

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION

Not Restricted

S CI 2009 04788

CAROL ANN MATTHEWS

Plaintiff

v

AUSNET ELECTRICITY SERVICES PTY  
LTD (formerly SPI ELECTRICITY PTY LTD)  
(ACN 064 651 118)  
and others according to the Schedule

Defendants

and

AUSNET ELECTRICITY SERVICES PTY  
LTD (formerly SPI ELECTRICITY PTY LTD)  
(ACN 064 651 118)

Plaintiff by Counterclaim

v

ACN 060 674 580 PTY LTD  
and others according to the Schedule

Defendants by Counterclaim

and

ACN 060 574 580 PTY LTD

Plaintiff by UAM Counterclaim

v

AUSNET ELECTRICITY SERVICES PTY  
LTD (formerly SPI ELECTRICITY PTY LTD)  
(ACN 064 651 118)  
and others according to the Schedule  
annexed to other rulings of the Court

Defendants by UAM Counterclaim

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JUDGE: J FORREST J  
WHERE HELD: Melbourne  
DATE OF HEARING: 9 June 2017  
DATE OF RULING: 22 June 2017  
CASE MAY BE CITED AS: Matthews v Ausnet Pty Ltd & Ors (Ruling No.46)  
MEDIUM NEUTRAL CITATION: [2017] VSC 360

PRACTICE AND PROCEDURE - Case management conference - Progress of the Settlement Distribution Scheme - Retainer of KPMG expert witness - Approval of settlement administration costs - Update on tax liability of interest incurred - Court declines to intervene in outcomes of individual assessments - Court to take into account feedback from group members in relation to assessment process.

APPEARANCES:

Counsel

Solicitors

For the Scheme  
Administrator

Mr A Watson, the Scheme  
Administrator, appeared in  
person

Maurice Blackburn

For the Group Members

Ms Vicki Ruhr  
Ms Liane Dawson  
Ms Joanne Ritchie

HIS HONOUR:

**Introduction**

- 1 This is the seventh ruling concerning the supervision of the administration of the Settlement Distribution Scheme (SDS) approved by Osborn JA on 23 December 2014.<sup>1</sup>
- 2 Save where necessary, I do not propose in the course of this ruling to re-state matters I have covered in rulings 40,<sup>2</sup> 41,<sup>3</sup> 42,<sup>4</sup> 43,<sup>5</sup> 44,<sup>6</sup> and 45<sup>7</sup> nor the contents of the SDS, which can be inspected on the Court's website.
- 3 At the case management conference on 9 June 2017, Andrew Watson, the Scheme Administrator, advised the Court as to progress made in relation to the processing of both injury and dependency (I-D) and economic loss and property damage (ELPD) claims.
- 4 This ruling concerns 6 matters arising out of that hearing:
- The progress of the assessment of claims pursuant to the SDS to date;
  - Retainer of Mr Dougall, KPMG, as an expert witness;
  - Approval of settlement administration costs;
  - An update as to the status of the tax liability on the interest incurred;
  - Letters from group members concerning the assessment process; and
  - The next case management conference.

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<sup>1</sup> See *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.40)* [2015] VSC 131; *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.41)* [2016] VSC 171 (rulings); *Matthews v AusNet Electricity Services Pty Ltd* [2014] VSC 663 (approval). A copy of the Deed and SDS is available on the Court's website at:

<http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/kilmore+east+kinglake+bushfire+class+action+settlement/> The content and procedures for administering the SDS are contained in *Matthews v AusNet Electricity Services Pty Ltd (Ruling No.40)* [2015] VSC 131 and therefore will not be repeated in this ruling.

<sup>2</sup> [2015] VSC 131.

<sup>3</sup> [2016] VSC 171.

<sup>4</sup> [2016] VSC 394.

<sup>5</sup> [2016] VSC 583.

<sup>6</sup> [2016] VSC 732.

<sup>7</sup> [2017] VSC 187.

### The hearing

5 The following material was provided by the Scheme Administrator and group members for the purpose of this case management conference:

- (a) Affidavit of Mr Watson sworn 25 May 2017;
- (b) Letter from group member Ms Liane Dawson dated 22 May 2017;
- (c) Letter from group member Ms Cheryl Phillips dated 2 June 2017; and
- (d) Letter from group member Joanne Ritchie dated 4 June 2017.

### Progress of the assessment of claims (I-D and ELPD)

#### **Injury and Dependency claims (I-D claims)**

6 There are only three I-D claimants who have not received a compensation payment.<sup>8</sup>  
Of these:

- (a) Two relate to deceased estates. Probate is likely to be granted for one of the two remaining deceased estates on 6 June 2017;<sup>9</sup>
- (b) One claimant is yet to decide whether to elect to take a compensation sum given his ongoing Department of Veterans Affairs entitlement.

7 Two I-D claimants are yet to present their cheques to the bank. Of these:

- (a) One remaining claimant has confirmed the cheque has been received, but is yet to present it.
- (b) One claimant has elected not to accept his settlement cheque. He has made an application for a review out of time. The Scheme Administrator interviewed the claimant in May 2017 and has asked for some further information, which

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<sup>8</sup> T 3 of the hearing of 9 June 2017.

<sup>9</sup> T 4, of the hearing of 9 June 2017. The Scheme Administrator also advised that one of the deceased estates which was referred to in paragraph 3(a) of his Affidavit dated 25 May 2017 (i.e. a fourth outstanding claimant) has since been resolved.

is now being investigated.<sup>10</sup>

8 There is one other claimant identified by the Scheme Administrator in his February affidavit,<sup>11</sup> due to an oversight, registration of a claimant was not recorded in March 2017.<sup>12</sup> This person has now completed the appropriate documentation and met with assessing counsel on 2 June 2017. The Scheme Administrator now awaits a decision from counsel and should then be in a position to make a determination.<sup>13</sup>

9 I am satisfied that the steps taken by the Scheme Administrator in relation to I-D claims have been reasonable and consistent with the provisions of the settlement deed.<sup>14</sup>

#### **Economic Loss and Property Damage claims (ELPD claims)**

10 Since March 2017 CMC, the Scheme Administrator has confirmed that of the 3,092 “above insurance” claimants entitled to receive compensation in the ELPD settlement distribution:

(a) Payment has been made to 3,056 of these claimants;<sup>15</sup> and

(b) 36 payments remain to be processed by the SDS Team.<sup>16</sup>

11 The remaining 36 ELPD “above insurance” claims concern:

(a) five claimants who are involved in ongoing disputes as to how the funds should be allocated as between claimants with joint property interests;

(b) 26 claimants who are either estate claimants or claimants who share an assessment with an estate claimant in circumstances where a grant of representation is yet to be obtained for the estate; and

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<sup>10</sup> T 4, of the hearing of 9 June 2017.

<sup>11</sup> Affidavit of Mr Watson dated 28 February 2017, [30]-[34].

<sup>12</sup> Affidavit of Mr Watson dated 25 May 2017, [5].

<sup>13</sup> T 5, of the hearing of 9 June 2017.

<sup>14</sup> Affidavit of Mr Watson dated 25 May 2017, [3].

<sup>15</sup> Affidavit of Mr Watson dated 25 May 2017, [7]; T 5, of the hearing of 9 June 2017.

<sup>16</sup> T 5, of the hearing of 9 June 2017.

(c) five other claims involving individual issues which require resolution prior to payment being made.<sup>17</sup>

12 Since the March case management conference, the ELPD settlement distribution has been made in respect of all 4,911 subrogated insurance claims assessed as being entitled to compensation.<sup>18</sup>

13 The number of above insurance claimants that have not presented their cheques is now 167.<sup>19</sup> The Scheme Administrator has written to each of these claimants requesting that they contact him if they have not received their cheque.<sup>20</sup>

14 The Scheme Administrator has informed the Court that his team continues to attend to the following:

(a) resolving remaining distributions;

(b) following up any ELPD claimants who have failed to present their cheques;

(c) cancelling ELPD compensation cheques and re-processing payments where the SDS Team has received notice such action is required due to group members being deceased, being unable to bank their cheques due to naming issues and/or cheques being mislaid; and

(d) responding to ELPD Claimant enquiries.<sup>21</sup>

15 I am satisfied that the steps taken to date by the Scheme Administrator in relation to ELPD claims have been reasonable and consistent with the provisions of the settlement deed.

#### **Retainer of KPMG as expert witness**

16 KPMG has been retained throughout as the external auditor of the settlement

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<sup>17</sup> Affidavit of Mr Watson dated 25 May 2017, [8]; T 5, of the hearing of 9 June 2017.

<sup>18</sup> Affidavit of Mr Watson dated 25 May 2017, [10].

<sup>19</sup> T 6, of the hearing of 9 June 2017.

<sup>20</sup> Affidavit of Mr Watson dated 25 May 2017, [11].

<sup>21</sup> Affidavit of Mr Watson dated 25 May 2017, [12].

distribution process.<sup>22</sup>

17 The Scheme Administrator advised that on 7 April 2017, KPMG proposed that Mr Martin Dougall, Partner and head of KPMG's Forensics practice, assume the role of expert in this proceeding due to a staffing change at KPMG.<sup>23</sup> He has accepted this role.<sup>24</sup>

18 I am satisfied that Mr Dougall is well placed to assume the role and that the expert report to be produced by KPMG will provide the Court and group members with an overview as to whether the distributions made by the Scheme Administrator are consistent with the court orders. In particular, the expert report will be directed to the calculation of pro rata entitlements to ensure that this was carried out in accordance with the Scheme.<sup>25</sup>

#### Approval of Settlement Administration Costs

19 The Scheme Administrator sought approval of the settlement administration costs for the period of 1 January 2017 to 30 June 2017 "in an amount of up to \$3,810,117.94 or the amounts showing on Maurice Blackburn's finalised invoices for these periods, whichever is the lesser."<sup>26</sup>

20 The Scheme Administrator explained that he anticipated that the likely costs for this period will be substantially less than \$3,810,117.94, but as a matter of prudence, he was seeking this amount because this was consistent with the estimates previously referred to in Mr White's report.<sup>27</sup>

21 The Scheme Administrator has guaranteed that payment of the settlement administration costs will only take place upon audit and approval by Mr John White, Special Referee, on the issue of costs and any subsequent orders deemed necessary by the Court following receipt of Mr White's report.

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<sup>22</sup> T 7, of the hearing of 9 June 2017.

<sup>23</sup> Affidavit of Mr Watson dated 25 May 2017, [13].

<sup>24</sup> Affidavit of Mr Watson dated 25 May 2017, [15].

<sup>25</sup> T 7, of the hearing of 9 June 2017.

<sup>26</sup> Affidavit of Mr Watson dated 25 May 2017, [18].

<sup>27</sup> Affidavit of Mr Watson dated 25 May 2017, [19].

22 I am satisfied that the settlement administration costs from 1 January 2017 to 30 June 2017 be approved up to whichever is the lesser of:

(a) \$3,810,117.94; or

(b) The amount showing on Maurice Blackburn's finalised settlement administration invoices for the period from 1 January 2017 to 30 June 2017.

Payment of this amount will, however, be subject to Mr White's audit and report. No payment, inconsistent with his opinion, will be made.

#### **Tax liability for the interest earned on the settlement fund**

23 The Scheme Administrator advised that he and his staff continue to work closely with taxation advisors, PwC, and counsel on the taxation issues relating to the settlement administration.

24 I have requested that the Scheme Administrator file an affidavit by 1 September 2017 setting out the progress made on this issue.<sup>28</sup> Although parts of this affidavit may be confidential, I have indicated that I want it to contain a general statement on progress made on this front for the benefit of group members.

#### **Letters from group members**

25 Ms Ruhr, Ms Dawson and Ms Ritchie were in attendance at the case management conference. Ms Dawson and Ms Ritchie had earlier provided the Court with letters dated 22 May 2017 and 4 June 2017 respectively. Another group member, Ms Phillips provided the Court with a letter dated 2 June 2017, however she was unable to attend the case management conference on 9 June 2017.

26 I explained to Ms Dawson and Ms Ritchie that although their letters contained matters that caused me concern as to the administration of the scheme, the Scheme Administrator had not been given an opportunity to respond. However, given the structure of the SDS (established pursuant to an order of this Court), there was little

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<sup>28</sup> T 10, of the hearing of 9 June 2017.



this Court could do in relation to their individual assessments other than to ensure the terms of the SDS had been applied to the individual claims. I have made reference to this on numerous occasions in previous rulings.<sup>29</sup>

27 I have requested information from the administrator as to the matters raised by the group members.<sup>30</sup> I intend to have the Court communicate with these group members in the next seven days.

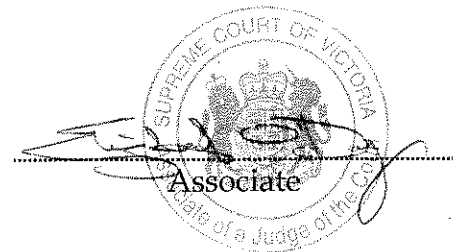
#### Next case management conference

28 Given the settlement distribution process is approaching finalisation, it is not necessary to hold another case management conference until I am advised by the Scheme Administrator that the process is as close as it can be to completion.

#### CERTIFICATE

I certify that this and the 6 preceding pages are a true copy of the reasons for Ruling of J Forrest J of the Supreme Court of Victoria delivered on 22 June 2017.

DATED this twenty second day of June 2017.



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<sup>29</sup> *Matthews v Ausnet Electricity Services Pty Ltd (Ruling No 42)* [2016] VSC 394; *Matthews v Ausnet Electricity Services Pty Ltd (Ruling No 43)* [2016] VSC 583; *Matthews v Ausnet Electricity Services Pty Ltd (Ruling No 45)* [2017] VSC 187.

<sup>30</sup> T 18, of the hearing of 9 June 2017.