

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

No. 4788 of 2009

B E T W E E N:

CAROL ANN MATTHEWS

Plaintiff

and

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

Defendants

(by original proceeding)

A N D B E T W E E N:

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:

18 March 2016

Filed on behalf of:

The Plaintiff

Prepared by:

Maurice Blackburn Lawyers
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Melbourne Vic 3000

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DX: 466 Melbourne
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.

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Ad W

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 the number of assessments completed and/or underway;
 - (c) providing the Court with an update in relation to work performed by the Scheme Administrator and the Settlement Distribution Scheme team (**SDS Team**);
 - (d) subject to the outcome of a review of such costs by the independent costs assessor appointed by the Court, seek approval of Scheme Administration Costs.

PERSONAL INJURY AND DEPENDENCY CLAIMS

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

4. There are 1,731 registered personal injury and dependency group members who registered an on time claim before class closure on 22 March 2013. As at 18 March 2016, 123 additional personal injury and dependency group members have been accepted as late registrants. As at 18 March 2016, there are in total 1,854 personal injury and dependency group members.
5. The steps being taken to assess each of these 1,854 personal injury and dependency claims and to address bottlenecks identified in the assessment process are detailed in my previous Affidavits dated 13 April 2015, 9 October 2015 and 25 February 2016.

B. SUMMARY OF ASSESSMENT PROCESS TO DATE

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6. As at 18 March 2016, of the 1,854 registered personal injury and dependency group members:
- (a) 1,830 electronic surveys have been completed by group members which equates to approximately 98 per cent of registered personal injury and dependency group members.
 - (b) 1,644 detailed personal injury questionnaires have been completed which equates to approximately 89 per cent of registered personal injury and dependency group members.
 - (c) 1,271 group members have attended a conference with assessing counsel which equates to approximately 69 per cent of registered personal injury and dependency group members.
 - (d) 60 group members currently have conferences scheduled with counsel and a further 132 group members are ready to be assessed by counsel. The SDS Team is in the process of scheduling these 132 conferences. Combined these will equate to approximately a further 10 per cent of registered personal injury and dependency group members.
 - (e) 343 Notices of Assessments and Statements of Reasons are currently outstanding from assessing counsel. In a small number of cases, counsel is awaiting the provision of further material before completing the assessment.
 - (f) 928 Notices of Assessments and Statements of Reasons have been received from assessing counsel to date and 140 are currently being reviewed by the SDS Team.
 - (g) 788 Notices of Assessments and Statements of Reasons have been reviewed by the SDS Team and have been sent or are ready to send to group members.
 - (h) 8 requests for review have been received from group members to date.
7. As at 18 March 2016, the following records and documents have been requested:
- (a) The SDS Team has requested 1,249 ATO records, of which 1,205 have been received.

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- (b) The SDS Team has requested 1,997 GP records, of which 1,942 have been received.
- (c) The SDS Team has requested 1,073 psychiatrist, psychologist or counsellor records of which 1,007 have been received, or the SDS Team has determined that we are unable to obtain such records after repeated requests for such records have failed.
- (d) The SDS Team has requested 191 records from third parties such as the Transport Accident Commission (TAC), the Country Fire Authority (CFA) and WorkCover of which 175 records have been returned.

C. CHANGES TO ASSESSMENT PROCESS

- 8. Data in relation to the assessment process continues to be reviewed by senior SDS Team members on a weekly basis in order to identify as early as possible any significant delays or potential delays in the assessment process. As a result, since the Case Management Conference on 9 October 2015 and in addition to those changes set out in my affidavit dated 25 February 2016, we have undertaken the following steps in relation to the assessment process:

- (a) ATO records were taking up to 3 months to be provided by the ATO following requests being made, causing significant delays in the assessment process. On 10 February 2016, two senior members of the SDS Team met with [REDACTED], [REDACTED] to discuss the assessment process and the importance of the records being provided in a timely manner. It was apparent that the requests had not been managed by the appropriate person within the ATO and that there were insufficient resources to process the requests in a timely manner. During the meeting, the ATO agreed to allocate dedicated resources to our requests and to have the requests overseen by [REDACTED]. Since this time, there has been a significant improvement in the provision of records. ATO records are now being provided to the SDS Team within approximately 2 weeks of the request being made.
- (b) The SDS Team is no longer conducting electronic surveys for those group members who were yet to complete the electronic survey. Those group members yet to complete the electronic survey include accepted late registrants and a small number of uncontactable or uncooperative group

Kate McKenna *Ad K*

members. The information that was gathered at the electronic survey stage will now be gathered through the personal injury questionnaire. If group members fail to complete the personal injury questionnaire in the time provided, we will proceed to assess these claims on the basis of the information, if any, contained on the file.

- (c) Steve Walsh, Chairman of Maurice Blackburn, has made personal telephone calls to those assessing counsel with large numbers of outstanding assessments to request that these assessments be submitted as a matter of priority. Unfortunately, despite very positive assurances provided to Steve Walsh by counsel during these telephone calls, the telephone calls have had little impact on the number of assessments being submitted by these counsel. I will file a confidential affidavit before the case management conference specifically identifying those counsel with large numbers of outstanding assessments.
- (d) The SDS Team had been holding back the assessment of claims involving third party statutory bodies such as the TAC, the VWA, the CFA, and the DVA (**crossover claims**) until a date of distribution was known so that counsel could accurately assess aspects of the claims such as paybacks and preclusions. The SDS Team is now preparing these crossover claims to be assessed with an instruction to counsel that the advice and assessment should be based on a specified estimated future distribution date. The assessment will be in a form which permits any final adjustments which are necessary to be made to the assessment amounts to be done by the SDS Team to factor in statutory payments made up until the actual distribution date. This change in process will result in an additional 100 group members being ready to be assessed by counsel.
- (e) For those group members who had private health insurance, the SDS Team were awaiting receipt of a notice of charge from the private health insurer before sending the group member to be assessed by counsel. Where the notice of charge is the only material outstanding for the group member, the SDS Team has now commenced sending those group members to be assessed by counsel and advising counsel that the notice of charge and payback figure will be incorporated into the notice of assessment by the SDS Team when it is received at a later date.

Kate McKenna *Ad K*

D. CHANGES TO THE SDS TEAM

9. Since the October Case Management Conference, the following changes have been made to the SDS Team:
 - (a) Rhiannon Reid, Associate, has departed for maternity leave. She has been replaced by Elizabeth Mukherji. Ms Mukherji is a Senior Associate with extensive personal injury and class action experience, having worked at Maurice Blackburn in the Class Action Department from 2005 to 2008 and at Slater & Gordon as a personal injury lawyer from 2009 to January 2016.
 - (b) Kathleen Sheehy, Solicitor, has departed for maternity leave. The SDS Team has recruited a replacement for Ms Sheehy who will commence in April 2016. The replacement is an Associate with over 5 years post-admission experience as a personal injury lawyer.
 - (c) Kate McFarlane has commenced on the team. Kate McFarlane is a Lawyer who has extensive experience working on both the Kilmore and the Murrindindi proceedings, having worked on the preparation for and the trial of the Kilmore proceeding and on the preparation for the Murrindindi proceeding.
10. The SDS Team members who are responsible for the administration for personal injury and dependency claims assessment under both the Kilmore SDS and under the SDS in this proceeding is currently comprised of:
 - (a) Andrew Watson, Scheme Administrator. Approximately 10% of his time is directed towards the Kilmore settlement administration.
 - (b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
 - (c) Elizabeth Mukherji, Senior Associate, engaged three days per week. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
 - (d) Simba Makoni, Associate, engaged on a full-time basis. Approximately 70 per cent of his time is directed towards the Kilmore settlement administration.



- (e) Megan Greaves, Lawyer, engaged on a full time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
- (f) Five paralegals working an equivalent of 4.2 full time positions. Approximately two thirds of their time is directed towards the Kilmore settlement administration.
- (g) Seven administrative assistance working an equivalent of 5.9 full time positions. Approximately two thirds of their time is directed towards the Kilmore settlement administration.

E. CHANGES TO TEAM OF ASSESSING COUNSEL

11. We have now appointed 34 members of counsel, experienced in acting for plaintiffs in personal injury litigation, to participate in the assessment process of personal injury and dependency claims. The process of engagement and training of these counsel is detailed in Section H, paragraphs 79 - 84 of my Affidavit dated 13 April 2015 and Section F, paragraphs 22 - 23 of my Affidavit dated 9 October 2015 and my Affidavit of 25 February 2016:

- | | |
|---------------------|------------------------|
| 1. Adam Hill | 12. Gary Clarke |
| 2. Amy Wood | 13. Gavin Coldwell |
| 3. Andrew Dimsey | 14. James Fitzpatrick |
| 4. Andrew Keogh SC | 15. John Valiotis |
| 5. Angus Macnab | 16. Julia Frederico |
| 6. Bruce Anderson | 17. Kim Bradey |
| 7. Christine Boyle | 18. Marcus Fogarty |
| 8. Conor O'Sullivan | 19. Maria Pilipasidis |
| 9. Daniel Wallis | 20. Marietta Bylhouwer |
| 10. Fiona Ellis | 21. Melanie Szydzik |
| 11. Fiona Ryan | 22. Michael Clarke |

Kate Myles *Paul Myles*

23. Michael Schulze

29. Patrick Over

24. Miguel Belmar

30. Raph Ajensztat

25. Neil Rattray

31. Rebecca Dal Pra

26. Nick Dubrow

32. Simon Martin

27. Nick Dunstan

33. Steve Carson

28. Nikki Wolski

34. Tim Tobin SC

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

12. There are 76 personal injury or dependency claim group members who have instructed the SDS Team that they do not wish to proceed with their personal injury claims. 74 of these 76 group members have had their instructions confirmed in writing and have been provided with a \$Nil assessment. The remaining two members have only recently provided instructions that they do not wish to proceed.

G. UNCOOPERATIVE GROUP MEMBERS

13. There are presently 66 group members who are refusing to provide instructions or information necessary to have their claims assessed. The SDS Team is currently reviewing each of these files to determine that the attempts made to obtain the necessary instructions or documents have been sufficient. If so, the group members will be given an opportunity to meet with assessing counsel. Those uncooperative group members who do not meet with assessing counsel will receive a \$Nil assessment.

H. UNCONTACTABLE GROUP MEMBERS

14. There are presently 10 group members who are uncontactable. Australian Electoral Commission (AEC) records have been searched for 9 of these group members and letters sent to their registered address, all of which have been marked returned to sender. The SDS Team will be attending the AEC to inspect AEC records shortly in relation to the remaining uncontactable group member. The SDS Team are in the process of conducting further investigations in an attempt to locate these uncontactable group members, including through use of internet and social media searches. Where all attempts at locating a group member have failed and there is insufficient evidence on file to support a claim, I intend to issue a \$Nil assessment.



I. COUNTRY FIRE AUTHORITY

15. On 17 December 2015, Maurice Blackburn reached agreement with the CFA regarding the interaction between group members' entitlements under the CFA compensation scheme and the SDS. The agreement specifies that:
- (a) group members' assessments under the SDS for various heads of damage (such as loss of earnings or medical and like expenses) will be reduced by any statutory benefits received from the CFA which are relevant to such heads of damage;
 - (b) receipt of compensation for a particular head of damage under the SDS will result in the termination of future statutory benefits relevant to that particular head of damage from the CFA;
 - (c) group members will be able to elect to receive compensation under the SDS for a particular head of damage or maintain their entitlement to CFA statutory benefits relevant to that head of damage;
 - (d) there will be no impact upon group members' statutory benefits from the CFA until such time as they are in receipt of compensation; and
 - (e) group members who are receiving compensation under the CFA compensation scheme will not lodge claims for permanent disability under the CFA scheme whilst the settlement process is underway.

J. VICTORIAN BUSHFIRE APPEAL FUND (VBAF) RECORDS

16. On 5 November 2015 a Form 42AA Subpoena was served on the Department of Health and Human Services (DH&HS) and service was accepted on 18 November 2015.
17. The Subpoena required the DH&HS to produce documents in relation to 1,061 group members.
18. At the Case Management Conference held in October 2015, His Honour Justice Forrest raised issues regarding the question of the SDS Team's authority to inspect the subpoenaed records.
19. Following the Case Management Conference, the SDS Team reviewed the authorities which it held on file in relation to the personal injury and dependency group members and ascertained that they had not collected a general authority to access group member records from each group member.

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20. As such, the SDS Team determined that it was necessary to collect specific authority to access the subpoenaed documents prior to inspecting.
21. To this end, the SDS Team contacted the DH&HS and requested that they provide a list of those individuals whose records had been produced. Without this information, the SDS Team would have been required to obtain authorities from each of the 1,061 in relation to whom the subpoena related. However, it was not expected that the DH&HS had produced documents in relation to all such 1,061 group members as the previous request made by the SDS Team for the records of 50 group members returned records in relation to only 13 group members.
22. On 18 February 2016, the SDS Team was advised by [REDACTED] at DH&HS, that the DH&HS would not provide the SDS Team with the requested list because to do so would be a breach of the *Privacy and Data Protection Act 2014* (Vic).
23. The SDS Team has discussed the necessity of obtaining access to the subpoenaed records with Andrew Keogh SC at this late stage in the assessment process. The view of Senior Counsel is that whilst the SDS Team would undoubtedly benefit from receipt of the documents, the group member claims could be properly assessed without these documents. Accordingly, the SDS Team has not pressed for inspection of these records.

K. ESTIMATED COMPLETION

24. Currently the SDS Team estimates that all initial assessments should be complete by the third quarter of this year. If this is achieved a distribution by the end of this year or early next year should be possible. This estimate is dependent on improving the rate of assessment completion and reducing the backlog of outstanding assessments.
25. If Maurice Blackburn is permitted to use appropriately qualified internal assessors in the ID assessment process I believe we will have a much greater chance of meeting this estimate and bringing forward the completion date. Currently an average of 34 assessment appointments are being scheduled per week. I will be able to make arrangements to increase this by 5 to 10 assessments per week if I am permitted to utilise appropriately qualified Maurice Blackburn solicitors.



ECONOMIC LOSS AND PROPERTY DAMAGE (ELPD) CLAIMS**A. THE SDS TEAM**

26. 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% of his time is directed towards the Kilmore settlement administration.
- (b) Kimi Nishimura, Senior Associate, engaged three days per week. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
- (c) Claire Brown, Lawyer, engaged on a full-time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
- (d) Five paralegals working an equivalent of 3.3 full time positions. Approximately two thirds of their time is directed towards the Kilmore settlement administration.

B. SUMMARY OF ELPD ASSESSMENT PROGRESS TO DATE***Allocation to ELPD loss assessors***

27. The assessment of ELPD claims in this proceeding will involve the assessment of claims at an estimated 3523 unique property addresses. Of these addresses, an estimated 2012 unique properties include an above-insurance claim. The SDS Team is prioritising the assessment of properties involving the assessment of above-insurance claims as such claims require ELPD Assessors to consult with group members about their uninsured losses and is more time-intensive.

28. As at 16 March 2016, the following mix of properties have been allocated for assessment:

- (a) 1562 or 78% of properties with an above-insurance claim have been allocated for assessment to the ELPD Assessors; and
- (b) 1021 or 68% of properties which involve the assessment of subrogated-only claims have been allocated for assessment to ELPD Assessors.



PNOAs completed as at 15 March 2016

29. As at 15 March 2016, approximately 700 or 20% of Provisional Notices of Assessment (**PNOAs**) have been completed by ELPD Loss Assessors. The completed PNOAs are comprised of:
- (a) PNOAs which have been or are ready to be issued to above-insurance group members. There are approximately 480 PNOAs which fall within this category; and
 - (b) PNOAs which assess subrogated-only losses. There are approximately 220 PNOAs which fall within this category.

PNOAs issued to above-insurance group members

30. I refer to my Affidavit dated 9 October 2015 regarding the progress of the preparation of PNOAs. At paragraph 59 of that Affidavit, I stated that I anticipated that the ELPD Assessors would be in a position to issue the 510 already completed PNOAs by the end of 2015.
31. In November 2015, a meeting was held between the SDS Team and the ELPD Assessors regarding the issuing of PNOAs. During the course of this meeting, the ELPD Assessors raised concerns about issuing PNOAs during the holiday period due to the likely absence of many group members from their usual places of residence. Upon consideration of this issue, the SDS Team directed the ELPD Assessor not to issue any PNOAs until after 21 January 2016, with a view to ensuring that group members could respond to any issues identified in the PNOAs within the 14 day period specified in section E4.2(c) of the SDS.
32. During the November 2015 meeting, the ELPD Assessors also raised concerns about their capacity to respond to group member enquiries in a timely fashion if they were required to issue all of their completed PNOAs at once. Upon consideration of this concern, the SDS Team advised the ELPD Assessors that they could issue their completed PNOAs in tranches so as to manage their work flow.
33. The ELPD Assessors commenced issuing PNOAs in tranches in late January 2016.
34. As at 15 March 2016, approximately 320 PNOAs have been issued to group members, with an additional 160 to be issued shortly.



35. Pursuant to E4.2 of the SDS, a group member then has 14 days to consider the 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**).
36. The PNOAs are accompanied by a pro forma letter, Dispute Notice and brochure drafted by the SDS Team which explain how to interpret the PNOA and advise group members of their rights under the SDS.
37. 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 9% of all PNOAs issued to date. The ELPD Assessors have reviewed all such Dispute Notices received to date and in all but one instance, the ELPD Assessors have revised their assessment to accommodate the new information received from the group member by way of Dispute Notice.

PNOAs assessing subrogated-only losses

38. The ELPD Assessors have completed approximately 220 assessments of properties which involve the assessment of subrogated-only losses. To date, no PNOAs have been issued to any insurers. It is my intention to issue a single PNOA and then a single Final NOA to each insurer which has registered claims in this proceeding in relation to all subrogated claims made by that insurer. To this end, where a PNOA pertains only to subrogated claims, we have requested the ELPD Assessors to forward these PNOAs to the SDS Team. It is my intention that the PNOA for insurers will contain:
- (a) The property loss address;
 - (b) The insured's name;
 - (c) The amount registered by the insurer in this proceeding in accordance with Order 4 of the class closure orders dated 24 January 2013; and
 - (d) The assessed amount.

Final Notices of Assessment to be issued

39. Under section E4.4 of the SDS, after the expiry of the 14 day period in which a group member can issue a Dispute Notice, ELPD Assessors are required to forward finalised assessments to the SDS Team.



40. As at 18 March 2016, the SDS Team has received 31 finalised assessments. The SDS Team has recently engaged a solicitor to oversee the issue of the Final Notices of Assessment and is in the process of recruiting a paralegal to assist with this process. The SDS Team is currently developing processes necessary to issue and manage such assessments, including:
- (a) developing processes for reviewing and monitoring assessments received from the ELPD Assessors in the Matter Centre database;
 - (b) saving assessments in individual group member folders;
 - (c) saving assessments in a data upload folder to facilitate the automatic loading of data from the assessment into the Matter Centre database through use of the data upload tool referred to in my Affidavit of 9 October 2015 at paragraph 55;
 - (d) converting such assessments into portable document format (PDF) form from the native Excel format,
 - (e) development of pro forma correspondence to accompany the Final Notice of Assessment;
 - (f) emailing and sending Final Notices of Assessment to group members;
 - (g) monitoring review periods;
 - (h) responding to group member enquiries regarding Final Notices of Assessment; and
 - (i) responding to any requests for review of Final Notices of Assessment.

C. COLLATION OF INFORMATION REQUESTED BY ASSESSORS

41. The SDS Team has undertaken a series of discussions with the ELPD Assessors in order to identify what it can do to assist with increasing their assessment speed. Both Crawfords and RMCG requested that the SDS Team send property loss workbooks to group members who have not previously completed an ELPD property loss workbook.
42. To this end, in early 2016 together with RMCG, a property loss workbook was developed. On 1 March 2016 the SDS Team distributed this property loss workbook to all group members who had not previously been allocated to an ELPD Assessor for assessment.

43. The distribution of workbooks has meant that in order to ensure that assessments can be completed as quickly as possible, the SDS Team has taken on the role of gathering information from ELPD claimants for provision to the ELPD Assessors. It was previously envisaged that this role would be assumed by the ELPD Assessors.

D. CHANGES TO ASSESSMENT PROCESS UPDATE

44. Since October 2015, the SDS Team has continued to improve the systems used to manage the ELPD assessment process.

Claims-per-Property Report

45. Between October and early November 2015, the SDS Team continued the work of standardising and reconciling all ELPD claims.
46. The SDS Team were then able to generate a report on 11 November 2015 which identified a list of every claim registered in relation to a property (**Claims-per-Property report**). This report has significantly increased the efficiency of the assessment process as it has enabled the SDS Team to allocate all claims (including subrogated claims) relating to a property to the same ELPD Assessor, so that they may be assessed at the same time. It has also enabled the SDS Team to be able to actively monitor assessments which are in progress.
47. The Claims-per-Property report continues to be refined during the ELPD Assessment Process as new information about related claims becomes available.

Retrofit progress

48. In November 2015, after completing the creation of the Claims-per-Property report, the SDS Team provided each ELPD Assessor with a Claims-per-Property report which reconciled claims which had been allocated to each ELPD Assessor as of 11 November 2015 with the new report. The ELPD Assessors were directed to use this report to finalise PNOAs for these properties, including use of the report to:
- (a) ensure that the assessment covered all registered ELPD above-insurance claims at the property address;
 - (b) ensure that the assessments included the assessment of all registered subrogated claims at for the property address; and



- (c) contact group members to ascertain the allocation of payments as between group members registered at the same property.
49. The majority of the PNOAs which had been completed prior to the completion of the ELPD Allocation Report and the new PNOA template being introduced have now been retrofitted by Hall and Wilcox, Ligeti Partners and Crawford. There has, however, been a delay in the retrofit of RMCG's assessments. The SDS Team has held a number of discussions with RMCG regarding the progress of the retrofit. The SDS Team informs me that the delay experienced by RMCG has occurred due to:
- (a) RMCG having completed a higher number of assessments than the other three assessor firms as at the time that the new template and ELPD Allocation Report were introduced; and
 - (b) apparent staffing issues that RMCG experienced in the second half of 2015 which RMCG has reported that they have since addressed.
50. RMCG currently estimates that it will have completed the retrofit by mid May, if not sooner. I am concerned at the progress RMCG has made on the retrofit process compared to other ELPD Assessors. The SDS Team continues to actively monitor the progress of the retrofit.

Revised PNOA template

51. On 7 March 2016, the SDS Team distributed a revised PNOA to the ELPD Assessors to address a formula error affecting a very small number of assessments, if any, to a very small degree. The SDS Team will review all PNOAs issued using the old template and address any errors made as a result of the formula error before a Final Notice of Assessment is issued to the group member. The SDS Team will bring this error to the attention of any group member that this impacts, which as indicated above we estimate to be likely to be minimal in terms of both the number of assessments, if any, and the degree to which they are affected.

Identification of ELPD claims ready for assessment

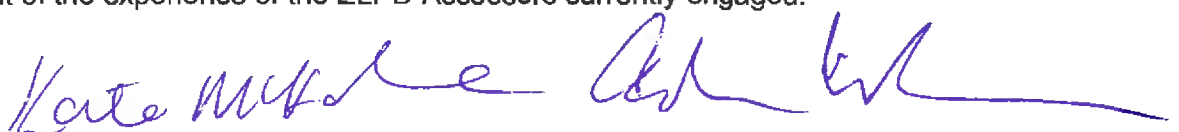
52. The SDS Team has created a report which identifies which loss addresses with an above-insurance claim have had property loss workbooks returned to the SDS Team (**Property Loss Workbook Report**).



53. The SDS Team utilises the Property Loss Workbook Report to promptly identify properties that are ready to be assessed by an ELPD loss assessor.
54. In some instances, group members are unable to complete a property loss workbook. This may be for a variety of reasons, including being overwhelmed by the ELPD Assessment Process. In these instances, we record this information on Matter Centre, and refer the ELPD claim to be assessed without the provision of a workbook. The ELPD Assessor will then contact the group member by telephone, and, if required, the ELPD Assessor may request further documents directly from the group member.

E. ESTIMATED DURATION

55. The SDS Team closely monitors the progress of the ELPD loss assessments and the performance of each of the ELPD Assessors. In early February 2016, RMCG communicated to the SDS Team that it could not assess as many ELPD claims by 29 July 2016 as had previously been anticipated.
56. The SDS Team has since conducted negotiations with both Hall and Wilcox and Crawfords who have agreed to increase the volume of assessments to be completed by these two firms and the speed with which such assessments can be completed. I have also recently engaged Technical Assessing as an additional ELPD Assessor with a view to ensuring that the ELPD assessments can be conducted within as short a time frame as is reasonably possible.
57. The SDS Team has communicated to all ELPD Assessors that if their assessment rate does not meet their stated commitment, we may re-allocate claims to another ELPD Assessor.
58. I have recently appointed the firm Technical Assessing as an additional ELPD loss assessor. The SDS Team has arranged for Technical Assessing to be trained and audited by Crawfords in order to ensure ongoing consistency between ELPD Assessors.
59. The SDS Team is also presently in discussions with a large global loss adjusting firm. If I am not satisfied with the loss assessment rate of the current ELPD Assessors, it is my intention to engage this firm as an additional ELPD Assessor to assist in the assessment of ELPD claims. The appointment of additional loss assessors in the interests of increasing the assessment speed must, however, be balanced with the benefit of the experience of the ELPD Assessors currently engaged.



60. Based on agreed numbers and timeframes reached with each of the ELPD Assessors, I anticipate that the ELPD Assessor firms will be able to issue Provisional Notices of Assessments (**PNOAs**) for all ELPD assessments in the third quarter of this year. Taking into account review periods, this will permit the distribution of settlement funds towards the end of 2016 or early 2017.

F. ELPD ASSESSOR AUDIT

61. I refer to paragraphs 76 to 80 of my Affidavit dated 9 October 2015 which describes the ELPD Assessor audit procedure established by the SDS Team to ensure that group members are being assessed on a consistent basis, regardless of which ELPD Assessor is conducting the assessment.
62. The SDS Team received the results of this audit from each ELPD Assessor in late October 2015 and subsequently arranged for this feedback to be distributed to each ELPD Assessor.
63. The audit identified issues that required rectification. The substantive issues consisted of the following:
- (a) PNOA containing insufficient detail for group members to understand the reasons for their assessments;
 - (b) Incorrect application of loss assessor principles under the SDS;
 - (c) Inconsistencies between the ELPD Assessors; and
 - (d) Inadequate quality assurance processes.
64. As a result of the audit, the SDS Team met with two ELPD Assessors to discuss the audit results, provided guidance as to how to rectify these issues and requested that these firms rectify such issues prior to issuing any PNOAs. The SDS Team subsequently organised for an additional random spot audit to be conducted once these firms had stated that all previous assessments had been rectified. I am now satisfied that these firms have addressed the issues identified through the audit process.
65. The SDS Team also organised an audit conference between all ELPD Assessors and senior members of the ELPD SDS Team on 25 November 2015. At this conference, and under the guidance of the SDS Team, the ELPD Assessors further discussed the application of loss assessment principles under the SDS.



High Level audit review

66. In addition to the peer-to-peer audit review referred to above, the SDS Team has directed each ELPD Assessor to provide to the SDS Team loss assessment data averages. The SDS Team analyses this data by comparing all the averages globally and across each head of loss to identify any potential differences in the assessment approaches used by the ELPD Assessors. In particular, the SDS Team looks for significant differences in the average assessments for particular heads of loss.
67. In November 2015, the SDS Team became concerned that the average assessment amounts of one of the ELPD Assessors were substantially higher than the other ELPD Assessors. The SDS Team conducted an investigation into this apparent difference in assessment approach. The SDS Team:
- (a) directed a separate ELPD Assessor to undertake a further audit of the ELPD Assessor's assessment to identify any potential differences in the assessment approach applied by that ELPD Assessor;
 - (b) examined the tranche of ELPD assessments allocated to the ELPD Assessor to identify whether this was an irregular sample of ELPD claims; and
 - (c) requested the ELPD Assessor to review this issue internally, with a view to establishing why their average assessment amounts were substantially higher than the other ELPD Assessors.
68. As a result of these investigations, the SDS Team ascertained that the insured to uninsured loss ratio of the ELPD Assessor in question was generally consistent with the insured to uninsured loss ratio of the other assessor firms. This indicated that the properties assessed by the firm in question had higher levels of insurance in comparison to an average property, and therefore that the overall losses sustained at the property were likely to be higher than at the average property. Taking this information into account, I satisfied myself that the differences in the assessment amounts produced by this ELPD Assessor was due the firm having been allocated either a non-random or a random but unrepresentative sample of properties for assessment.
69. The SDS Team will continues to audit the average assessment amounts of all ELPD Assessors in order to ensure that the ELPD assessment process is conducted



consistently across ELPD Assessors with a view to ensuring fairness for all group members.

Audit of new ELPD Assessor appointed under the SDS

70. In order to ensure that the quality and consistency achieved by the original ELPD Assessors is maintained by Technical Assessing, the SDS Team has arranged for Crawfords to audit their work before any PNOAs are issued by Technical Assessing.
71. The SDS Team will continue to conduct random spot audits in order to ensure that ELPD assessments are being assessed consistently and to a high quality by all ELPD Assessors.

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

72. As of 15 March 2016, 101 group members have advised the SDS Team that they do not wish to proceed with an ELPD claim for compensation.
73. 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;
74. 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 because 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.
75. As of 15 March 2016, the SDS Team has contacted 64 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.
76. Following these calls, correspondence has been sent to 50 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.

77. We have informed these group members that we will be issuing them with \$Nil assessments. To date, no \$Nil assessments have been issued.

H. UNCONTACTABLE GROUP MEMBERS

78. 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.
79. In addition to this, Hall and Wilcox registered above-insurance claims on behalf of persons the subject of subrogated claims, to preserve the rights of those persons. For approximately 30 of these above-insurance claims, Hall & Wilcox have instructed us that they have not been able to contact the above-insurance claimant, and otherwise have very little information other than the location of the fire-affected property.
80. The SDS Team is currently setting up processes to attempt to locate these persons, including instructing a paralegal to attend the Australian Electoral Commission (AEC) to obtain updated contact details.
81. Where a person has passed away, the SDS Team will conduct probate searches to identify the appropriate person to provide instructions on behalf of the estate.

LATE REGISTRANTS

82. As at 16 March 2016 Maurice Blackburn has received late registration forms from 371 claimants.
83. I have considered the evidence of 270 of the 371 claimants.
84. In respect of 160 of the late registrants considered to date, I have determined that the evidence discloses compassionate grounds that constitute a basis for inclusion of these claims in the scheme. Of these claims, 48 are in respect of claims for both PI and ELPD, 75 are for PI only, and the remaining 37 for ELPD only. I have caused notices to be sent to these claimants advising them of this decision.
85. In respect of 55 of the late registrants considered to date, I have determined that the evidence does not disclose compassionate grounds that constitute a basis for inclusion

of these claims in the scheme. I have caused notices to be sent to these claimants advising them of this decision.

86. In respect of the remaining 55 late registrants that have been considered to date, there is presently insufficient evidence to allow me to decide whether they should be included or excluded in the scheme. For these, I have caused further inquiries to be made.
87. I recently formed a view that it was necessary to impose a deadline for the receipt of late registration applications in order to ensure late registrant claims do not delay the distribution of the settlement. At my direction, any individuals who have made late registration inquiries since 3 March 2016 have been told that the deadline for making a late registration application has passed and no further applications will be considered.

INTERIM PAYMENTS

88. As at 16 March 2016, I have received 36 applications for interim payment on the basis of exceptional need pursuant to section D1.4 of the SDS.
89. Of these, 24 group members have been assessed as being eligible to receive compensation from the settlement sum and 12 have claims which are yet to be assessed.
90. To date, I have considered the applications of 21 of the group members who have been assessed as being eligible to receive compensation. 19 of these group members have been successful in their applications for an interim payment and 2 have been unsuccessful.
91. The remaining 3 group members who have been assessed as eligible to receive compensation have yet to be assessed for eligibility for interim payment.

SENIOR MASTERS OFFICE

92. As per Section H2 of the Settlement Distribution Scheme, I continue to maintain with the Senior Master's Office a current register identifying each Order 15 Claimant and the contact details of the personal representative of each Order 15 Claimant.
93. During the course of completing the Personal Injury Questionnaire, the conferences with assessing counsel and with ELPD Loss Assessors it is anticipated that further group members who are lacking capacity will be identified. Upon identification of such

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group members, the SDS Team will ensure that a Personal Representative is appointed for such group members and the Senior Master's Office notified accordingly.

TAXATION ISSUES

94. I refer to paragraphs 147 to 151 of my Affidavit dated 9 October 2015 regarding the steps taken as at that date to reduce the taxation liability of the Distribution Sum. The following steps have been taken to advance this issue since the time of swearing that Affidavit:

- (a) The SDS Team instructed Pitcher Partners to engage with the ATO regarding the applicability of the decision in *Whitaker v Federal Commissioner of Taxation* (1998) 98 ATC 4285 (***Whitaker's case***) to the Distribution Sum.
- (b) Pitcher Partners engaged with the ATO on a preliminary basis regarding this issue and on 4 November 2015, Kimi Nishimura and I attended a teleconference with Pitcher Partners and Michael Majoor of the ATO to discuss the applicability of *Whitaker's case* to the Distribution Sum.
- (c) Following this discussion, Michael Majoor initiated informal processes at the ATO with a view to getting an internal opinion as to the assessability of the interest earned on the Distribution Sum. This informal process took some time to occur.
- (d) On 8 March 2016, the SDS Team were informed by Pitcher Partners that the outcome of the informal ATO review of this issue had been unfavourable, in that the ATO did not think that *Whitaker's case* applied and that in their view the interest earned on the Distribution Sum would therefore be assessable.
- (e) Pitcher Partners have advised that there are two options for further investigating this issue:
 - i) Applying to the ATO for a Substituted Accounting Period to apply to the Distribution Sum. This would have the effect of altering the taxation year, therefore reducing the taxation liability of the Distribution Sum. This is the course recommended by Pitcher Partners at this point in time. Pitcher Partners have advised that this process is generally fairly quick, and that it is likely to take around 28 days from the date of submission of an application for a Substituted Accounting Period.



- ii) Applying for a Private Ruling from the ATO. Pitcher Partners recommends that this course be pursued if the application for a Substituted Accounting Period is unsuccessful. Pitcher Partners has advised that this process generally takes approximately 3 months from the date of application for a Private Ruling.
- (f) The SDS Team has instructed Pitcher Partners to prepare an application for a Substituted Accounting Period in accordance with their advice and continues to monitor this issue. I intend to obtain further advice on the applicability of *Whitaker* because of the importance of the issue.

COSTS

95. In light of the anticipated delays in the distribution of the settlement I had given active consideration to deferring seeking approval in relation to Maurice Blackburn's professional costs associated with administering the Scheme until all assessments have been finalised. In light of the recent advice from the ATO we have been advised by Pitcher Partners that the prudent thing to do from a tax perspective is to have all Scheme costs approved as these will reduce assessable income on the fund. Subject to the Court receiving a satisfactory report from Mr John White, independent costs expert appointed by the Court regarding such costs, I seek approval to pay to Maurice Blackburn \$4,856,511.87 for settlement administration costs and disbursements incurred for the period 1 September 2015 to 31 January 2016.

A. SETTLEMENT ADMINISTRATION COSTS INCURRED BETWEEN 1 SEPTEMBER 2015 AND 31 JANUARY 2016

96. 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**).

97. 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.
98. In undertaking the work detailed in this Affidavit, the following settlement administration costs and disbursements have been incurred for work carried out between 1 September 2015 and 31 January 2016:

Settlement Administration Costs and Disbursements		
General Settlement Administration:		
Professional Fees		\$250,963.90
Disbursements		\$10,104.82
Subtotal		\$261,068.72
I-D Settlement Administration:		
Professional Fees		\$2,152,169.80
Disbursements		\$1,007,020.85
Subtotal		\$3,159,190.65
ELPD Settlement Administration:		
Professional Fees		\$943,686.70
Disbursements		\$492,565.80
Subtotal		\$1,436,252.50
Total administration costs and disbursements:		
Professional Fees		\$3,346,820.40
Disbursements		\$1,509,691.47
Total		\$4,856,511.87

99. Now produced and shown to me marked '**AJW-1 Itemised MB Invoices**' is a copy of the itemised invoices for settlement administration costs and disbursements for work carried out between 1 September 2015 and 31 January 2016.

Kate McFarlane *Adm*

I. Professional fees incurred between 1 September 2015 and 31 January 2016

100. Total professional fees for work carried out between 1 September 2015 to 31 January 2016 amounted to \$3,346,820.40, composed of:

- (a) \$250,963.90, being professional fees incurred in relation to General Settlement Administration;
- (b) \$2,152,169.80, being professional fees incurred in relation to I-D Settlement Administration; and
- (c) \$943,686.70, being professional fees incurred in relation to ELPD Settlement Administration.

General Settlement Administration

101. Total professional fees for work carried out in relation to General Settlement Administration between 1 September 2015 and 31 January 2016 amounted to \$250,963.90.

102. Professional fees incurred by lawyers overseeing the settlement administration process between 1 September 2015 and 31 January 2016 amounted to \$163,873.60, with a total of 262.3 hours spent on the following and similar tasks:

- (a) Overseeing the settlement administration process;
- (b) Recruiting, training and supervising settlement administration staff;
- (c) Developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (d) Management and administration of settlement monies;
- (e) Ongoing liaison work with organisations regarding taxation and interest accrued on the distribution sum;
- (f) Implementing practices to monitor and estimate settlement administration costs;
- (g) Reviewing and determining late registrant applications and processes, and providing direction on late registrant enquiries;

Two handwritten signatures in blue ink are present at the bottom of the page. The signature on the left is 'Kare McFarlane' and the signature on the right is 'Ash K'. Both are written in a cursive, flowing style.

- (h) Reviewing and determining interim payment applications and processes, and providing direction on interim payment enquiries;
- (i) Monitoring the process for Order 15 claimants;
- (j) Reviewing and approving various invoices;
- (k) Liaison with, and preparing brief for, independent costs assessor, John White; and
- (l) Preparing for the Case Management Conference of 20 October 2015, including preparation of affidavit and supporting material.

103. Professional fees incurred by non-lawyers undertaking paralegal and administrative tasks between 1 September 2015 and 31 January 2016 amounted to \$87,090.30, with a total of 266.6 hours spent on the following and similar tasks:

- (a) Assisting with late registrant processes, enquiries and applications, including drafting memoranda and maintaining the database and spread sheets monitoring the status of such applications;
- (b) Assisting with interim payment processes, enquiries and applications, including drafting memoranda and maintaining the database spread sheets monitoring the status of such applications;
- (c) Assisting with preparing brief for independent costs assessor, John White; and
- (d) Updating accounting database systems in relation to disbursements relating to the assessment of individual group members' claims.

I-D Settlement Administration

104. Total professional fees for work carried out in relation to I-D Settlement Administration between 1 September 2015 and 31 January 2016 amounted to \$2,152,169.80.

105. Professional fees incurred by lawyers overseeing the settlement administration process between 1 September 2015 and 31 January 2016 amounted to \$915,891.90, with a total of 1622.1 hours spent on the following and similar tasks:

- (a) Establishing and monitoring the I-D settlement administration process;
- (b) Overseeing and managing the I-D settlement administration team;



- (c) Recruiting, training and supervising support staff responsible for administrative processes;
- (d) Developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) Reviewing completed I-D assessments received from counsel;
- (f) Attending assessment conferences with sample group members;
- (g) Ongoing liaison work with assessing counsel regarding assessment conferences and assessments;
- (h) Ongoing liaison work with organisations holding claimant information relevant to the I-D assessment process, including government agencies and medical practices;
- (i) Implementing and monitoring the process for reviews by I-D group members;
- (j) Reviewing I-D Claim Books prepared for assessing counsel;
- (k) Reviewing psychiatric assessments of I-D group members;
- (l) Reviewing and summarising internal files of I-D group members with crossover claims;
- (m) Responding to individual group member inquiries;
- (n) Drafting and settling correspondence to group members and various organisations;
- (o) Providing direction on individual cases;
- (p) Reviewing and finalising assessment memoranda, action plans and records for assessing counsel;
- (q) Monitoring progress of all I-D group members claims, including those who are not proceeding or uncooperative, by preparing and reviewing various IT reports;
- (r) Identifying claims that can be assessed in the absence of certain records;



- (s) Preparing Affidavit of Service regarding the Victorian Bushfire Appeal Fund subpoena and various communications with the Department of Health and Human Services regarding progress;
- (t) Monitoring personal injury statistics, reviewing and interrogating data; and
- (u) Reviewing and approving various invoices.

106. Professional fees incurred by non-lawyers carrying out paralegal and administrative tasks between 1 September 2015 and 31 January 2016 amounted to \$1,236,277.90, with a total of 3810.6 hours spent on the following and similar tasks:

- (a) Responding to individual group member inquiries;
- (b) Assisting I-D group members with completing electronic survey;
- (c) Administering detailed telephone questionnaire for I-D group members;
- (d) Preparing assessment memoranda for assessing counsel;
- (e) Gathering documents required for I-D assessment from various organisations, including government agencies and medical practices;
- (f) Ongoing liaison with I-D group members and various organisations regarding outstanding documentation required for I-D Claim Book;
- (g) Reviewing and identifying I-D group members that are ready to be assessed by assessing counsel;
- (h) Preparing I-D Claim Books for assessing counsel;
- (i) Scheduling I-D assessment conferences between I-D group members and assessing counsel;
- (j) Drafting correspondence to group members and various organisations;
- (k) Assisting with the process for I-D group members who are not proceeding or uncooperative;
- (l) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;



- (m) Updating index, collating, reviewing and processing invoices and vouchers from assessing counsel and various organisations;
- (n) Conducting various audits to ensure data is reflected accurately in our system databases; and
- (o) Undertaking initial review of completed I-D assessments received from assessing counsel.

107. *ELPD Settlement Administration*

108. Total professional fees for work carried out in relation to ELPD Settlement Administration between 1 September 2015 and 31 January 2016 amounted to \$943,686.70.

109. Professional fees incurred by lawyers overseeing the settlement administration process between 1 September 2015 and 31 January 2016 amounted to \$360,969.40 , with a total of 588.3 hours spent on the following and similar tasks:

- (a) Establishing and monitoring the ELPD settlement administration process;
- (b) Overseeing and managing the SDS ELPD team;
- (c) Recruiting, training and supervising support staff responsible for administrative processes;
- (d) Developing, implementing and monitoring internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) Responding to group member inquiries;
- (f) Providing direction on individual cases;
- (g) Ongoing liaison with ELPD loss assessors regarding assessment of ELPD claims;
- (h) Working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
- (i) Drafting and settling correspondence to group members and loss assessors;
- (j) Auditing assessments completed by ELPD loss assessors and providing feedback;
- (k) Reviewing claimant files provided by ELPD loss assessors; and

(l) Monitoring ELPD statistics, reviewing and interrogating data.

110. Professional fees incurred by non-lawyers carrying out paralegal and administrative tasks between 1 September 2015 and 31 January 2016 amounted to \$582,717.30, with a total of 1771 hours spent on the following and similar tasks:

- (a) Preparing, reviewing and allocating files for ELPD loss assessors;
- (b) Responding to individual group member inquiries;
- (c) Drafting correspondence to group members and loss assessors;
- (d) Liaising with and completing information requests from ELPD loss assessors;
- (e) Establishing interactions between group members with ELPD claims and I-D claims;
- (f) Administering the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (g) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (h) Investigating and amending errors in claimant data;
- (i) Amending and maintaining the ELPD Allocation report;
- (j) Overseeing the assessment of Estate and Trust claims;
- (k) Conducting various audits to ensure data is reflected accurately in our system databases; and
- (l) Updating index, collating, reviewing and processing invoices pertaining to ELPD assessments.



II. Disbursements incurred between 1 September 2015 and 31 January 2016

111. Fixed rates of remuneration have been established for trainers and assessors in the I-D assessment process and for ELPD assessors, as detailed in the Affidavit of Andrew Watson dated 13 April 2015.
112. Total disbursements for work carried out or invoiced between 1 September 2015 and 31 January 2016 amounted to \$1,509,691.47, composed of:
- (a) \$10,104.82 for disbursements incurred in relation to General Settlement Administration;
 - (b) \$1,007,020.85 for disbursements incurred in relation to I-D Settlement Administration; and
 - (c) \$492,565.80 for disbursements incurred in relation to ELPD Settlement Administration.

General Settlement Administration

113. Disbursements for work carried out or invoiced in relation to General Settlement Administration between 1 September 2015 and 31 January 2016 amounted to \$10,104.82, and include payments of:
- (a) \$10,103.50 to Pitcher Partners for providing advice in relation to taxation and interest derived on the settlement sum; and
 - (b) Miscellaneous administrative disbursements, including photocopying charges, totalling \$1.32.

I-D Settlement Administration

114. Disbursements for work carried out or invoiced in relation to I-D Settlement Administration between 1 September 2015 and 31 January 2016 amounted to \$1,007,020.85, and include payments of:
- (a) \$857,159.38 to counsel for conducting I-D assessments;
 - (b) \$91,253.60 to medical practitioners, hospitals, psychiatrists, psychologists and counsellors for providing I-D group member treatment records and reports;



- (c) \$33,473.00 to BizData for providing services to improve IT systems and build reporting systems;
- (d) \$14,002.57 to Law in Order for electronic document processing charges;
- (e) \$583.00 to Medicolegal Communications for providing translation services for group members during assessing counsel conferences;
- (f) \$239.86 to Victoria Transcript Services to obtain Case Management Conference court transcript of 20 October 2016;
- (g) \$220 to NuLegal for web-hosting fees; and
- (h) Miscellaneous administrative disbursements, including telephone calls, photocopying, and courier charges, totalling \$10,089.44.

ELPD Settlement Administration

115. Disbursements for work carried out or invoiced in relation to ELPD Settlement Administration between 1 September 2015 and 31 January 2016 amounted to \$492,565.80, and include payments of:

- (a) \$392,518.00 to RMCG for conducting ELPD assessments;
- (b) \$30,000 to RMCG for providing initial setup and ongoing design of the ELPD settlement administration process;
- (c) \$11,800 to RMCG for attendance at audit conference and auditing assessments completed by other ELPD loss assessors;
- (d) \$21,533.99 to Crawford and Company for conducting ELPD assessments;
- (e) \$7,199.94 to Crawford and Company for auditing assessments completed by other ELPD loss assessors;
- (f) \$19,866 to BizData for providing services to improve IT systems and build reporting systems;
- (g) \$8199.94 to Hall & Wilcox Lawyers for auditing assessments completed by other ELPD loss assessors; and



- (h) Miscellaneous administrative disbursements, including telephone calls and photocopying charges totalling \$1,447.93.

Combined total of settlement administration costs and disbursements incurred between 1 September 2015 and 31 January 2016

116. The combined settlement administration costs and disbursements for work carried out between 1 September 2015 and 31 January 2016 is \$4,856,511.87. I seek approval to pay that sum from the Distribution Sum.

TOTAL ANTICIPATED SETTLEMENT ADMINISTRATION COSTS

117. I remain hopeful that the total anticipated settlement administration costs can be defrayed by the interest earned on the Distribution Sum. However, this may not prove possible if the ATO delivers an unfavourable ruling about the taxation issues discussed above. This may also be affected by any decrease in the Reserve Bank of Australia cash rate, and its consequent effect on interest rates applicable to the Distribution Sum.

SWORN by the deponent at)
Melbourne in the State of Victoria)
this 18th of March 2016)
)



Before me:



KATE ROSE MCFARLANE
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