmore settlement administration.
- (i) Nikki Macfarlane, Lawyer, engaged on a full-time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
- (j) Jonathan Peck, Trainee Lawyer, engaged on a full-time basis. Approximately 70 per cent of his time is directed towards the Kilmore settlement administration.
- (k) 15 paralegals working an equivalent of 11.5 full time positions. Approximately two thirds of their time is directed towards the Kilmore settlement administration.
- (l) Laura Opperman, Data Analyst, engaged three days per week. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.

B. CHANGES TO ELPD SDS TEAM

40. Since the last CMC, the following changes have been made to the ELPD SDS Team:

- (a) Kate McFarlane, Associate, has resigned from Maurice Blackburn;
- (b) Patricia McMullan, Associate, has been redeployed to work primarily with the ELPD SDS Team;
- (c) Nikki Macfarlane, Lawyer, has joined the ELPD SDS Team on a full-time basis;
- (d) Justin Boyd, Trainee Lawyer, has departed from the team. Jonathan Peck, Trainee Lawyer, has joined the ELPD SDS Team on a full-time basis;




41. The duties undertaken by the paralegals and lawyers on the ELPD SDS team are outlined in paragraphs 38 and 39 of my affidavit sworn on 17 June 2016.

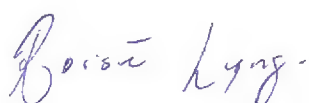
C. SUMMARY OF ELPD ASSESSMENT PROGRESS TO DATE

Allocation to ELPD loss assessors

42. I refer to my affidavit dated 7 September 2016 and confirm that 100% of property claims have been allocated for assessment to the ELPD Assessors.
43. Senior members of the ELPD Team monitor the progress of the allocated assessments and have recently re-allocated some assessments where the assessor has indicated they no longer have capacity to assess an ELPD claim.

PNOAs issued to above-insurance group members

44. As at 26 October 2016, approximately 1925 (or 95% of all) Provisional Notices of Assessment (PNOAs) have been reported by the ELPD Assessors as having been completed and issued to group members. The ELPD Assessors recently reported to the SDS Team that there are 49 PNOAs left to be issued to group members.
45. I refer to my affidavits dated 9 October 2015, 18 March 2016, 17 June 2016 and 7 September 2016 regarding the preparation of PNOAs.
46. Pursuant to E4.2 of the SDS, a group member has 14 days to consider their PNOA, and identify any errors or omissions. If a group member wishes to raise any errors or omissions with their PNOA, they are directed to deliver to the ELPD Assessor a written statement outlining the error or omission (**Dispute Notice**).
47. The ELPD Assessors have received only a small number of Dispute Notices in response to the PNOAs which they have issued to date, being approximately 12 % of all PNOAs issued to date.
48. Where a Dispute Notice is received by the ELPD Assessor, in many instances this results in a delay in the PNOA being provided to Maurice Blackburn to issue as a Final Notice of Assessment due to the ELPD Assessors taking time to consider the error or omission alleged and amend the assessment where necessary. The SDS Team are working with the ELPD Assessors to minimise such delays.



PNOAs assessing subrogated-only losses

49. The ELPD Assessors have nearly completed the assessments of all properties which involve the assessment of subrogated-only losses. There remain a small number of complex subrogated assessments involving council properties which have all been allocated to Crawford to finalise. These assessments are almost finalised and should be issued shortly.
50. The process for issuing PNOAs for subrogated-only losses was outlined broadly in my affidavits dated 17 June 2016 and 9 September 2016. Section E4.2 of the SDS contemplates that the ELPD Assessor will deliver a PNOA directly to the ELPD claimant. In order to facilitate the process of issuing PNOAs to insurers in the most efficient way possible, I have instructed ELPD Assessors to provide PNOAs pertaining to subrogated claims directly to the ELPD SDS Team. The SDS Team has collated these claims by insurer and issued a single PNOA to each insurer on behalf of multiple ELPD Assessors.
51. As of 25 October 2016, 4,309 (or 86% of all) subrogated ELPD claims have now been assessed and issued as PNOAs to each insurer which has registered claims in this proceeding.
52. Should an insurer identify an error or omission with any of the ELPD claims assessed, they have 14 days to deliver a statement with an explanation of the perceived error or omission to the SDS Team.
53. As of 25 October 2016, the SDS Team has received 238 statements detailing a perceived error or omission from the insurers (this is 4.75% of all PNOAs issued). Of these disputes, 194 are to be remitted to the relevant ELPD Assessor for further investigation. Most of the errors are relatively minor and consist of the following:
- (a) Incorrect calculations and allocations of payments by the loss assessor;
 - (b) Data entry or data extraction errors;
 - (c) Errors occurring where a loss assessor has omitted payments received for clearing debris, towing or demolition; and
 - (d) Insurer registration issues, which are discussed further below.

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Insurer registration issues

54. In paragraph 59 of my affidavit dated 7 September 2016, I noted that where the total assessed value exceeds the amount registered by the insurer at class closure, the PNOA issued to the insurer limits the assessment to the amount as registered.
55. The application of the above limit has resulted in some potential errors where the insurer has registered multiple subrogated claims at the same loss address, and both claims have been assessed together. The ELPD Assessor may not have assessed the claim consistently with how the insurer registered the insurance payment. This can result in one or more of the subrogated claims being assessed at a lower value due to the PNOA issued being limited to the amount registered.
56. The SDS Team are reviewing the insurer registration disputes to determine whether the registered claim limit can be revised to reflect the total registered amount by the insurer across all subrogated claims at the loss address, while ensuring the total assessed loss does not exceed the total registered amount for that loss address by the insurer.
57. The SDS Team have identified that 47 statements alleging an error or omission relate to insurer registration issues which can be more efficiently resolved by the ELPD SDS team rather than being remitted to the relevant ELPD Assessor.
58. The SDS Team have written to the lawyers for the insurers who have raised these disputes, and advised them of how the SDS Team proposes to deal with these disputes, and no objections have been received.

Anticipated timeline for issuing of remaining PNOAs

59. The ELPD SDS Team are in regular contact with each ELPD Assessor regarding the completion of the remaining PNOAs. A solicitor member of the ELPD SDS Team has been designated to liaise with each of the ELPD Assessors to assist in resolving any bottlenecks in issuing PNOAs.
60. To this end, all ELPD Assessors are sharing detailed data with the SDS Team regarding the status of all outstanding assessments. This data is being reviewed

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by the SDS Team to assist the ELPD Assessors in progressing outstanding assessments.

Cooperation of group members

61. Where a group member has failed to provide documents to an ELPD Assessor after multiple requests for information, the SDS Team requests the ELPD Assessors to finalise the assessment based on the information provided, and to issue the PNOA to the group member. If the group member disagrees with the assessment, they then have 14 days to raise any errors, and provide additional information or evidence to the ELPD Assessor.
62. The SDS Team have also written to numerous group members advising them that unless they cooperate with the ELPD Assessment process, then the ELPD Assessor will finalise their PNOA in the manner referred to the above. Where the SDS Team has more information about a group member's personal circumstances, the SDS Team are trying to assist as much as possible by also contacting the group member, and assisting with the completion of these assessments.
63. The SDS Team are also assisting ELPD Assessors to contact group members who are difficult to contact.

Complex assessments

64. The SDS Team are continuing to assist ELPD Assessors with complex assessments where requested.
65. Mr David Geddes has indicated to me that he regards certain matters which arise in the assessment of some large plantation claims allocated to him for assessment as being outside his area of expertise. I have accordingly referred those matters to Mr Min Guo, ELPD Assessor, who will jointly assess these claims with Mr Geddes.

Estimated completion date of ELPD Assessments

66. The ELPD Assessors have all been requested to provide the SDS Team with an estimated completion date for the outstanding ELPD assessments, and have indicated as follows:

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| PNOAs assessing above-insurance group members | | | |
|---|---------------------------|---|--|
| ELPD Assessor | Estimated completion date | Number of assessments to be issued to group members | Number of assessments to be provided to SDS Team |
| Hall and Wilcox | Mid November | 15 | 32 |
| RMCG | Late November | 20 | 72 |
| Crawford | Mid to late November | 7 | 25 |
| Cunningham Lindsey | Early November | 0 | 10 |
| Mr Min Guo | Late November | 2 | 2 |
| Mr David Geddes | Mid to late November | 5 | 5 |

67. In paragraph 79-80 of my affidavit dated 17 June 2016, I noted the weekly reporting requirements of ELPD Assessors to the SDS Team. The SDS Team compile this information to monitor the performance of each ELPD Assessor.
68. In September, the SDS Team noted a significant drop in the volume of assessments being completed of one ELPD Assessor. I subsequently contacted the Principal at this ELPD Assessment firm to discuss my concerns. To date, their performance has improved, but I remained concerned at their progress. The SDS Team continue to work very closely with this firm. To date, they continue to have the most outstanding assessments.
69. The ELPD Assessors have been instructed to upload issued PNOAs on a daily basis to reduce delays in sending Final Notices of Assessments (**FNOAs**) to group members.

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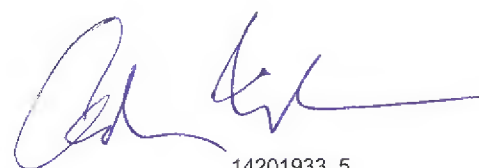
Progress of issuing finalised assessments

70. As at 26 October 2016, the SDS Team estimates it has received finalised assessments for 1857 properties with an above insurance claim from the ELPD Assessors. As at 26 October 2016, the SDS Team has issued FNOAs to 1670 (84% of all) properties with an above insurance claim, resulting in 3027 group members having now been issued with FNOAs.
71. As of 26 October 2016, the SDS Team has issued 3378 (67.5% of all) FNOAs to insurers.
72. The procedure developed by the ELPD SDS Team for issuing FNOAs is set out in detail in paragraphs 50 to 62 of my affidavit dated 17 June 2016.
73. In paragraphs 65 to 69 of my affidavit dated 17 June 2016, I alerted the Court to the unexpectedly high number and technically complex nature of the errors encountered by the ELPD SDS Team in the course of the initial check and software review process which were causing delays to the process of issuing FNOAs. These errors largely fall into two categories:
 - (a) minor data or administrative errors; and
 - (b) more substantive errors potentially affecting the value of the assessment.

Minor data or administrative errors identified by the ELPD SDS Team in the process of issuing finalised assessments

74. The SDS Team continues to review assessments for the errors detected by the First Upload software described at paragraphs 57 to 60 of my 17 June 2016 affidavit. An estimated 50% of assessments continue to be affected by minor data or administrative errors which are typically minor in nature and relatively straightforward to correct. Although minor, I consider it important that these errors be corrected prior to any distribution to ensure that correct payments are made to the correct claimants. These errors include:
 - (a) typographical errors in group member names;
 - (b) incorrectly transcribed Matter Centre IDs; and

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- (c) failure to assess all claims registered at an address in the assessment.

Template formula errors

75. I refer to my previous affidavit dated 18 March 2016 regarding the revised template issued on 7 March 2016 to address a formula error. The SDS Team has been reviewing all PNOAs issued under the old template and amending the Final Notice of Assessment to address any errors made as a result of the formula error before the FNOA is issued to the group member.
76. The SDS Team has written to all group members affected by this error. In all instances, this has increased the total assessed losses to the benefit of the group member. As at 24 October, 196 assessments have been impacted by the formula error. In 24 instances, the correction of the error resulted in an increase of more than 5% of the assessment value.

Substantive errors identified by the ELPD SDS Team in the process of issuing finalised assessments

77. In the process of issuing finalised assessments, a small number of errors exceeding \$5000 or 5% of the assessed value have been detected. As of 26 October 2016, the SDS Team have found that 2.16% of finalised assessments have been affected by such errors. Under my direction, the SDS Team is facilitating the amending these assessments in accordance with the orders of this Court dated 17 October 2016.

Complex assessments

78. All finalised notices of assessment involving a complex claim, trust or estate are being reviewed by a solicitor or trainee solicitor before being issued to group members.

Allocation of compensation to trusts, partnerships or companies

79. In the process of issuing finalised assessments, the SDS Team have identified instances where the contact for an ELPD claim in their capacity as trustee, partner, company director or authorised contact have instructed that \$0 is to be allocated to the entity where there are multiple claims at the address. The SDS Team has written to all claimants who have allocated \$0 to such an entity to remind them that as authorised contact for the company, trust or partnership, they

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are under a legal obligation to ensure that any compensation is distributed to its rightful owner.

De-registered companies

80. The SDS Team have identified a number of instances where the registered company for an ELPD claim is now de-registered. So as to not delay the ELPD assessment process, these ELPD claims are continuing to be assessed. However, claimants are being advised that in order to recover any compensation for the company, they will need to take steps to re-instate the company. For small company claims, the SDS Team is considering alternate procedures.

ELPD review process

81. Under section E5.1 of the SDS, group members may request a review of their FNOA within 42 days of the date shown on the assessment.
82. Under section E5.3 of the SDS, where a request for review has been received, I must give notice to the group member seeking the review and provide 21 days to provide materials in support of the review application.
83. To date, only 2 applications for review have been received in respect of the more than 1670 issued FNOAs. In relation to one of these applications, I have determined that it is appropriate to direct the original ELPD Assessor to amend the alleged error or omission raised by the review application with a view to the assessment being reissued as an FNOA. The bond in relation to the second application for review was not lodged within the 14 day period and consequently has lapsed.

ELPD Assessor audit

84. In order to ensure that group members are being assessed on a consistent basis, the SDS Team continues to undertake the ELPD Assessor auditing processes described in my previous affidavits dated 18 March 2016 (paragraphs 6 to 65), 17 June 2016 (paragraphs 86 to 90) and 7 September 2016 (paragraphs 79 to 93).

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D. STEPS TAKEN TO PREPARE FOR FINAL ELPD DISTRIBUTION

Internal review

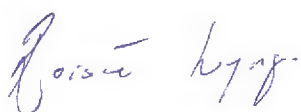
85. The ELPD SDS Team is currently in the process of undertaking a number of internal audits of all data in preparation for final distribution:
- (a) Assessment data audit - The purpose of this audit is to ensure that the assessment data contained in the Notices of Assessment sent to group members matches the assessment data in the Matter Centre client database.
 - (b) Not Proceeding / Uncooperative Assessments - The purpose of this audit is to ensure that appropriate steps have been taken for all group members in these categories and that these steps have been accurately recorded in the Matter Centre client database.
 - (c) Assessment status audits – Members of the SDS Team are conducting a series of assessment status audits with a view to ensuring that assessments marked in the Matter Centre database as being at a particular stage of the assessment process are in fact at that stage of the assessment process. The purpose of these audits is to ensure that no assessments are inadvertently left unassessed due to an administrative error.
86. The SDS Team expects to have this internal audit completed concurrently with or shortly after the last FNOA has been issued.

External review

87. The SDS Team is working to ensure that the reporting and infrastructure systems are ready for Mr George Kompos of KPMG to commence a review as soon as all ELPD assessments have been finalised.

E. ESTIMATED DURATION OF ELPD ASSESSMENT PROCESS

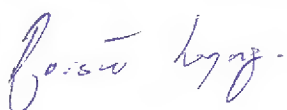
88. As referred to above, we anticipate that all ELPD assessments will be provided to the SDS Team by late November to issue as finalised notices of assessment. The SDS Team are taking steps to ensure that all finalised notices of assessment are issued as soon as possible.



89. The SDS Team estimates that provided that all finalised notices of assessment are provided to the SDS Team by the end of November, all FNOAs will be issued by the end of the first week of December.
90. The Settlement Distribution Scheme provides relatively generous periods in relation to seeking a review of finalised notices of assessment (42 days with a further 21 days to provide materials to the ELPD review assessor).
91. In November, in order to ensure that the final ELPD distribution is not unnecessarily delayed by these review periods, the SDS Team will commence sending claimants a notice to make an election not to exercise any rights of review (**Election Notice**). For all FNOAs issued in late November, a member of the SDS Team will call the claimant to explain the Election Notice, and encourage any claimants who advise that they do not intend to seek a review of their FNOA to return the Election Notice to the SDS Team.
92. Given the relatively generous review periods under the Settlement Distribution Scheme, I no longer consider it possible to complete a distribution to ELPD claimants **late in 2016**. However, I remain of the view that final distribution to property damage claimants will occur in **early 2017**. Such an outcome remains dependent on the finalisation of PNOAs and FNOAs within the timeframes described above, completion of internal and external audit processes (which can be commenced as soon as all FNOAs are issued), resolution of taxation issues with the ATO and the finalisation of cheques by an external mailing house.

F. ELPD GROUP MEMBERS WHO HAVE INSTRUCTED US THEY DO NOT WISH TO PROCEED

93. As of 26 October 2016, 173 group members have advised the SDS Team that they do not wish to proceed with an ELPD claim for compensation.
94. These group members fall into two categories:
 - (a) Group members who lodged an ELPD claim in error; and
 - (b) Group members who have an ELPD claim but do not want to proceed.
95. The SDS Team has identified that a large proportion of the claims have been lodged in error. Many of these claims were lodged in error because when the group member registered a PI claim, they also registered an ELPD claim as they




were unsure whether or not they were required to tick the box indicating economic loss and property loss. These group members often had economic loss claims consequent to their personal injuries, but not any property damage or pure economic loss.

96. As of 26 October 2016, the SDS Team has contacted 173 of these group members in order to explain the settlement process, ensure those group members are not overwhelmed by the process, to offer additional assistance where appropriate and to confirm the group member's instructions.
97. Following these calls, correspondence has been sent to 171 group members confirming their instructions that they do not wish to be assessed and allowing a period of time for them to change their instructions.
98. We have informed these group members that we will be issuing them with \$Nil assessments. To date, 171 \$Nil assessments have been issued.

G. UNCONTACTABLE ELPD GROUP MEMBERS

99. Paragraphs 78 and 79 of my affidavit dated 18 March 2016 indicated that the SDS Team have identified a number of ELPD claims where we have been unable to contact the relevant person. This may be for the following reasons:
 - (a) The contact person's contact details are out of date; and/or
 - (b) The contact person has since passed away.
100. As of 26 October 2016, there are presently 22 registered ELPD group members who are uncontactable. The SDS Team has sent letters to these group members, requesting that they contact Maurice Blackburn in relation to their claim. Australian Electoral Commission (AEC) records have been searched for all of these group members. The additional investigations undertaken by the ELPD SDS Team in an attempt to locate uncontactable group members are detailed in paragraph 103 of my affidavit dated 17 June 2016.
101. In respect of 9 of these group members, I have determined that there is insufficient evidence on file to support a claim and have caused a \$Nil assessment to be issued to their last known address. In respect of 9 group members, we have identified some evidence in relation to the losses sustained at the relevant loss address. ELPD Assessors have been directed to complete their assessment

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based on the evidence available and to issue PNOAs to the group member's last known address.

FNOAs returned to sender

102. In addition to the work undertaken in relation to uncontactable group members, the SDS Team has implemented procedures in relation to FNOAs which are returned to the SDS Team as 'return to sender'. As of 21 October 2016, approximately 25 group members' FNOAs have been returned to sender.
103. In such instances, the SDS Team initially attempts to contact the group member via telephone, email and/or other contact method using the contact details held by the SDS Team and the ELPD Assessor. In most instances, such attempts are successful and the FNOA can subsequently be sent to the group member's updated contact address.
104. Where the SDS Team is unable to contact the group member, the SDS Team implements procedures similar to the uncontactable group member procedure, such as inspecting AEC records. As at 26 October 2016, this has only been required in relation to one group member, however it is anticipated that this may be required for more group members in the future.
105. Where an FNOA is reissued to a group member at an updated contact address, it is in some instances appropriate for an extension of time to seek review of the FNOA to be granted.

H. FAMILY LAW DISPUTES AND ELPD ASSESSMENTS

106. The SDS Team has issued FNOAs to 42 group members who have disputed the allocation of settlement funds. Compensation will be held on trust where group members dispute the allocation of funds. I anticipate that FNOAs subject to complex family law disputes may be held on trust for some time beyond final distribution. This may require additional tasks to be undertaken by the SDS Team following final distribution.
107. Where there is a registered dispute, the SDS Team is requesting family law court orders or statutory declarations detailing the agreed allocation of compensation between group members who are the subject of such disputes.

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108. The SDS Team has sought an advice from Bronia Tulloch of counsel regarding the potential impact that certain family law court orders may have on the payment of distribution monies to group members who dispute the allocation of funds.

LATE REGISTRANTS

109. I refer to paragraphs 179 to 183 of my affidavit dated 17 June 2016 and paragraphs 96 and 97 of my affidavit dated 7 September 2016 in relation to the consideration of applications for late registration to participate in this settlement distribution.
110. Since my last affidavit, there have been no more late registrants accepted. However, a number of group members whose claims were intended to be covered by an existing registration continue to be discovered in the process of reviewing finalised ELPD assessments and as such are registered pursuant to section A7.2 of the SDS.

INTERIM PAYMENTS

111. As at 26 October 2016, I have received 230 applications for interim payment on the basis of exceptional need pursuant to sections D1.4 and F1.4 of the SDS.
112. In respect of 227 of these applications, the group member has been assessed as being eligible to receive compensation from the settlement sum and 1 group member has an ELPD claim which is yet to be assessed.
113. To date, I have considered the applications of 196 of the group members who have been assessed as being eligible to receive compensation. 185 of these group members have been successful in their applications for an interim payment and 11 have been unsuccessful.
114. The remaining 31 group members who have been assessed as eligible to receive compensation have yet to be assessed for eligibility for interim payment.

SENIOR MASTERS OFFICE (SMO)

115. I refer to paragraphs 102 and 103 of my affidavit dated 7 September 2016.
116. On 19 October 2016, Senior Members of the I-D SDS Team met with employees of the SMO in relation to the approval and payment process for Order 15 personal injury group members.



117. During this meeting, an in principle agreement was reached with the SMO in respect of the following matters:

- (a) The nature, format and provision of the documents required to be provided to the SMO;
- (b) The contents and exhibits of the affidavit required to be filed with the SMO;
- (c) The information and processes required for interim payment applications for Order 15 claimants;
- (d) The review to be undertaken by the SDS Team as to any minors who may continue to be under a legal incapacity upon turning 18 years of age;
- (e) The information to be provided to Order 15 claimants by the SDS Team;
- (f) That the SDS Team would work together with the SMO's IT department to facilitate the efficient provision and delivery of information in relation to Order 15 claimants; and
- (g) The manner in which funds payable in relation to Order 15 claimants would be transferred to the SMO.

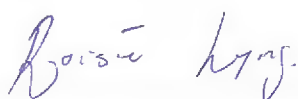
118. Since this meeting, the SDS Team has commenced the process of forwarding the final register of all Order 15 claims and the required documentation to the SMO.

119. The SDS Team continue to liaise with the SMO in regards to the precise form of orders to be made by the SMO.

ESTATE CLAIMS

120. As at 26 October 2016, we have identified 169 registered ELPD and/or PI claims made on behalf of estates. Additional estate claims continue to be identified where group members pass away.

121. The processes for managing the assessment of claims made by estates and the distribution of any compensation payable to estates are outlined in paragraphs 188 to 193 of my affidavit dated 17 June 2016 and paragraphs 104 to 107 of my affidavit dated 7 September 2016.



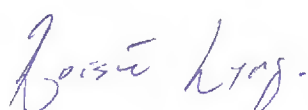
GROUP MEMBER COMMUNICATIONS

General updates on settlement administration progress

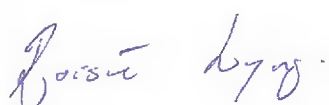
122. Since the update letter of 6 September 2016, no general update as to the settlement administration progress has been sent to all group members.
123. However, on 6 October 2016 I sent a letter to all registered personal injury group members to advise them that in order to finalise group members' entitlements to compensation and to allow for the distribution of funds, I would not be making any interim payments to personal injury claimants for applications received after 20 October 2016. The letter advised that registered ELPD group members could still make interim payment applications after this date.
124. I intend to send an update letter to all group members regarding the likely timing of the final settlement distribution prior to the end of November 2016.

TAXATION ISSUES

125. I refer to paragraphs 196 to 199 of my affidavit dated 17 June 2016 and paragraph 109 of my affidavit dated 7 September 2016 regarding the steps taken as at that date to reduce the taxation liability of the Distribution Sum. Since the time of swearing that affidavit, Kimi Nishimura and PwC employees have contacted the ATO on numerous occasions to request that the ATO resolve the taxation issues raised in relation to this settlement administration by way of letter dated 2 August 2016.
126. On 29 September 2016, I sent a letter to the ATO advising that in order to finalise the personal injury assessment amounts I required the ATO's response to the taxation issues by 14 October 2016. I have never received a formal response to that letter.
127. On several occasions, PwC has been advised by the ATO that it will provide a response to the issues raised within a matter of days, but on each occasion the nominated date had lapsed without such response or any explanation as to why or when the response will be given. The most recent of these nominated dates was 21 October 2016.



128. Now produced and shown to me marked "AJW-3" is a copy of a letter from PwC to me dated 28 October 2016 summarising the position as to the taxation issues in this proceeding as of the morning of 28 October 2016.
129. On the evening of 28 October 2016, I was advised that PwC was contacted by [REDACTED] of the ATO late on 28 October 2016. PwC advised that [REDACTED] had conveyed her informal advice that the position of the ATO would be that all interest earned on settlement monies would be assessable and that no administration expenses would be deductible. PwC requested that written justification of the response be provided and [REDACTED] suggested a meeting to discuss these issues in the week commencing 31 October 2016. It is to be hoped that a more favourable outcome may be arrived at as a result of this meeting.
130. I am profoundly disappointed by the informal indication which the ATO has given of its approach to this matter and of the time it has taken to respond to the matters raised. The consequence for group members in this proceeding is likely to be that the Settlement Distribution Sum will be reduced by approximately \$12m, that interest earned (net of tax) will not be sufficient to cover administrative expenses and that the percentage recovery for group members will be reduced.
131. Unless the ATO's response changes at the meeting in the week commencing 31 October, I effectively have two options:
- (a) to delay the distribution of the personal injury payments until I have obtained legal advice regarding the ATO's proposed position and if necessary take formal legal steps to dispute their assessment. This avoids the possibility of two personal injury distributions but has the obvious drawback of potentially delaying a distribution beyond the end of this year; or
 - (b) effecting the distribution of personal injury settlement moneys on the basis that the maximum potential taxation amount is payable from the settlement distribution fund. In the event that I am advised to pursue options to dispute any assessment and that course is successful I will look at the most effective way to distribute the difference between the amount withheld for the maximum tax liability and the amount actually paid for tax. This has the advantage of ensuring a distribution this year but will result in increased costs associated if there is a need for a second distribution to personal injury claimants.



132. After much consideration, if the ATO does not change from the position it has informally indicated in the next few weeks, I propose to effect the final personal injury settlement distribution on the basis that the maximum potential taxation amount is payable from the settlement distribution fund. I have determined to do so primarily because I think it is important to effect the distribution this year if at all possible. If the taxation issues are ultimately resolved in a more favourable way than this position, I will consider the most effective way to deal with any difference between the amount withheld for tax and the amount payable. This may require seeking directions from the Court.

COSTS

133. Subject to the Court receiving a satisfactory report from Mr John White, Special Referee, Costs, appointed by the Court, I now seek approval for Maurice Blackburn to be paid \$9,585,271.06 for settlement administration costs and disbursements comprised of:

- (a) \$3,198,735.63, being settlement administration costs and disbursements incurred between 1 May 2016 and 30 June 2016 in excess of the \$1,200,000.00 approved for costs incurred over this period by His Honour Justice Forrest on 21 June 2016;
- (b) \$5,225,633.80, being settlement administration costs and disbursements incurred between 1 July 2016 and 30 September 2016;
- (c) \$419,453.63, being the estimated anticipated General and I-D settlement administration costs and disbursements between 1 October 2016 and 31 October 2016;
- (d) \$684,146.00, being the estimated anticipated I-D settlement administration costs and disbursements between 1 November 2016 and 31 December 2016; and
- (e) \$57,302.00, being the estimated anticipated I-D settlement administration costs between 1 January 2017 and 31 January 2017.

134. Now produced and shown to me marked 'AJW-4' is a copy of the itemised invoices for settlement administration costs and disbursements for work carried out between 1 May 2016 and 30 September 2016.

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135. The costs and disbursements incurred to date in the course of the settlement administration have been allocated into three categories, according to whether they relate to:

- (a) processes common to all group members (**General Settlement Administration**);
- (b) processes specific to the assessment of group members' personal injury and dependency claims (**I-D Settlement Administration**); or
- (c) processes specific to the assessment of group members' economic loss and property damage claims (**ELPD Settlement Administration**).

136. These categories correspond to the division of the Distribution Sum into an I-D Claims Fund and an ELPD Claims Fund, as set out in Section B1.1 of the Settlement Distribution Scheme.

137. In previous affidavits I have set out extensive detail regarding the nature of the work performed by the SDS team and the disbursements incurred by the Scheme. This information has been provided to Mr White for the purposes of his review of our costs and I do not propose to repeat it here. In order to effect the I-D distribution it is also necessary to estimate the costs from 1 October 2016 to 31 January 2016, and to this end Mr White has also been provided with an estimate of the costs and a description of the work to be performed over this period.

PROPOSED TRANSFER PAYMENT FROM MURRINDINDI DISTRIBUTION SUM TO KILMORE DISTRIBUTION SUM

138. Since the last Case Management Conference, together with senior members of the SDS Team I have conducted a review of the costs incurred in the Kilmore and the Murrindindi settlement administrations. This review was motivated by the observation made by senior members of the SDS Team that all aspects of the Murrindindi settlement administration have benefited from the Kilmore settlement administration because they have largely replicated the procedures and systems developed for the Kilmore settlement administration. This has resulted in significantly lower costs both in absolute terms and proportionately being incurred in the Murrindindi matter when compared with than the Kilmore matter.

139. As an indicator, settlement administration costs in the Kilmore settlement administration to 30 September 2016 are \$27,824,425.35 and constitute 6.4% of

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the settlement sum whilst the corresponding figures for the Murrindindi settlement administration are \$7,040,080.47 and 2.5%. In other words, as things presently stand I am concerned that the Kilmore Settlement Administration has borne a disproportionate share of the set up and development costs associated with the administration of the two schemes. It is my view that the set up and development costs should be shared equally between the two schemes because they are in the nature of fixed costs and not dependent on claim numbers or settlement size.

140. In order to ensure that the claimants to this proceeding do not bear a disproportionate share of the set-up and development costs for the two proceedings, I have made an application in the Murrindindi settlement administration proceeding for a transfer payment of \$3,782,340.77 (inclusive of GST) to be made from the Murrindindi settlement fund to the Kilmore settlement fund.
141. I do not believe it is cost effective to engage in a line by line examination of the many bills in the proceeding to assess whether they are appropriately characterised as set up or development costs. This would be unduly time consuming and expensive. I have calculated the amount of the transfer payment on the following basis:
- (a) that I-D professional costs and disbursements prior to 30 June 2015 were all for set up and development work to the benefit of both schemes;
 - (b) that ELPD professional costs before 31 December 2015 were all for set up and development work to the benefit of both schemes;
 - (c) that senior operator time on the General Settlement Administration file has generally been for the benefit of both schemes.
142. In each instance I have calculated the total incurred for each category above on both the Kilmore and Murrindindi files, apportioned that total equally between the two files and calculated the amount which would be required to be transferred from the Murrindindi settlement fund to the Kilmore settlement fund to achieve that outcome. Now produced and shown to me and marked 'AJW-5' is a copy of that calculation. Mr White has also been provided with a copy of this calculation and the data underlying this calculation.



143. Whilst there may be some individual elements of the costs incurred in the above categories which were not incurred for the benefit of both schemes there will be other elements of costs which can be so categorised which are not captured. For example, I consider some of the ELPD disbursements incurred during the period to 31 December 2015 to be for the assessment of prototype ELPD assessments which benefited the Murrindindi ELPD claimants equally to the Kilmore ELPD claimants. However, a high number of disbursements incurred in the Kilmore settlement administration over this period were also attributable to payment of pre-assessed ELPD claims. As such I consider it difficult to ascertain what proportion of the ELPD disbursements incurred over this period can be attributed to the establishment of the ELPD settlement administration processes and systems and have accordingly not taken such costs into account. In all, I am satisfied that the proposed transfer payment is fair though not precise.

CONCLUSION

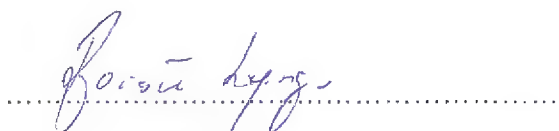
144. In light of the significant progress which continues to be made on each of the I-D and ELPD distributions since my last affidavit, it remains very likely that distributions will occur in the previously advised time frame of by the end of this year or in the early part of next year.

SWORN by the deponent at)
Melbourne in the State of Victoria)
this 31st day of October 2016)



Before me:

ROISIN MARY LYNG
of 456 Lonsdale Street, Melbourne
an Australian Legal Practitioner
within the meaning of the Legal
Profession Uniform Law (Victoria)



FILED on behalf of the Plaintiff