

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:

17 June 2016

Filed on behalf of:

The Plaintiff

Prepared by:

Maurice Blackburn Lawyers
Level 10, 456 Lonsdale Street
Melbourne Vic 3000

Solicitor's Code: 564
Tel: (03) 9605 2700
DX: 466 Melbourne
Ref: AJW/3052491

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.



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) providing the Court with an update in relation to interim payments;
 - (e) providing the Court with an update in relation to group member communications; and
 - (f) 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.

PERSONAL INJURY AND DEPENDENCY CLAIMS

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 14 June 2016, 170 additional personal injury and dependency group members have been accepted as late registrants. As at 14 June 2016, there are in total 1,901 personal injury and dependency group members.


2

5. The steps being taken to assess each of these 1,901 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, 25 February 2016 and 18 March 2016.

A. THE SDS TEAM

6. Since the last Case Management Conference (**CMC**), the following changes have been made to the SDS Team:
- (a) Timothy Dionyssopoulos, Principal, has been seconded to the SDS Team from Maurice Blackburn's TAC practice. Mr Dionyssopoulos is an experienced personal injury lawyer of 22 years' experience and is a Law Institute of Victoria accredited personal injury specialist.
 - (b) Patricia McMullan, Associate, has commenced on the SDS Team. Patricia has 6 years' experience in personal injury law. She has joined Maurice Blackburn from Slater and Gordon's WorkCover practice.
7. The SDS Team responsible for the administration of personal injury and dependency claims assessment under both the SDS in this proceeding and the Murrindindi SDS, in addition to the persons listed above, 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.


3

- (e) Kate McFarlane, Lawyer, engaged on a full time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
- (f) Megan Greaves, Lawyer, engaged on a full time basis. Approximately 60 per cent of her time is directed towards the Kilmore settlement administration.
- (g) Seven paralegals working an equivalent of six full time positions. Approximately two-thirds of their time is directed towards the Kilmore settlement administration.
- (h) Seven administrative assistants working an equivalent of 5.9 full time positions. Approximately two-thirds of their time is directed towards the Kilmore settlement administration.

B. CHANGES TO TEAM OF ASSESSORS

8. We have currently appointed 33 members of counsel and 1 solicitor, all 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 assessors 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 | 10. Fiona Ryan |
| 2. Amy Wood | 11. Gary Clark |
| 3. Andrew Dimsey | 12. Gavin Coldwell |
| 4. Angus Macnab | 13. Henri Kauthen (solicitor) |
| 5. Bruce Anderson | 14. James Fitzpatrick |
| 6. Christine Boyle | 15. John Valiotis |
| 7. Conor O'Sullivan | 16. Julia Frederico |
| 8. Daniel Wallis | 17. Kim Bradey |
| 9. Fiona Ellis | 18. Marcus Fogarty |



19. Maria Pilipasidis	27. Nick Dunstan
20. Marietta Bylhouwer	28. Nikki Wolski
21. Melanie Szydzik	29. Patrick Over
22. Michael Clarke	30. Raph Ajzensztat
23. Michael Schulze	31. Rebecca Dal Pra
24. Miguel Belmar	32. Simon Martin
25. Neil Rattray	33. Steve Carson
26. Nick Dubrow	34. Tim Tobin SC

C. SUMMARY OF ASSESSMENT PROCESS TO DATE

9. As at 14 June 2016, 1,751 of the 1,901 registered personal injury and dependency group members are proceeding with the assessment of their claim. The remaining 150 group members have either instructed us that they do not wish to proceed with their claim, are unco-operative or are uncontactable. Of the 1751 group members proceeding with the assessment of their personal injury and dependency claim:
 - (a) 1,741 detailed personal injury questionnaires have been completed which equates to approximately 99.4 per cent of registered personal injury and dependency group members.
 - (b) 1,711 group members have attended a conference with an assessor which equates to approximately 97.7 per cent of registered personal injury and dependency group members.
 - (c) 14 group members currently have conferences scheduled with an assessor and a further 18 group members are ready to be assessed by an assessor. The SDS Team is in the process of scheduling these 18 conferences. Combined these will equate to approximately a further 1.8 per cent of registered personal injury and dependency group members.
 - (d) 216 Notices of Assessments and Statements of Reasons are currently outstanding from assessors. In a number of cases, assessors are waiting upon the provision of further material required for the completion of their assessment.




- (e) 1,495 Notices of Assessments and Statements of Reasons have been received from assessors to date. Of these, 256 are currently being reviewed or are awaiting review by the SDS Team. The increase in the number of assessments to be reviewed by the SDS Team is largely due to the recent increase in the number of assessments being submitted by assessors and the temporary redeployment of solicitors to undertake personal injury questionnaires, which is discussed below. I anticipate that the backlog of assessments awaiting review will be cleared over the next few weeks, as there are now 3 full time members of the SDS team and one external contractor responsible for reviewing Notices of Assessments and Statements of Reasons, each of whom can review approximately 30 assessments per day.
 - (f) 1,239 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.
 - (g) 21 requests for review have been received from group members to date. Of these, 10 are quantum reviews and 11 are threshold reviews. 3 quantum reviews have been determined, with 2 being in favour of the group member and 1 upholding the original assessment. 7 quantum reviews remain to be determined by review counsel. 2 threshold reviews have been determined, both being in favour of the group member. 9 threshold reviews remain to be determined by a medicolegal specialist.
10. As at 14 June 2016, approximately the following number of records and documents have been requested by the SDS Team:
- (a) 1,174 ATO records, of which 1,136 have been received.
 - (b) 2,141 GP records, of which 2,089 have been received.
 - (c) 1,159 psychiatrist, psychologist or counsellor records of which 1,128 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) 210 records from third parties such as the Transport Accident Commission (**TAC**), the Country Fire Authority (**CFA**) and WorkCover of which 205 records have been returned.



D. CHANGES TO ASSESSMENT PROCESS

11. 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 last CMC, we have made the following changes to the assessment process:

Appointment of solicitor assessors

12. I refer to my comments at the CMC of 31 March 2016 foreshadowing the appointment of John Voyage as a solicitor assessor under the SDS. On 6 April 2016, Mr Voyage was appointed the Road Safety Camera Commissioner for Victoria and subsequently declined to be appointed as a solicitor assessor.
13. Consequently, senior members of the SDS Team interviewed a number of other experienced personal injury solicitors for potential appointment as solicitor assessors. Following this process, Henri Kauthen, Principal of Kauthen Legal, was appointed as a solicitor assessor under the SDS. Mr Kauthen is an experienced personal injury solicitor and a Law Institute of Victoria accredited specialist in personal injury law.
14. Mr Kauthen has received training from the SDS Team and has been in contact with Mr Michael Wilson QC regarding his role. To date, Mr Kauthen has held assessment conferences with 36 group members and completed 35 assessments under the SDS in this proceeding and the Murrindindi SDS.
15. Subsequent to Mr Kauthen's appointment, and as a result of the marked increase in counsel assessor availability discussed below, it was determined that it was unnecessary to appoint any further solicitor assessors under the SDS.

Measures taken to increase assessor availability and throughput rate

16. **Request for increased availability:** Following the last CMC, a further request was made to all assessing counsel to provide as much availability for conferences with group members as possible. A small group of counsel who had demonstrated a high level of commitment to the assessment process was additionally asked to commit to the process full-time until all assessments had been conducted.
17. **Introduction of financial incentives:** From 1 April 2016, the standard rate per assessment paid to assessors was increased by \$250. A further incentive payment of \$250 was also introduced at this time for those assessments submitted within




two weeks of the assessor meeting with the group member. On 3 June 2016, a further incentive payment was introduced to encourage assessments to be submitted before the end of the financial year.

Increase in assessment conference availability & throughput rate

18. The measures outlined above have resulted in a significant increase in the number of assessment conferences available each week and in the assessment throughput rate across the Kilmore and Murrindindi settlement administrations. Since 1 April 2016, the average number of weekly assessment appointments scheduled with assessors has more than doubled, from 28 to 61. The average number of weekly assessments submitted has also significantly increased, from 29 to 67.
19. The significant increase in the number of assessment conferences available each week across the Kilmore and Murrindindi settlement administrations is graphically depicted below:

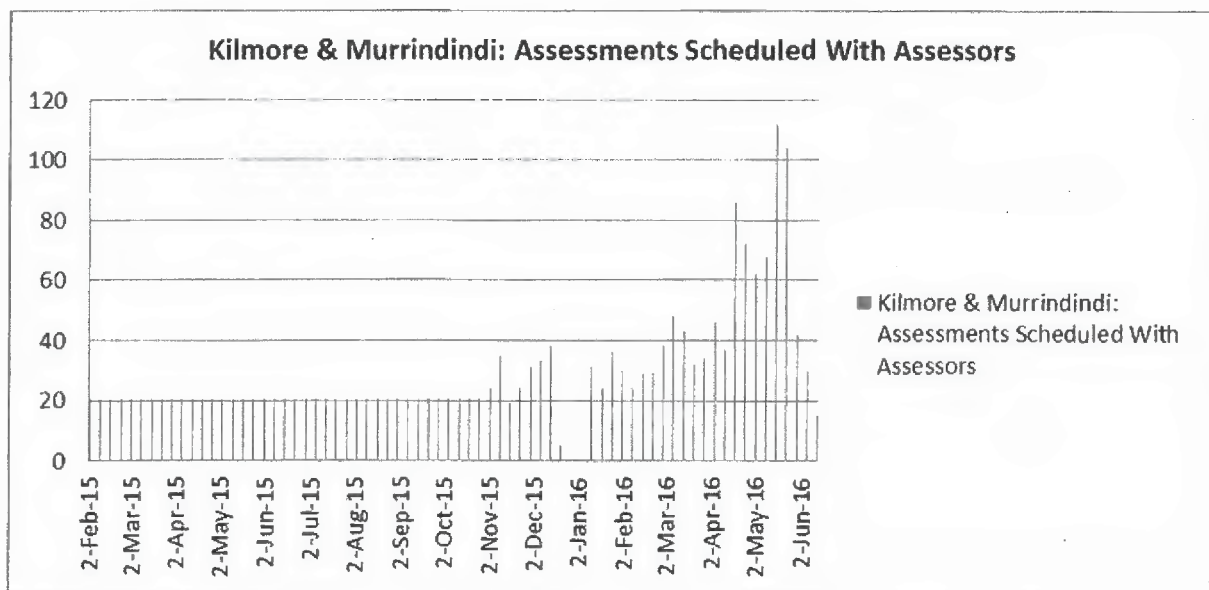


Figure 1: 793 appointments were booked for Kilmore and Murrindindi group members between 1 February and 1 November 2015, an average of 20.3 assessor appointments per week. This average weekly figure has been adopted for the purposes of preparing this graph.

20. As a result of the dramatic increase in the number of assessment conferences available each week from 1 April 2016, the SDS Team implemented a number of changes in process to ensure that sufficient numbers of group members were ready to fill the available appointments:

[Signature]

10688594-11

Kate Murre

Changes to the process for preparing group members' claims for assessment

21. The following changes were made to the process for preparing group members' claims for assessment:
- (a) For those group member who were yet to undergo the personal injury questionnaire (predominantly late registrants), the questionnaire was modified to reduce the amount of time taken by the SDS Team to gather the information necessary for an assessor to conduct the assessment. These changes were made after consultation with Mr Keogh SC (as he then was) and other assessing counsel to ensure there was minimal impact on the assessment process or quality of the assessments.
 - (b) To speed up the personal injury questionnaire process, two experienced personal injury solicitors were tasked to undertake the bulk of the remaining personal injury questionnaires. Due to their experience, these solicitors have been able to focus the questionnaires and complete them more rapidly than paralegal staff members.
 - (c) In order to accelerate the assessment process, the SDS Team is no longer preparing a detailed memorandum for the assessor based on the information obtained during the personal injury questionnaire. Instead, the assessor is simply provided with the personal injury questionnaire and the I-D claim book. Again, this change was made after consultation with Mr Keogh SC (as he then was) and other assessing counsel.
22. These changes in the process have reduced the amount of time taken by the SDS team to get group members ready to be assessed from approximately 3-5 hours to approximately 1-1 ½ hours.

Scheduling of assessment conferences

23. The following changes have been made to determining when a group member is ready to be scheduled in for an assessment conference:
- (a) Prior to the dramatic increase in assessment appointment availability, group members were only booked in for an assessment appointment after the SDS Team had received all documents that it had identified as necessary for assessing the claim. If the SDS team had continued with this approach following the increase in appointment availability, a significant number of the available assessment appointments would not have been filled. After consultation with




assessing counsel and experienced Maurice Blackburn personal injury lawyers, the decision was made to book all group members in for assessment regardless of whether the SDS Team was awaiting outstanding material.

- (b) As a result of this new process, when an assessor confers with a group member and supporting documents are outstanding, the assessor takes the necessary instructions but does not finalise the assessment until all necessary supporting documents have been received.
- (c) In order to avoid delays caused by requests for unnecessary supporting documents, senior members of the SDS Team are now contacting the assessors to discuss and identify those documents that are necessary for outstanding assessments to be completed. This process has resulted in the number of outstanding records being pursued by the SDS Team significantly reducing, and in document follow-up requests to be more targeted.

Medicolegal appointments and reports

24. The following changes have been made to the medicolegal appointment and reporting process:
- (a) The SDS Team has arranged for Dr Nigel Strauss, medicolegal psychiatrist, to set aside a number of days in June and July to conduct future anticipated medicolegal assessments required for the settlement administration process. This will ensure that the settlement administration is not delayed by group members waiting for available medicolegal appointments which can be up to 3 months from the date of requesting the appointment. In order to mitigate against potential delays caused by outstanding medicolegal reports, the SDS team has arranged for Dr Strauss to provide a short form report where appropriate.
 - (b) The SDS team has engaged Dr Robert Chazen, child psychiatrist, to conduct medicolegal assessments for all minors within the group whose claims are yet to be assessed. Given the complexity of minors' claims, it is anticipated that having the medicolegal assessment prior to the assessment appointment will avoid any delay caused by an assessor seeing the group member and then subsequently a medicolegal assessment. Dr Chazen has agreed to set aside a number of days in June to conduct these assessments. Dr Chazen has agreed to prepare short form reports where appropriate.



E. ASSESSORS WITH A LARGE BACKLOG OF ASSESSMENTS AND/OR LONG OUTSTANDING ASSESSMENTS

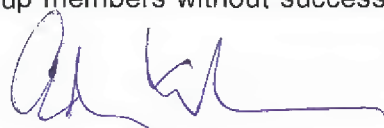
25. I refer to the confidential exhibit to my Affidavit of 29 March 2016 which identified assessing counsel who had as at that date a large backlog of outstanding assessments and/or long outstanding assessments.
26. Whilst a number of these counsel have since returned their outstanding assessments, there is still a small number of counsel who continue to have assessments outstanding from 6 – 12 months ago.
27. Steve Walsh, Chairman of Maurice Blackburn continues to contact these counsel on a regular basis about their backlog. Senior members of the SDS Team have additionally met with the clerks for such counsel to request their assistance in obtaining the outstanding assessments, advising them of the outstanding assessments, the length of time the work has been outstanding and the measures that the SDS Team has thus far taken to get the assessments completed.
28. The SDS Team has advised these counsel and their clerks that those outstanding assessments not submitted by 30 June 2016 will be reallocated to another assessor to be completed which may involve a further conference with the group member. I will file a confidential Affidavit on the day prior to the CMC scheduled for 21 June 2016 identifying any counsel who as at that date continues to have a large backlog and/or long outstanding assessments.

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

29. There are 86 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. 83 of these 86 group members have had their instructions confirmed in writing and have been provided with a \$Nil assessment. The remaining three members have only recently provided instructions that they do not wish to proceed and have had their instructions confirmed in writing.

G. UNCOOPERATIVE GROUP MEMBERS

30. There are presently 54 group members who are refusing to provide instructions or information necessary to have their claims assessed. The SDS Team has made numerous attempts to obtain the necessary instructions and documents from the group members without success. Attempts were made, when possible, by telephone,



SMS, regular post, registered post and email. Of these 54, 52 group member files did not contain any documentation, and as such were issued with a \$Nil assessment on 3 June 2016, with a 28 day period to request a review. The remaining two group members' have minimal documentation on file and so will be assessed by an I-D assessor on the papers.

H. UNCONTACTABLE GROUP MEMBERS

31. There are presently 10 registered personal injury and dependency group members who are uncontactable. Australian Electoral Commission (**AEC**) records have been searched for 8 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 members. 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 to their last known address.

I. ESTIMATED COMPLETION

32. Given the small number of group members who are yet to attend a conference with an assessor, the SDS team have notified all except for four assessors that we no longer require them to provide ongoing availability. The remaining assessments will be booked in with the four assessors on an as needs basis.
33. The SDS Team currently estimates that all group members will have attended a conference with an assessor by 30 June 2016. This is up to 12 weeks ahead of the estimate provided in my 18 March 2016 Affidavit. Allowing time for outstanding documents to be obtained and considered by assessors and any medicolegal assessments and reviews to occur, the SDS Team is confident that the distribution of settlement monies will be able to take place in the final quarter of 2016, or in the first quarter of 2017.
34. I note that:
 - (a) The Court approved a settlement in the case *Mercieca v SPI Electricity and Ors* (SCI 2010/01978) relating to the Black Saturday Beechworth bushfire. In a subsequent hearing on 29 July 2013 it was reported that the total number of




claims in that case was about 200 and that 25 were resolved. Subsequent consent orders made 5 September 2014 (more than 2 years after settlement approval) indicate that distribution in that case was ongoing. I do not know if it has yet been finalised.

- (b) The Court approved a settlement in *Thomas v Powercor* (SCI 2009/09166) relating to the Black Saturday Horsham bushfire on 5 December 2011. Media reports on 10 June 2016 indicate that 200 claimants would receive payment 4 and a half years after case approval. The media reports seem to indicate that these payments would not finalise that distribution.

- 35. Based on the current estimates, in this case and the Murrindindi bushfires case a distribution will be made in relation to approximately 13,500 claims (taking account of both PI and ELPD claims in both cases) in either just under or just over two years from settlement approval. Whilst I understand the enormous concern to group members regarding delays in the settlement distribution process I believe the comparison with other bushfire distributions gives some indication of the scale and complexity of the administrations in this case and the Murrindindi case and the relative efficiency of the processes adopted.

ECONOMIC LOSS AND PROPERTY DAMAGE (ELPD) CLAIMS

A. THE SDS TEAM

- 36. 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 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, Lawyer, engaged on a full-time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.




- (e) Kate McFarlane, Lawyer, engaged on a full-time basis. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.
- (f) Justin Boyd, Trainee Lawyer, engaged on a full-time basis. Approximately 40 per cent of his time is directed towards the Kilmore settlement administration.
- (g) Nine paralegals working an equivalent of 6.9 full time positions. Approximately two thirds of their time is directed towards the Kilmore settlement administration.
- (h) Laura Opperman, Data Analyst, engaged three days per week. Approximately 70 per cent of her time is directed towards the Kilmore settlement administration.

B. ROLE OF THE ELPD SDS TEAM

37. Since the last CMC, the volume of enquiries received by the ELPD SDS Team from ELPD Assessors and group members has increased significantly. I am informed by Claire Brown that we are routinely receiving an average of 150-200 inquiries from group members and ELPD Assessors per week, and at times we receive a significantly larger volume of inquiries per week. In addition to this increased volume of inquiries, the ELPD SDS Team has commenced issuing Final Notices of Assessment. In order to assist with the increased workload:

- (a) Helen Leaf, Senior Associate, has joined the ELPD SDS Team on a part-time basis;
- (b) Lily O'Neill, Lawyer, has joined the ELPD SDS Team on a part-time basis;
- (c) Kate McFarlane, Lawyer, has been redeployed to work primarily with the ELPD SDS Team;
- (d) An additional three full-time paralegals and a part-time data analyst have been employed; and
- (e) The ELPD SDS Team is currently recruiting for a further full-time paralegal to assist with the issuing of Final Notices of Assessment.

38. The paralegals on the ELPD SDS Team are responding largely to the following enquiries:

- (a) Group member contact details and loss address clarification
- (b) Provision of above insurance and subrogated claim documentation

- (c) Assessor allocation
 - (d) Resolving allocation issues, e.g. where group members have multiple loss addresses that have been allocated to different assessors
 - (e) Advising assessors on the requirements for provisional notices of assessment
 - (f) Registration errors such as where an individual is claiming for lost assets belonging to their company which is not registered in the proceeding
 - (g) Estate claims
 - (h) Interim payment applications
 - (i) Uncontactable group member procedures
 - (j) Uncooperative group members procedures
 - (k) Advising on interpretation of the SDS
 - (l) Resolving insurance documents issues
 - (m) Group member contact and clarification of assessment issues
39. The lawyers on the ELPD SDS team generally respond to more complicated inquiries regarding the interpretation of the SDS and to claims made in relation to more complex claims or by more challenging group members.

C. SUMMARY OF ELPD ASSESSMENT PROGRESS TO DATE

Allocation to ELPD loss assessors

40. As a result of new information received from ELPD Assessors in the course of the assessment process since filing my Affidavit of 18 March 2016, the ELPD SDS Team has been able to consolidate more claims, resulting in a reduction in the number of unique property addresses. Based on our current figures, the assessment of ELPD claims in this proceeding involves the assessment of more than 9,000 claims at approximately 3506 unique property addresses. Of these addresses, an estimated 2052 unique properties include an above-insurance claim, an increase of 40.




41. 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 are more time-intensive.
42. As at 10 June 2016 the following mix of properties have been allocated for assessment:
 - (a) 91% of properties with an above-insurance claim have been allocated for assessment to the ELPD Assessors; and
 - (b) 93% of properties which involve the assessment of subrogated-only claims have been allocated for assessment to ELPD Assessors.

PNOAs completed as at 10 June 2016

43. As at 10 June 2016, approximately 75% 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 1283 PNOAs which fall within this category; and
 - (b) PNOAs which assess subrogated-only losses. There are approximately 993 PNOAs which fall within this category.

PNOAs issued to above-insurance group members

44. I refer to my Affidavits dated 9 October 2015 and 18 March 2016 regarding the progress of the preparation of PNOAs.
45. As at 10 June 2016, approximately 1155 PNOAs have been issued to group members, this is an increase of more than 800 since swearing my affidavit of 15 March 2016.
46. 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**).



10688594-11



47. 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.
48. 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 per cent of all PNOAs issued to date.

PNOAs assessing subrogated-only losses

49. The ELPD Assessors have completed approximately 993 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 name of the ELPD Assessor who assessed the claim;
 - (d) The amount registered by the insurer in this proceeding in accordance with Order 4 of the class closure orders dated 24 January 2013; and
 - (e) The assessed amount.

Procedure for issuing Final Notices of Assessment

50. Since filing my 18 March 2016 affidavit, we have finalised the processes necessary to issue and manage finalised assessments, including the design and development of software to facilitate the automatic upload of data from finalised assessments in their native excel format to our Matter Centre database. These processes are outlined in greater detail below.
51. After the expiry of the 14 day period in which a group member can issue a Dispute Notice, ELPD Assessors upload the finalised assessment in the native excel format to the Collaborate database.




Initial Checks of finalised assessments

52. On a weekly basis, or such other periodic basis as capacity and workflow dictate, paralegals download finalised assessments from Collaborate. These assessments are saved in batches, and each batch of finalised assessments is allocated a tranche number in a central spread sheet. Periodic checks are made against the ELPD Assessor tracking spreadsheets to ensure that all finalised assessments are captured through this process.
53. After a batch of finalised assessments has been downloaded from Collaborate, they are saved to a Maurice Blackburn database for a series of initial checks designed to identify any issues that require correction by the SDS Team or ELPD Assessor before they can be converted into Final Notices of Assessment and issued to group members. The initial checks are conducted by a paralegal and include:
- (a) Confirming that the assessed values in the finalised assessment reconcile by reviewing the three reconciliation columns in the finalised assessment;
 - (b) Confirming that the correct economic loss multiplier has been used by the ELPD Assessor for assessed losses;
 - (c) Ensuring that there is at least one Matter Centre ID identifying a unique registered group member in the finalised assessment;
 - (d) Checking for discrepancies and unexpected references in the 'Overview' section of the finalised assessment which may indicate a potential error or omission in the group members listed or the property loss included. For example, an error in the group member may arise where beneficiaries, company directors, or partners are listed on the finalised assessment instead of the relevant Estate, company or partnership. An error in relation to the property included in a finalised assessment may arise where the ELPD Assessor has included property for unregistered claimants. If a potential error or omission is detected by a paralegal, the finalised assessment is moved to a folder to be reviewed by a lawyer in the ELPD SDS Team.
54. Where the initial checks of finalised assessments highlight data or other administrative issues that have no effect on the value of the ELPD assessment or the identity of the group member, the data or administrative issue is corrected by an appropriate member of the SDS Team.




55. Where the initial checks highlight a more substantive issue that may change the value of the finalised assessment or the identity of the group member, the issue is reviewed by a lawyer in the SDS Team and brought to the attention of the relevant ELPD Assessor. Where the ELPD Assessor identifies that an error or omission has been made which affects the value of the assessment, steps are taken by the ELPD Assessor to amend the assessment and reissue with an explanation about the amendments.
56. If no issues are identified in the initial check process, the file is moved to the FirstUpload Folder.

FirstUpload software review

57. With the assistance of Bizdata, a service provider with a specialisation in data management, we have developed a software program which reviews finalised assessments that have passed the initial check process and automatically extracts and uploads the assessment data to our Matter Centre database. In addition, the software conducts a series of checks of each assessment to ensure we are able to maintain the data integrity of the more than 9000 registered ELPD claims.
58. Once a finalised assessment has been moved to the FirstUpload Folder, the software conducts a series of checks on the finalised assessment. The FirstUpload software is designed to detect the following errors in a finalised assessment:
 - (a) Inconsistencies between the group member name as listed in the finalised assessment and the group member name as registered and recorded in the Matter Centre database;
 - (b) Not every claim registered for the address which is the subject of the finalised assessment has been assessed within the file;
 - (c) Formula errors, which may have resulted in inaccurate assessment amounts being recorded in the assessment;
 - (d) The Matter Centre ID is invalid and cannot be located in Matter Centre, thus preventing the assessment information from being attributed to a group member's claim;



10688594-11



- (e) The assessment pertains to a claim or claims which have already had assessment data loaded onto the database or in relation to which a Final Notice of Assessment has already been issued;
 - (f) There is more than one loss address recorded in the file; and
 - (g) A series of other technical errors which may have resulted in inaccurate assessment information being recorded in the assessment.
59. If an error is detected, the software generates an error report and the assessment is reviewed to determine whether it is possible to correct the error in-house or if amendment by the original ELPD Assessor is required. In making this determination, a paralegal will direct the review to be undertaken by a lawyer if it is thought that a more substantive error may exist. Once the errors have been rectified, the finalised assessment will be uploaded to the FirstUpload Folder again, and the software will repeat the checks outlined above.
60. When a finalised assessment successfully passes all the checks applied by the FirstUpload software, the assessment data is automatically uploaded to group members' files on our Matter Centre database. If the assessment includes the assessment of an above-insurance claim, the file is converted into portable document format (PDF) form from the native Excel format and prepared for sending to the group member.

Issuing Final Notices of Assessment

61. The SDS Team periodically prepares and sends out tranches of Final Notices of Assessment to group members under cover of one of eight different precedent letters which gives an indicative estimated recovery range and provides details of the applicable review period. A paralegal checks all letters against the printed Final Notice of Assessments, which are grouped by unique loss address. This matching process operates as a final cross check to ensure a letter has been printed for each registered above-insurance claim assessed at the address. The paralegal then conducts a final review against the following fields in each group member's Matter Centre profile:
- (a) contact address;
 - (b) claimant name;
 - (c) assessment amount; and




(d) personal representative (if any).

62. The paralegal is also responsible for completing the date upon which the Final Notice of Assessment was sent in each group member's Matter Centre profile.

Progress of issuing finalised assessments

63. As at 10 June 2016, the SDS Team has received 1161 assessments from ELPD assessors.
64. As at 10 June 2016, the SDS Team has issued Final Notice of Assessments to 309 group members with registered above-insurance claims, with these claims pertaining to 177 unique property addresses.
65. The process of issuing Final Notices of Assessment has been delayed due to the unexpectedly high number and the technically complex nature of the errors identified in the course of completing the initial check process and software review process.
66. The ELPD SDS Team has found that approximately 47% of finalised assessments uploaded to Collaborate by ELPD Assessors have been affected by minor data or administrative errors. Examples of the errors identified include where there is an error in the name or spelling of a claimant or property address. Each error requires further investigation by the ELPD SDS Team, which given the large number of these issues is taking longer than anticipated.
67. The ELPD SDS Team has found that approximately 12% of finalised assessments uploaded to Collaborate by ELPD Assessors contain discrepancies or issues which may highlight a more substantive error potentially affecting the value of the assessment. Examples of the types of issues identified include:
- (a) One ELPD Assessor was incorrectly including the insurance excess in their assessment of subrogated losses.
 - (b) ELPD Assessors overriding formulas in the template to manually reconcile the assessment values. Although this issue only affected the value of a small number of finalised assessments, the ELPD Assessors had to review and make amendments to a larger number of assessments to remove the error.
 - (c) ELPD Assessors including property for unregistered claimants in finalised assessments.




68. In addition to the issues identified during the initial check process, there have been two instances where assessor errors have been brought to the attention of the ELPD SDS Team by an ELPD Assessor after a Final Notices of Assessment had been sent to the group members. These two Final Notices of Assessment have been amended and reissued.
69. As a result of the large number of minor data and administrative issues, and the complexity of the more substantive issues which potentially affect the value of the finalised assessments, the ELPD SDS Team is currently issuing Final Notices of Assessment at a slower rate than anticipated. The ELPD SDS Team is currently recruiting an additional full-time resource to assist with this task with a view to ensuring that it does not delay the ELPD assessment process.

D. ELPD REVIEW PROCESS

70. Under section E5.1 of the SDS, group members may request a review of their Final Notice of Assessment within 42 days after the date shown on the assessment.
71. I refer to paragraphs 82 and 83 of my affidavit dated 9 October 2016. In addition to Mr Delany QC, we have now retained the following members of the Victorian Bar as ELPD Review Assessors:
- (a) Christopher Archibald; and
 - (b) Emily Porter.
72. We are currently in discussions with two additional members of the Victorian Bar whom we propose to retain as ELPD Review Assessors.
73. To date, no application for review has been received in respect of the Final Notices of Assessment that have been issued to date.
74. The ELPD Review Assessors will have limited availability over the Court's winter vacation. However, in light of the limited number of reviews sought to date by group members of their Provisional Notices of Assessment and the Final Notices of Assessment, the ELPD SDS Team does not currently anticipate that a high volume of review requests will be received.



E. APPOINTMENT OF NEW ELPD ASSESSORS

75. Since my 18 March 2016 Affidavit the ELPD SDS Team has concluded negotiations with the global loss adjusting firm Cunningham Lindsay, which has been appointed as an additional ELPD Assessor. To date, the ELPD SDS Team has allocated 85 properties to Cunningham Lindsay for assessment, and they have indicated that they have capacity to complete an additional 65 assessments.
76. I have also recently appointed the law firm HWL Ebsworth and Min Guo, a member of the Victorian Bar, as additional ELPD Assessors. To date, we have only allocated properties relating to the Murrindindi settlement distribution scheme to HWL Ebsworth. We have allocated four properties to Min Guo for assessment.
77. The SDS Team has arranged for Cunningham Lindsey, HWL Ebsworth and Min Guo to be trained and audited by Crawfords in order to ensure ongoing consistency between ELPD Assessors.
78. At the time of swearing my 18 March 2018 affidavit, we had recently appointed the firm Technical Assessing as an additional ELPD Assessor. The loss assessor responsible for conducting loss assessments at this firm has subsequently departed, and we will not be allocating any additional assessments to Technical Assessing.

F. WEEKLY MONITORING OF ELPD ASSESSORS

79. Since my 18 March 2016 affidavit, we have introduced a new weekly reporting requirement to improve the systems used by the SDS Team to manage the ELPD assessment process.
80. ELPD Assessors now submit a weekly progress report comprising the following statistics for above insurance and subrogated assessments:
- (a) Total number of Provisional Notices of Assessment completed (whether or not it has been issued to the group member);
 - (b) Total number of Provisional Notices of Assessment completed issued to group members;
 - (c) Total number of Provisional Notices of Assessment uploaded to the Collaborate database;



10688594-11



- (d) Total number of Provisional Notices of Assessment which will be issued in the next two weeks;
- (e) Total number of disputes received; and
- (f) Total number of disputes received which were not able to be resolved.

G. INCENTIVE PAYMENTS TO EXISTING ELPD ASSESSORS

- 81. The SDS Team has been closely monitoring the completion rates of each ELPD Assessor. At present, Hall & Wilcox and Crawfords are the only ELPD Assessors who have consistently met their weekly assessment targets.
- 82. In order to facilitate the timely completion of assessments, I have recently implemented a conditional rate increase payable to Hall & Wilcox and Crawfords if they are able to increase the volume of assessments completed over a four-week cycle by their respective firms to above the agreed-upon numbers. The purpose of this financial incentive is to enable these ELPD Assessors to pay overtime and to finance any other steps which will permit them to increase their assessment completion rate.
- 83. The conditional rate increase specifies that if these ELPD Assessors meet specified stretch targets, the ELPD Assessors will receive an additional \$250 for all above-insurance assessments completed in two four-week cycles: 16 May to 10 June 2016, and 13 June to 8 July 2016. They will not be eligible for the rate increase in the second cycle if they do not meet the specified completion rates in the first cycle.
- 84. I have recently proposed a similar conditional rate increase to RMCG, which is yet to confirm whether or not it is interested in participating in the conditional rate increase scheme.
- 85. The SDS Team will monitor the assessment completion rates of the new ELPD Assessors and consider extending a similar conditional rate increase to any other ELPD Assessor that successfully meets its assessment targets.

H. ELPD ASSESSOR AUDIT

- 86. 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. I also refer to paragraphs 61 to 65 of my Affidavit dated 18 March 2016 in respect of the substantive issues identified as a consequence of the audits and the steps taken to rectify these issues.

87. Since this time, we have undertaken an additional spot audit of assessments completed by Ligeti and identified that they were incorrectly including insurance excess in their assessments of subrogated claims. The SDS Team has alerted Ligeti to this issue, and they have undertaken a review of all affected assessments and prepared and uploaded corrected assessments.
88. In order to ensure the initial assessments completed by newly appointed ELPD Assessor Technical Assessing were consistent with assessments prepared by the original ELPD Assessors, a number of their assessments were audited prior to any PNOAs being issued. This audit detected an unacceptably high volume of typographical errors in their assessments which required rectification before they could be issued. As a consequence, all assessments completed by Technical Assessing were reviewed by the ELPD SDS Team prior to being issued to group members.
89. In order to ensure that the quality and consistency achieved by the original ELPD Assessors is maintained by the new ELPD Assessors, the ELPD SDS Team has arranged for Crawfords to audit their work prior to any assessments being issued to group members. Assessments recently completed by HWL Ebsworth and Min Guo are currently being reviewed by Crawfords. While assessments have been allocated to each of Cunningham Lindsay, they are yet to be audited.
90. The ELPD 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.

High Level audit review

91. The ELPD SDS Team 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. The process for conducting this review is described in paragraphs 66 to 69 of my affidavit dated 18 March 2016.



10688594-11



I. ESTIMATED DURATION

92. The ELPD SDS Team continues to closely monitor the progress of the ELPD loss assessments and the performance of each of the ELPD Assessors.
93. We anticipate that the combined effect of the efforts to expedite the ELPD assessment process outlined above, including the engagement of new ELPD Assessors and the offer of a financial incentive to ELPD Assessors to increase the volume of assessments will be of assistance in ensuring that the remaining ELPD assessments can be conducted within as short a time frame as is reasonably possible.
94. At present, one of the most significant impediments to the completion of ELPD assessments is the difficulty that ELPD Assessors are experiencing in contacting group members and delays in group members returning requested documents and phone calls. While the SDS Team and ELPD Assessors are aware that completing forms and providing information in respect of their losses can be a traumatic experience for many group members, these issues are resulting in a longer than expected timeframe required to complete some assessments.
95. The ELPD SDS Team and the ELPD Assessors are currently aiming to have all PNOAs issued by the end of July 2016. Based on the current completion rate being attained by the ELPD Assessors and given the delays that the ELPD Assessors are experiencing in finalising certain assessments, it may not be possible to issue all PNOAs prior to the end of August. Taking into account review periods, this will permit the distribution of settlement funds towards the end of 2016 or early 2017.

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

96. As of 10 June 2016, 142 group members have advised the SDS Team that they do not wish to proceed with an ELPD claim for compensation.
97. 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;
98. 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.

99. As of 10 June 2016, the SDS Team has contacted 115 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.
100. Following these calls, correspondence has been sent to 113 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.
101. We have informed these group members that we will be issuing them with \$Nil assessments. To date, no \$Nil assessments have been issued.

K. UNCONTACTABLE GROUP MEMBERS

102. I refer to paragraphs 78 and 79 of my Affidavit dated 18 March 2016 which indicated that the SDS Team had 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.

103. There are presently 53 registered ELPD group members who are uncontactable. The SDS Team has sent letters to the addresses of 29 of these group members, requesting that they contact Maurice Blackburn in relation to their claim. Australian Electoral Commission (**AEC**) records have been searched for 33 of these group members. Where this reveals an address different than the one provided to Maurice Blackburn, a letter will be sent to their registered address. The SDS team will be attending the AEC to inspect AEC records shortly in relation to the remaining uncontactable group members. 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 to their last known address.




INTERIM PAYMENTS

Interim payments on the basis of extraordinary need or compassionate grounds

104. As at 15 June 2016, I have received 105 applications for interim payment on the basis of exceptional need pursuant to sections D1.4 and F1.4 of the SDS.
105. In respect of 95 of these applications, the applicants have been assessed as being eligible to receive compensation from the settlement sum, 1 applicant has been assessed as not being eligible to receive compensation from the settlement sum and 9 applicants have claims which are yet to be assessed.
106. To date, I have considered the applications of 83 of the applicants who have been assessed as being eligible to receive compensation. 78 of these applicants have been successful in their applications for an interim payment, 4 have been unsuccessful and 1 applicant was provided with a letter to assist in obtaining finance.
107. To date, I have approved a total of \$2,006,554.50 in interim payments to the successful applicants.
108. The remaining 11 group members who have been assessed as eligible to receive compensation have yet to be assessed for eligibility for interim payment.
109. Now produced and shown to me marked "AJW-1" is a confidential exhibit listing the outcome of interim payment applications considered to date.

Interim Distributions: I-D Claims

110. Pursuant to Section D1.1 and D1.2 of the SDS, in an exercise of my absolute discretion I may commence making distributions from the I-D Fund to resolved I-D claims upon resolution of the Final Assessed Values of at least 30% of I-D claims, subject to the considerations and limitations in Section D1.3 of the SDS.
111. This threshold was met on approximately 11 March 2016.
112. I have considered whether, in the circumstances, it is appropriate to commence making interim distributions to group members with assessed I-D claims. Completing this process would involve the diversion of significant resources from the SDS Team responsible for preparing claims for I-D claims for assessment to administer an interim distribution, including due to:




- (a) Data verification of all files assessed to date to ensure that the assessment data as recorded as against a group member's file in Matter Centre accurately reflects the assessment data as set out in the group member's Notice of Assessment to ensure that no over or underpayment occurs;
- (b) A widespread review of group members' files in order to determine the potential interim liability under social security legislation of group members who would receive an interim distribution, in part, for economic loss due to injury;
- (c) The coordination of a widespread mail-out to eligible group members advising them of the proposed distribution and requesting that they sign and return an authority to release funds;
- (d) The monitoring of the return of authorities to release funds and the coordination of a widespread mailout to group members by cheque;
- (e) The coordination of a widespread mail-out to ineligible group members explaining why they are not entitled to participate in the interim distribution; and
- (f) The fielding of an anticipated large number of telephone calls and emails from ineligible group members seeking to advance their claims more quickly in order to expedite their eligibility for an interim payment.

113. For these reasons, I have determined that making an interim distribution to I-D group members had great potential to disrupt and delay the progress of the I-D assessment process, potentially by up to a month or longer, and practically could have the effect of delaying the final distribution from this year until next. Consequently in the interests of finalising the assessment process and distributing compensation to all group members in as short a time frame as possible I have determined not to make an interim distribution at this time.

114. If, in October 2016 it looks likely that final settlement distribution in respect of I-D group members will not occur in the fourth quarter of 2016, I propose to revisit this issue.

Interim Distributions: ELPD Claims

115. Section F.1 of the SDS confers a similar discretion to make an interim distribution to ELPD group members upon resolution of the Final Assessed Values of at least 40% of ELPD claims. Whilst substantially more than 40% of ELPD claims by estimated value




have reached the PNOA stage because of the issues surrounding finalisation of assessments detailed above this threshold has not yet been reached. I have given consideration as to whether to make an interim distribution to ELPD group members when this threshold is reached. For reasons which are similar to those which pertain to an interim distribution in relation to I-D claims I am concerned that a distribution under section F.1 may be very disruptive to the process of finalising the distribution to group members and could be the practical difference between a distribution this year and a distribution next.

116. If, in October 2016 it looks likely that final settlement distribution in respect of ELPD group members will not occur in the fourth quarter of 2016, I propose to revisit this issue.

Interim payment application made by Denis Spooner

117. I refer to the following statement published in The Australian newspaper on 11 April 2016:

Mr Spooner said that when he fell into severe hardship he met with Andrew Watson... to ask for an interim payment... "I said 'This is how it is: I run out of money in two months' time," Mr Spooner said. He said Mr Watson initially rejected the request, but after receiving more paperwork agreed to a partial payment.

118. I confirm the statements made by Denis Spooner in that article.
119. I refer to Denis Spooner's email to the Supreme Court of Victoria of 11 May 2016 in which Denis Spooner advised the Court that he and Suzi Kerr were on a short vacation.
120. It has now come to my attention that Denis Spooner and Suzi Kerr have made publicly available statements published via Facebook which indicate that this short vacation included trips to St Lucia and Antigua in the Caribbean and California and Orange County in the United States of America.
121. In the circumstances, I am concerned that the statements made by Denis Spooner regarding his financial hardship may not have been accurate.



10688594-11



Apparent misinformation regarding quantum of interim payment made to Denis Spooner

122. I have been advised by the Plaintiff that she has been contacted by a distressed group member who was upset and confused as to why Denis Spooner had been "paid out in full" for his claim. This group member advised the Plaintiff that they had heard about Denis Spooner's alleged full payout through the bushfire community. The group member had just received their notice of assessment and wanted to know why their assessment was so much lower than the "half a million dollars" that they had heard that Denis Spooner had been paid out.
123. The group member who had contacted the Plaintiff was highly agitated and distressed.
124. The Plaintiff is not provided with information regarding individual group members or their claims, and as such she was unable to confirm or deny the rumours which the group member had heard. However, due to her knowledge of the Settlement Distribution Scheme and the interim payment provisions, the Plaintiff was able to explain to the group member that it was her understanding that no one would be paid in full until all assessments were done and that the most that Denis Spooner would have been paid is an interim payment.
125. I am concerned about the apparent misinformation that is being circulated in the bushfire community regarding the interim payment process. To this end, and without disclosing details which are particular to Denis Spooner or any other group member's claims:
- (a) I confirm that given that the assessment process is not complete, no group member has been paid "in full" by way of interim payment; and
 - (b) I confirm that no group member has been paid out half a million dollars by way of interim payment.
126. Rather, the interim payments which have been made to date have been designed to address circumstances which, based on the statutory declarations and supporting materials presented to me, disclose exceptional need based on financial or compassionate grounds. The amount of interim payments granted varies from group member to group member, depending on the individual circumstances and financial needs of the group member as evidenced by their statutory declaration and supporting documents.



GROUP MEMBER COMMUNICATIONS***Communication with group members in relation to individual I-D claims***

127. In the course of the assessment of an **individual I-D claim**, a group member will receive the following communications from the SDS Team:

- (a) Letter or email requesting they complete an electronic survey, providing a unique ID number and password and directing them towards a website to complete the survey. Upon completion of the survey, each group member was required to complete and return relevant authorities to the SDS Team;
- (b) Letter or email advising the group member regarding the Personal Injury Questionnaire process;
- (c) Telephone call from a paralegal scheduling a Personal Injury Questionnaire;
- (d) Telephone call from a paralegal to complete the Personal Injury Questionnaire, which typically took between one and three hours to complete;
- (e) Telephone call from a paralegal or legal assistant to schedule an appointment with an assessor;
- (f) Letter confirming the details of the appointment with the assessor;
- (g) A SMS or phone call confirming the details of the appointment with the assessor 24 hours prior to the scheduled appointment;
- (h) Letter enclosing their Notice of Assessment and Statement of Reasons.

128. Certain types of claims require further communication with group members, for example, letters appointing personal representatives for all Order 15 claimants with registered I-D claims.

129. Considering the 1901 registered I-D claimants, I estimate that the SDS Team administering the I-D claims assessment process has engaged in over 15,000 individual communications with I-D claimants since the commencement of the settlement administration process.

130. In addition to these communications, it is frequently necessary for the SDS Team to contact group members through email, letters and telephone calls to remind them to complete the electronic survey, return signed authorities, and to participate in the



Personal Injury Questionnaire, and to respond to questions specific to the status of each individual's I-D assessment.

Communication with group members in relation to individual ELPD claims

131. In the course of the assessment of an individual **above-insurance ELPD claim**, a group member will receive the following communications from the SDS Team:
- (a) Letter confirming the allocation of their claim to an ELPD Assessor for assessment;
 - (b) Letter enclosing the Final Notice of Assessment.
132. All group members with unallocated claims as at March 2016 have also been sent an ELPD workbook by the ELPD SDS Team, and there has been a large volume of communication with individual group members in relation to the completion and return of this workbook.
133. Further to these communications, there has also been a large volume of correspondence with individual group members in respect of interim payment applications, review requests, requests for bond waivers, and late registration applications.
134. In addition to communication directly with the ELPD SDS Team, every individual group member with an above-insurance ELPD claims is also contacted by the ELPD Assessors via letter, email and telephone in relation to the assessment of their individual claim.
135. Each group member is also issued by their allocated ELPD Assessor with a Provisional Notice of Assessment, a pro forma letter enclosing the Provisional Notice of Assessment, a pro forma dispute notice and an information guide to interpreting the Provisional Notice of Assessment. This standard form documentation was drafted by the ELPD SDS Team and provided to the ELPD Assessors in order to standardise the information sent to group members by the ELPD Assessors.

Daily communication with group members in relation to individual claims

136. At all stages in the assessment process, group members have been invited to contact the SDS Team with any questions specific to the assessment of their individual claim(s) or the operation of the settlement distribution scheme more generally.




137. I am informed by the SDS Team that they respond to approximately 140 group member enquiries per day falling into this category, whether by way of email or telephone call.

General updates on settlement administration progress

138. In addition to the vast volume of individual group member communications, the SDS Team continues to update group members on the progress and conduct of the settlement administration on a periodic basis. Correspondences which fall into this category include:

- (a) Update letter sent via email or post on 20 January 2015;
- (b) The detailed "Personal injury compensation in the Kilmore-East to Kinglake Bushfire Class Action" brochure and enclosing letter sent on 19 March 2015;
- (c) The detailed, "Property damage compensation in the Kilmore-East to Kinglake Bushfire Class Action" brochure and enclosing letter sent on 10 June 2015;
- (d) Update letter sent via email or post on 9 February 2016;
- (e) Update letter sent via email or post on 29 February 2016; and
- (f) Update letter sent via email or post on 10 May 2016.

Complaints made regarding group member communication by certain group members

139. I refer to:

- (a) Vicki Ruhr and Denis Spooner's comments made on ABC Radio on 6 February 2016;
- (b) Denis Spooner's comments in The Sunday Age article, "Black Saturday bushfire victims devastated after class-action payouts delayed" published 7 February 2016;
- (c) Vicki Ruhr's comments on ABC on 7 February 2016;
- (d) Denis Spooner's comments in The Australian article, "Black Saturday bushfire: Lawyers' money from misery 'obscene'" published 12 April 2016;
- (e) Vicki Ruhr, Denis Spooner, and Suzi Kerr's comments in The Australian article, "Bushfire survivors say lawyers 'must put little person first'" published 25 April 2016;




- (f) Vicki Ruhr, Denis Spooner and Suzi Kerr's comments in The Australian article, "Black Saturday survivor angst grows over Maurice Blackburn legal fees" published 25 April 2016; and
- (g) Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's letters to the Supreme Court of Victoria dated 26 April 2016;
- (h) Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's comments published in The Australian Article, "Black Saturday bushfire survivors seek court's help on \$794m payout" published 2 May 2016;
- (i) Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's letters to the Supreme Court of Victoria dated 3 May 2016;
- (j) Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's email to the Supreme Court of 10 May 2016;
- (k) Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's email to Michael Wilson QC, Settlement Distribution Coordinator, of 10 May 2016;
- (l) Denis Spooner's email to the Supreme Court of Victoria of 11 May 2016; and
- (m) Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's email to the Supreme Court of 14 June 2016.

140. Now produced and shown to me marked '**AJW-2**' are copies of each of these letters and media publications.

141. Each of these letters, emails and media publications contain complaints made by one or more of Ms Ruhr, Mr Spooner, Ms Kerr and Mr Archibald regarding the progress and/or conduct of the settlement administration. The crux of their complaints is that:

- (a) There has been a lack of communication regarding the settlement administration and the anticipated delay in the settlement distribution;
- (b) Group members are uninformed about the supervision and oversight of the settlement administration process; and
- (c) Group members are waiting for their money whilst the lawyers are being paid on an ongoing basis.




142. Due to the public and repeated manner in which they have made such allegations, in this section I deal with complaints regarding group member communications.

143. I have addressed above the standard communication to group members about the settlement administration. Below I specifically address:

- (a) The communications made with Vicki Ruhr, Denis Spooner and Norman Archibald in relation to non-standard enquiries or issues.
- (b) The allegation that there has been a failure to communicate with group members about the delay in the settlement distribution; and
- (c) The allegation that group members were unaware of the Court's ongoing supervisory role.

144. In the circumstances I believe the allegation that there is a lack of communication with group members and in particular with Denis Spooner, Vicki Ruhr and Norman Archibald is plainly untenable.

Communication with Vicki Ruhr

145. In addition to standard communications pertaining to the assessment of her individual claims, Vicki Ruhr has received a large amount of non-standard communication from me and members of the Settlement Distribution Team, including:

- (a) A face-to-face meeting on 16 February 2016 regarding the progress of this settlement administration attended by Vicki Ruhr, Denis Spooner Norman Archibald, Suzi Kerr;
- (b) Eleven emails; and
- (c) Three telephone calls.

146. In addition to these non-standard communications, Vicki Ruhr has been sent standard communications sent to all group members in relation to the assessment of individual I-D and ELPD claims set out above.

Communication with Denis Spooner

147. In addition to standard communications pertaining to the assessment of his individual claims, Denis Spooner has received a large amount of non-standard communication from me and members of the Settlement Distribution Team, including:



- (a) Two face-to-face meetings, both of which occurred on 16 February 2016. The first such meeting was a general meeting regarding the progress of the settlement administration attended by Vicki Ruhr, Denis Spooner Norman Archibald, Suzi Kerr. The second such meeting was a meeting with members of the Settlement Distribution Team in relation to the progress of the assessment of Denis' individual claims;
- (b) Eleven written correspondences, comprised of emails and letters. These correspondences were in response to specific issues raised by Denis Spooner regarding his claims and/or in response to concerns raised about the settlement administration process; and
- (c) Seven telephone calls, including one with me in the capacity as Scheme Administrator.

148. The last non-standard communication which the Settlement Distribution Team attempted to have with Denis Spooner was on 12 April 2016. On this date, senior members of the Settlement Distribution Team attempted to telephone Denis Spooner following a report that he was dissatisfied with the settlement administration process. The staff involved left a message for Denis Spooner stating that they understood that he had concerns about the process and inviting him to call back if he wished to discuss these concerns. Denis Spooner did not return this call.

149. In addition to these non-standard communications, Denis Spooner has been sent standard communications sent to all group members in relation to the assessment of individual I-D and ELPD claims set out above.

Communication with Norman Archibald

150. In addition to standard communications pertaining to the assessment of his individual claims, Norman Archibald has received non-standard communication from me and members of the Settlement Distribution Team, including:

- (a) A face-to-face meeting on 16 February 2016 regarding the progress of this settlement administration attended by Vicki Ruhr, Denis Spooner Norman Archibald, Suzi Kerr;
- (b) Six written correspondences, comprised of letters and emails; and
- (c) Four telephone calls.




151. In addition to these non-standard communications, Norman Archibald has been sent standard communications sent to all group members in relation to the assessment of individual I-D and ELPD claims set out above.

Communication regarding delay in the settlement distribution

152. In their letter to the Supreme Court of Victoria dated 26 April 2016, Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald alleged that between 17 February 2016 and 26 April 2016, the Settlement Distribution Team had not communicated with them regarding the anticipated delays in the settlement distribution. An extract from their letter containing this allegation was subsequently printed in The Australian newspaper on 2 May 2016.
153. This allegation is false.
154. On 29 February 2016, the Settlement Distribution Team sent an update to all registered group members in this proceeding via letter or email advising them of the issues experienced in the assessment process, the measures taken to address these issues and the likely new timeframe for the settlement distribution. Copies of this letter, and the earlier update letter of 9 February 2016, were sent to each of Vicki Ruhr, Denis Spooner and Norman Archibald. Suzi Kerr is not a group member to this proceeding and accordingly was not sent a copy of either letter.
155. A further update letter was sent to registered group members on 10 May 2016. A copy of this letter was sent to each of Vicki Ruhr, Denis Spooner and Norman Archibald.
156. Each of the update letters of 9 February 2016, 29 February 2016 and 10 May 2016 urged group members to contact Maurice Blackburn if they had any questions.

Communication re Court supervision

157. I refer to Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's assertion in their letter dated 26 April 2016 that group members are uninformed regarding the ongoing supervisory role of the Court in the settlement distribution.
158. This assertion is incorrect. The ongoing supervisory and monitoring role of the Court is specifically referred to in the detailed information brochures which were sent to group members last year on 19 March 2015 and 10 June 2015 and in the group member update letters of 29 February 2016 and 10 May 2016.

159. During my meeting with Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald on 16 February 2016, I specifically advised them of the forthcoming Case Management Conference and advised them that they could attend court if they desired. As at that date, a specific time had not been set down for the Case Management Conference but I advised them that it was likely to take place in March or early April.
160. The day after my meeting with Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald, I received an email from Vicki Ruhr requesting the Court's details, acknowledging the Court's supervisory role in the settlement administration process and stating that they wished to go to Court and ask for urgent assistance. The email cc'd in Suzi Kerr and Norman Archibald. I accordingly provided them with the Court's contact details.
161. Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald have not at any stage since that time requested information from the Settlement Distribution Team regarding the specific timing of forthcoming court dates. If they had done so, such information would have been promptly provided to them.
162. In these circumstances, Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's claim that they and other group members are unaware of the supervisory role of the Court, the existence of Case Management Conferences and their ability to attend Court is inaccurate.

Response to concerns raised regarding communication

163. I refer to Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald's request in their email dated 14 June 2016 that the Court intervene to ensure "helpful and efficient" communication surrounding the progress of the settlement administration.
164. The SDS Team will continue its day to day communication with individual group members detailed above and provide further general updates where appropriate.
165. Further, given the false nature of the allegations made by Vicki Ruhr, Denis Spooner, Suzi Kerr and Norman Archibald addressed above, it is of some concern to me that Vicki Ruhr and Suzi Kerr have been posting invitations on Facebook to group members to:
- (a) contact journalists if they are dissatisfied with the settlement administration process (posted by Vicki Ruhr on a number of occasions);




- (b) contact them if they have any questions about the class action (posted by both Vicki Ruhr and Suzi Kerr);
- (c) contact them if they want information or details about the Case Management Conference (posted by both Vicki Ruhr and Suzi Kerr);
- (d) contact them if they want to raise issues at the Case Management Conference so that these can be conveyed to the Court a week in advance. (posted by Suzi Kerr).

166. Given the false and inaccurate information which these group members have previously disseminated and their apparent fundamental misunderstanding of some aspects of the settlement distribution process, these activities impede rather than facilitate helpful and efficient communication.

STEPS REQUIRED TO PREPARE FOR SETTLEMENT DISTRIBUTION

167. There is a large amount of work which will need to be undertaken upon finalisation of each assessment prior to the settlement distribution occurring. This work will need to be conducted in order to ensure that the amounts distributed to be to each group member, and the amounts to be withheld to pay back relevant statutory authorities and third parties, are accurately calculated and recorded in Maurice Blackburn's Matter Centre database.
168. This process of data and payment verification is acutely important because if any one assessment is inaccurately recorded in the database, payments to all group members eligible to make a claim on the relevant distribution sum will be inaccurate. This is because eligible I-D group members will receive a pro rata distribution of their assessed losses from the I-D Distribution Sum, and eligible ELPD group members will receive a pro rata distribution of their assessed losses from the ELPD Distribution Sum.
169. Whilst great care has been taken to ensure that Matter Centre accurately records group members' assessed losses as such losses are assessed, the recording of such assessments has been done through a combination of manual and automatic data importing. To the extent that such data has been recorded manually, data verification is necessary to ensure that no human data input error has occurred. To the extent that such data has been automatically imported through use of importing software,




data verification is necessary to ensure that the importing software has worked accurately.

170. In order to ensure that all assessment and withholding amounts are accurately calculated and recorded in Matter Centre prior to distribution, once all assessments have been sent to group members, the SDS Team will:
- (a) Review each finalised assessment as sent to group members and the Matter Centre record for such group member to verify that the assessment data has been accurately recorded in Matter Centre; and
 - (b) Review each finalised assessment as sent to group members to ensure that any monies which will need to be withheld on account of paybacks to statutory authorities is up-to-date and accurately recorded in Matter Centre. To the extent that such information is not up-to-date, the SDS Team will seek updated payback information for the group member based on an anticipated future distribution date and, once such information has been received, update Matter Centre.
171. I anticipate that this process of file and data review by the SDS Team will be able to be commenced in relation to I-D group members in July or August 2016. I anticipate that this process of internal data review will take approximately four to six weeks.
172. In relation to ELPD group members, based on the current progress of the assessments, I anticipate that this process of file and data review by the SDS Team will be able to be commenced in August or September 2016. I anticipate that this process of internal data review will take approximately four to six weeks.
173. Concurrently with the internal data verification process, the SDS Team will request and chase up any outstanding disbursement invoices payable from the Distribution Sum so that the quantum of the Distribution Sum can be known.
174. In calculating the quantum of the Distribution Sum, it will also be necessary for the SDS Team to consider and estimate the settlement administration costs and disbursements which will be incurred after the distribution of compensation to group members, for example:
- (c) managing group member inquiries;
 - (d) external audit fees;



- (e) the cost of preparing corporate taxation returns for FY17;
- (f) managing any settlement money that the SDS Team is unable to distribute (for example, unpresented cheques, unresolved disputes over the allocation of ELPD compensation between group members with above-insurance claims registered at a single loss address, deregistered companies or estate claims where no grant of representation has been obtained).

175. Following completion of this internal data verification process, the Settlement Distribution Team will move the Distribution Sum into a non interest-bearing account so that the precise quantum of the Distribution Sum is known and individual pro-rata payments can be calculated based on the assessed data contained in the Matter Centre database.
176. The assessed data contained in the Matter Centre database will then be totalled to establish the entire Distribution Sum and a proposed schedule of payments will be produced based on each eligible group member's calculated pro rata entitlement to the Distribution Sum.
177. Prior to the distribution occurring, I intend to engage an external consulting firm to audit the proposed schedule of payments to ensure its accuracy. Maurice Blackburn's auditors, KPMG, have indicated that they are amenable to undertaking such an audit. I anticipate that the process of external audit will take approximately two to three weeks.
178. After the proposed payment data has been audited, the schedule of payments will be sent to an external mailing house authorised to print cheques. This external mailing house will be instructed to print cheques in accordance with the schedule of payments and to send out such cheques with a pro forma letter drafted by the Settlement Distribution Team. Based on previous settlement distributions conducted by Maurice Blackburn and the volume of payments to be made in this proceeding, I anticipate that it will take the external mailing house approximately three weeks to issue the cheques and letters required by this settlement distribution.

LATE REGISTRANTS

179. As at 14 June 2016, I have received late registration application forms from 387 claimants.
180. I have now considered the evidence of all late registration applicants.




181. In respect of 242 of the late registrants considered, I determined that the evidence discloses compassionate grounds that constitute a basis for inclusion of these claims in the scheme. Of these claims, 65 are in respect of claims for both PI and ELPD, 106 are for PI only, and the remaining 71 for ELPD only. I have caused notices to be sent to these claimants advising them of this decision.
182. In respect of 116 of the late registrants considered, 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.
183. We identified 19 late registration applications that were made in error, for example, a number of group members with registered claims made late registration applications in respect of the same claims. No further action has been taken in respect of these applications.

SENIOR MASTERS OFFICE

184. 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.
185. During the course of completing the Personal Injury Questionnaire, the conferences with assessors and with ELPD Loss Assessors we have identified further group members who are lacking capacity. The SDS Team is in the process of ensuring that a Personal Representative is appointed for such group members and the Senior Master's Office is notified accordingly. As the assessment process is ongoing, this is by necessity an iterative process.
186. At the conclusion of the assessment process, I propose to deliver the final PI and final ELPD Assessments for all Order 15 claimants identified in the proceeding to the Senior Master's Office in accordance with the procedure facilitating Order 15 approval set out in Section H3 of the Settlement Distribution Scheme.

ESTATE CLAIMS

187. As at 14 June 2016, we have identified 147 registered ELPD and/or PI claims made on behalf of estates. While a number of these claims were originally registered in the proceeding as estate claims, in the course of the assessment process we are




continually identifying additional estate claims where group members have passed away.

188. In respect of 72 of these estate claims, we have determined through searches of the Supreme Court of Victoria's Probate Register that Grants of Probate or Letters of Administration ('**Grants of Representation**') have been made. The SDS Team is in the process of obtaining copies of these Grants of Representation from the Probate Office and the Public Record Office Victoria, which holds probate records for applications filed with the Court prior to 1 January 2015.
189. The SDS Team has identified that there will be significant delays in obtaining such grants from the Public Record Office Victoria. Consequently, in addition to making applications to obtain grants from the Public Record Office Victoria, a member of the SDS Team is also reviewing the advertisements published in respect of these Estates on the Court's 'Probate Online Advertising System' to identify and contact the applicant for the Grant of Representation.
190. Upon receipt of these Grants of Representation, the SDS Team will review the information held on file for each estate claim and determine whether the Contact Person listed on file is the Executor or Administrator of the Estate. Where the Contact Person is also the Executor or Administrator of the Estate, the assessment of the ELPD and/or PI claim made on behalf of the Estate will continue.
191. In circumstances where the Contact Person is not the Executor or Administrator, the SDS Team will write to the Executor or Administrator and seek their authority to continue with the ELPD and/or PI claim registered on behalf of the Estate. If they elect to proceed with the Estate claim, all Notices of Assessment will be sent to the Executor or Administrator, and that individual will exercise any review rights in respect of the Estate's claims. At the conclusion of the assessment process, any compensation payable to the Estate will be sent to the Executor or Administration for distribution to beneficiaries.
192. In respect of 68 of the estate claims registered in this proceeding, the SDS Team has been unable to determine whether a grant of representation has been made. The SDS Team will shortly be writing to the Contact Person on file for each of these claims advising that we will continue to assess the ELPD and/or PI claim registered on behalf of the Estate, however that it will be necessary to obtain a Grants of Representation before compensation can be distributed to the Estate. The letter will provide information on how to obtain a Grant of Representation.

193. If no Grant of Representation has been obtained at the time of settlement distribution, the compensation payable to the Estate will be held on trust in accordance with sections D2.2 and F3.1 Settlement Distribution Scheme until a grant of representation has been made and is presented to the SDS Team.

TRUSTS, PARTNERSHIPS AND DEREGISTERED COMPANIES

194. There are :

- (a) 30 claims registered on behalf of Trusts in the proceeding.
- (b) 88 claims registered on behalf of partnerships in the proceeding.
- (c) 231 claims registered on behalf of companies in the proceeding. In the course of the assessment process it has become apparent that a number of these companies have been deregistered in the years post-bushfire.

195. The SDS Team is in the process of establishing processes for dealing with claims by Trusts, partnerships and deregistered companies in order to ensure that Notices of Assessment and distribution monies are distributed to the person or persons authorised to make claims on behalf of such entities. In the case of deregistered companies, the processes which are currently being established will require that a company be reinstated prior to any distribution occurring. The SDS team will seek clarification from the Australian Securities and Investment Commission (**ASIC**) as to whether or not they may exercise any discretion or power which may otherwise prevent the need for reinstatement.

TAXATION ISSUES

196. I refer to paragraph 94 of my Affidavit dated 18 March 2016 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) On 5 April 2016, Pitcher Partners provided advice suggesting that a Substituted Accounting Period would not assist in reducing the taxation liability payable on the Distribution Sum.
- (b) On 8 April 2016, Kimi Nishimura and I had a teleconference with Pitcher Partners during which we explored the implications of the Pitcher Partners advice of 5 April 2016. During this teleconference, I instructed Pitcher Partners to investigate and provide advice on the following matters:




- i) Whether the interest accrued before the case was deposited into Maurice Blackburn's accounts was assessable for taxation purposes;
- ii) Whether the interest accrued before the settlement was approved was assessable for taxation purposes; and
- iii) In all the circumstances, whether their advice was that I should pursue a private binding ruling to determine the taxation liability on the Distribution Sum.

197. Following this teleconference, and for a variety of reasons I determined to take further tax advice from different advisors and so retained Tim Hall, Taxation Partner at PwC to investigate these issues.

- (a) Together with Kimi Nishimura, I have since engaged in a series of communications with PwC regarding the taxation issues pertinent to the Distribution Sum, including providing them with background to the issues explored with Pitcher Partners.
- (b) In the course of these communications, PwC raised the issue of whether settlement administration costs can be deducted from the interest earned on the Distribution Sum. I advised PwC that this was the advice which I had received from Pitcher Partners (and in another matter from Greenwood Freehills) and that Pitcher Partners and I had always been proceeding on this basis. Notwithstanding this, PwC has determined that this question, in addition to the other issues raised by me, will need to be considered.
- (c) As a result of our discussions with PwC, I instructed PwC to:
 - i) Conduct a review of issues pertaining to the assessability of the interest earned on the funds and the deductibility of settlement administration fees and form an opinion as to the taxation payable on each of the funds;
 - ii) Engage with the ATO regarding these issues with a view to obtaining a binding ruling from the ATO regarding the taxation payable on each of Distribution Sum prior to September 2016.
 - iii) Assuming settlement administration costs are deductible, to advise on whether settlement administration costs incurred in FY15 and approved by the Court in FY15 but not paid out of the fund until FY16 are deductible from the FY15 interest; and



- iv) Assuming settlement administration costs are deductible, to advise on whether settlement administration costs incurred (including disbursements to 3rd parties which have been paid by the SDS Team) in FY15 but not approved by the Court until FY16 are deductible from the FY15 interest.
- (d) As corporate taxation returns for FY15 were due to be filed on 16 May 2016, in order to provide PwC with the requisite time to explore such issues, I instructed PwC to lodge an application for an extension within which to the FY15 taxation return. A 28 day extension has been granted, and a further 3-month long extension has been applied for.
- (e) As at 10 June 2016, PwC have advised that:
 - i) They have initiated informal contact with the ATO regarding the taxation issues pertaining to the Distribution Sum; and
 - ii) They are in the process of preparing an advice analysing the taxation treatment of interest earned and costs incurred by the Distribution Sum. The advice will include the questions they recommend that I ask the Commissioner of Taxation for the purposes of seeking certainty by way of a private binding ruling.

198. I have been advised by PwC that the private binding ruling process once initiated may take up to 3 months. As a result, senior members of the SDS Team are closely monitoring PwC's adherence to timeframes with a view to ensuring that the taxation issues pertaining to the Distribution Sum do not cause any delay in the distribution process.

199. I have been advised by PwC that, notwithstanding the uncertainty surrounding the taxation issues stated above, it is prudent for taxation planning purposes for any costs incurred in the FY16 financial year to be approved prior to 30 June 2016.

COSTS

200. I refer to the Australian article dated 9 April 2016 and the issues raised by the disaffected group members. In relation to the plaintiff's trial costs and the question of dividend payments paid to equity principals of Maurice Blackburn the article in the Australian gives a misleading impression. The issues raised by the disaffected group members proceed in this regard on a false premise. The facts are set out below.




201. On the application for approval of the settlement Maurice Blackburn engaged two separate independent costs assessors to determine the amount which could reasonably have been claimed for the Plaintiff's costs in the proceeding. One costs assessor determined the appropriate amount would have been at least \$69.5 million another found that the appropriate amount would have been \$77.6 million.
202. Notwithstanding the findings of the independent costs assessors, Maurice Blackburn sought approval for \$60 million in costs and disbursements and reduced the amount of its professional costs accordingly. That is, Maurice Blackburn sought approval for at least \$9.5 million less than one independent assessor regarded as reasonable and \$17.6 million less than the other.
203. The Court approved the amount of \$60 million for the Plaintiff's costs and disbursements in its judgment of 23 December 2014.
204. Pursuant to the settlement agreement, those costs were not paid until February 2015.
205. In the final analysis Maurice Blackburn's total professional costs amounted to \$37 million (approximately 7% of the settlement sum) with disbursements comprising the balance. This was \$13.4 million less than one independent assessor would have allowed and \$18.9 million less than the other assessor would have allowed for Maurice Blackburn's professional costs.
206. To describe Maurice Blackburn as having received \$60 million in costs is thus to elide the important distinction between costs and disbursements and to ignore that the costs for which approval was obtained were many millions less than those which had been independently assessed.
207. Maurice Blackburn's financial commitment to the running of the proceeding was financed by a combination of bank borrowings and reduced dividends to shareholders. In the course of the proceeding Maurice Blackburn's borrowings substantially increased. Not all this increase was attributable to the proceeding but certainly a substantial portion was. Overall the cashflow impact of carrying such a large amount of unpaid WIP and unrecovered disbursements resulted in reduced dividend payments to shareholders in the 2012, 2013 and 2014 financial years.
208. The amounts which Maurice Blackburn received by way of its professional costs from this proceeding formed part of the overall revenue of the firm and used in the general running expenses of the firm including paying down debt and paying outlays in other

large “no win no fee” cases (including the Murrindindi bushfire class action) and paying dividends.

209. The Australian article may give the impression that dividend payments were somehow deducted from the Settlement Sum in addition to the costs which the Court approved. Further, this is the express premise of the questions submitted by the disaffected group members. This is false. Dividend payments were never deducted from the Settlement Sum. The only amounts deducted from the Settlement Sum have been approved by the Court on account of the Plaintiff's costs or on account of administration costs.
210. Further the article suggests that dividend payments made prior to February 2015 were linked to the outcome of this proceeding. This is also false. As indicated above no money was received in respect of costs for the proceeding prior to February 2015 and dividends paid prior to that time arise from receipts on other cases. Dividends paid after receipt of the costs in this proceeding took account of the funds received from the Court approved costs in this case as well as receipts from other cases which the firm runs.
211. Averaged over the four financial years 2012 to 2015 inclusive the level of dividends paid to equity principals was still less than the dividends which had been paid in 2011.

Payment of settlement administration costs on an ongoing basis

212. Under the court-approved Settlement Distribution Scheme, all professional costs and disbursements incurred in the settlement administration are:
- (a) subject to Court-approval; and
 - (b) to the extent approved by the Court, payable from the Distribution Sum from any accrued interest before reducing the principal of the Distribution Sum.
213. Under Order1 of His Honour Justice Forrest of 5 November 2016, such costs are further subjected to an audit by Mr John White, Special Referee, Costs.
214. As set out in my Affidavit below, I have sought court-approval of professional costs and disbursements already incurred or paid periodically throughout the course of the settlement administration based on the taxation advice received from Pitcher Partners and PwC, regarding the best means to reduce the potential taxation liability of the Distribution Sum.




215. Subject to the Court receiving a satisfactory report from Mr John White, Special Referee, Costs, appointed by the Court, I seek approval to pay to Maurice Blackburn \$3,619,677.85 for settlement administration costs and disbursements incurred for the period 1 February 2016 to 30 April 2016.
216. In accordance with the advice of Pitcher Partners and PwC, I additionally seek approval to pay Maurice Blackburn an additional \$1,200,000 for settlement administration costs and disbursements which it is anticipated which will have been incurred in relation to the assessment of ELPD claims for the period 1 May 2016 until 30 June 2016.

SETTLEMENT ADMINISTRATION COSTS INCURRED BETWEEN 1 FEBRUARY 2016 AND 30 APRIL 2016

217. 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**).
218. 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.
219. In undertaking the work detailed in this Affidavit, the following settlement administration costs and disbursements have been incurred for work carried out between 1 February 2016 and 30 April 2016:



Settlement Administration Costs and Disbursements		
General Settlement Administration:		
Professional Fees		\$407,509.30
Disbursements		\$6,133.85
Subtotal		\$413,643.15
I-D Settlement Administration:		
Professional Fees		\$1,060,819.10
Disbursements		\$868,539.59
Subtotal		\$1,929,358.69
ELPD Settlement Administration:		
Professional Fees		\$567,485.60
Disbursements		\$709,190.41
Subtotal		\$1,276,676.01
Total administration costs and disbursements:		
Professional Fees		\$2,035,814.00
Disbursements		\$1,583,863.85
Total		\$3,619,677.85

220. Now produced and shown to me marked 'AJW-3' is a copy of the itemised invoices for settlement administration costs and disbursements for work carried out between 1 February 2016 and 30 April 2016.

I. Professional fees incurred between 1 February 2016 and 30 April 2016

221. Total professional fees for work carried out between 1 February 2016 and 30 April 2016 amounted to \$2,035,814.00, composed of:

- (a) \$407,509.30, being professional fees incurred in relation to General Settlement Administration;




- (b) \$1,060,819.10, being professional fees incurred in relation to I-D Settlement Administration; and
- (c) \$567,485.60, being professional fees incurred in relation to ELPD Settlement Administration.

General Settlement Administration

- 222. Total professional fees for work carried out in relation to General Settlement Administration between 1 February 2016 and 30 April 2016 amounted to \$407,509.30.
- 223. Professional fees incurred by lawyers overseeing the settlement administration process between 1 February 2016 and 30 April 2016 amounted to \$275,031.90, with a total of 425.6 hours spent on the following and similar tasks:
 - (a) Overseeing the settlement administration process;
 - (b) Ongoing recruitment, training and supervision of settlement administration staff;
 - (c) Ongoing development 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) Ongoing monitoring and estimating of settlement administration costs and process of distribution;
 - (g) Overseeing late registrant process, reviewing and determining late registrant applications, and providing direction on late registrant enquiries;
 - (h) Overseeing interim payment process, reviewing and determining interim payment applications, and providing direction on interim payment enquiries;
 - (i) Preparing correspondence to group members regarding update on processes and responding to similar enquiries;
 - (j) Preparing procedure for assessing estate claims and distributing funds to estate claims;




- (k) Monitoring the process for Order 15 claimants;
- (l) Reviewing and approving various invoices;
- (m) Liaison with John White, independent costs assessor; and
- (n) Preparing for the Case Management Conference of 31 March 2016, including preparation of affidavits and supporting material.

224. Professional fees incurred by non-lawyers undertaking paralegal and administrative tasks between 1 February 2016 and 30 April 2016 amounted to \$132,477.40, with a total of 384 hours spent on the following and similar tasks:

- (a) Assisting with late registrant processes, enquiries and applications, including drafting memoranda, collating documentation 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, collating documentation, preparing controlled money withdrawal advice and maintaining the database spread sheets monitoring the status of such applications;
- (c) Assisting with preparation of correspondence to group members regarding update on processes; and
- (d) Updating accounting database systems in relation to disbursements relating to the assessment of individual group members' claims.

I-D Settlement Administration

225. Total professional fees for work carried out in relation to I-D Settlement Administration between 1 February 2016 and 30 April 2016 amounted to \$1,060,819.10.

226. Professional fees incurred by lawyers overseeing the settlement administration process between 1 February 2016 and 30 April 2016 amounted to \$568,013.60, with a total of 974.6 hours spent on the following and similar tasks:

- (a) Ongoing monitoring and development of the I-D settlement administration process;
- (b) Overseeing and managing the SDS I-D team;




- (c) Ongoing recruitment, training and supervision of I-D settlement administration staff;
- (d) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
- (e) Reviewing completed I-D assessments received from I-D assessors and drafting letter to I-D group members enclosing I-D assessment;
- (f) Ongoing liaison work with I-D assessors regarding assessment conferences and assessments;
- (g) Reviewing agreements with statutory compensation authorities and preparing procedures for assessment of I-D group members with cross-over claims;
- (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, including bond waiver applications;
- (j) Reviewing I-D claim books prepared for I-D assessors;
- (k) Reviewing and summarising internal files of I-D group members with crossover claims;
- (l) Responding to individual I-D group member enquiries;
- (m) Drafting and settling correspondence to I-D group members and various organisations;
- (n) Providing direction on individual cases;
- (o) Administering detailed telephone questionnaire with I-D group members, reviewing and finalising assessment memoranda, action plans and records for the I-D claim book;
- (p) Monitoring progress of all I-D group members claims, including those who are not proceeding or uncooperative, by preparing and reviewing various IT reports;
- (q) Identifying claims that can be assessed in the absence of certain records;



- (r) Overseeing further material requests received from I-D assessors;
- (s) Overseeing various audits to ensure data is reflected accurately in our system databases;
- (t) Monitoring personal injury statistics, preparing and reviewing various reports and interrogating data; and
- (u) Reviewing and approving various invoices relating to the assessment of individual group members' claims.

227. Professional fees incurred by non-lawyers carrying out paralegal and administrative tasks between 1 February 2016 and 30 April 2016 amounted to \$492,805.50, with a total of 1515.7 hours spent on the following and similar tasks:

- (a) Responding to individual I-D group member enquiries;
- (b) Administering detailed telephone questionnaire with I-D group members;
- (c) Preparing assessment memoranda for I-D assessors;
- (d) Gathering documents required for I-D assessment from various organisations, such as government agencies and medical practices, including maintaining the database and spread sheets monitoring the status of such requests;
- (e) Ongoing liaison with I-D group members and various organisations regarding outstanding documentation required for I-D Claim Book;
- (f) Reviewing and identifying I-D group members that are ready to be assessed by I-D assessors;
- (g) Monitoring process and scheduling conferences between I-D group members and medico-legal expert;
- (h) Preparing I-D claim books for I-D assessors;
- (i) Scheduling I-D assessment conferences between I-D group members and I-D assessors;
- (j) Drafting correspondence to I-D group members and various organisations;

- (k) Assisting with the process for I-D group members who are not proceeding or uncooperative;
- (l) Assisting with the process for reviews by I-D group members, including bond waiver applications;
- (m) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (n) Updating index, collating, reviewing and processing invoices and vouchers from I-D assessors and various organisations relating to the assessment of individual group members' claims;
- (o) Assisting with various audits to ensure data is reflected accurately in our system databases;
- (p) Undertaking initial review of completed I-D assessments received from I-D assessors; and
- (q) Assisting with the preparation of reviewed I-D assessments and letter to be sent to I-D group members enclosing I-D assessment.

ELPD Settlement Administration

228. Total professional fees for work carried out in relation to ELPD Settlement Administration between 1 February 2016 and 30 April 2016 amounted to \$567,485.60.
229. Professional fees incurred by lawyers overseeing the settlement administration process between 1 February 2016 and 30 April 2016 amounted to \$214,192.00, with a total of 389 hours spent on the following and similar tasks:
- (a) Overseeing the ELPD settlement administration process;
 - (b) Overseeing and managing the SDS ELPD team;
 - (c) Ongoing recruitment, training and supervision of ELPD settlement administration staff;
 - (d) Ongoing development and monitoring of internal processes for assessing claims, including IT system requirements and infrastructure;
 - (e) Responding to ELPD group member enquiries;




- (f) Providing direction on individual cases;
- (g) Monitoring progress of ELPD loss assessors, including capacity and speed allocation;
- (h) Ongoing liaison with ELPD loss assessors regarding assessment of ELPD claims, including potential new assessors;
- (i) Working with ELPD loss assessors on loss assessment principles and methods for streamlining assessment processes whilst maintaining quality control;
- (j) Drafting and settling correspondence to ELPD group members and loss assessors;
- (k) Designing, implementing and overseeing systems and procedures for issuing final notices of assessment, including IT system requirements and infrastructure;
- (l) Producing documentation for loss assessors and SDS ELPD team regarding understanding and responding to ELPD group member enquiries;
- (m) Preparing procedures for assessing trusts, business partnerships and deregistered companies' claims;
- (n) Reviewing and responding to loss assessor enquiries, including estate claims and deregistered companies;
- (o) Preparing procedure for uncontactable group members;
- (p) Overseeing audit of assessments completed by ELPD loss assessors and providing feedback;
- (q) Reviewing preliminary and final assessments completed by ELPD loss assessors;
- (r) Monitoring progress of all ELPD group members claims, including those who are not proceeding or uncooperative, by preparing and reviewing various IT reports;
- (s) Overseeing the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (t) Monitoring ELPD statistics, reviewing and interrogating data; and



- (u) Reviewing and approving various invoices and overseeing the auditing of invoices pertaining to ELPD assessments.

230. Professional fees incurred by non-lawyers carrying out paralegal and administrative tasks between 1 February 2016 and 30 April 2016 amounted to \$353,293.60, with a total of 1,047.5 hours spent on the following and similar tasks:

- (a) Preparing, reviewing and allocating files for ELPD loss assessors, including running subrogated claim checks;
- (b) Responding to individual ELPD group member enquiries;
- (c) Drafting correspondence to ELPD group members and ELPD loss assessors;
- (d) Liaising with and completing information requests to and from ELPD loss assessors;
- (e) Reviewing the Order 15 claimant process for ELPD group members;
- (f) Assisting with the process for ELPD group members who are not proceeding, uncooperative or uncontactable;
- (g) Ongoing monitoring of interactions between group members with ELPD claims and I-D claims, including ELPD group members who have met the I-D assessment threshold;
- (h) Administering the collection and collation of supporting documentation related to above insurance claims and small insurer claims;
- (i) Reviewing and amending preliminary notices of assessments to rectify errors;
- (j) Updating various system databases including Matter Centre, Collaborate, FileSite and accounting systems;
- (k) Investigating and amending errors in ELPD group member data population;
- (l) Amending and maintaining the ELPD Allocation reports and ELPD statistics report;
- (m) Assisting with the assessment of Estate and Trust claims;
- (n) Assisting with assessment of plantation claims and responding to expert plantation loss assessor enquiries;

The block contains two handwritten signatures in blue ink. The signature on the left is stylized and appears to be 'Adele'. The signature on the right is more legible and appears to be 'Kato Myle'.

- (o) Conducting various audits to ensure data is reflected accurately in our system databases; and
- (p) Updating index, collating, reviewing and processing invoices relating to the assessment of ELPD claims.

II. Disbursements incurred between 1 February 2016 and 30 April 2016

231. 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.
232. Total disbursements for work carried out or invoiced between 1 February 2016 and 30 April 2016 amounted to \$1,583,863.85, composed of:
- (a) \$6,133.85 for disbursements incurred in relation to General Settlement Administration;
 - (b) \$868,539.59 for disbursements incurred in relation to I-D Settlement Administration; and
 - (c) \$709,190.41 for disbursements incurred in relation to ELPD Settlement Administration.

General Settlement Administration

233. Disbursements for work carried out or invoiced in relation to General Settlement Administration between 1 February 2016 and 30 April 2016 amounted to \$6,133.85, and include payments of:
- (a) \$ 3,386.59 to Law in Order for photocopying charges;
 - (b) \$2,172.50 to LitSupport for photocopying charges;
 - (c) \$574.10 to Victorian Transcript Services to obtain Case Management Conference court transcript of 31 March 2016; and
 - (d) Miscellaneous administrative disbursements, including photocopying, totalling \$0.66.




I-D Settlement Administration

234. Disbursements for work carried out or invoiced in relation to I-D Settlement

Administration between 1 February 2016 and 30 April 2016 amounted to \$868,539.59, and include payments of:

- (a) \$819,379.46 to I-D assessors for conducting I-D assessments;
- (b) \$41,398.78 to medical practitioners, hospitals, psychiatrists, psychologists and counsellors for providing I-D group member treatment records and reports;
- (c) \$5,300.40 to Law in Order for electronic document processing and photocopying charges;
- (d) \$143.00 to Medicolegal Communications for providing translation services for I-D group members during assessment conferences;
- (e) \$46.80 to County Court for photocopying charges; and
- (f) Miscellaneous administrative disbursements, including telephone calls, photocopying, and courier fees, totalling \$2,271.15.

ELPD Settlement Administration

235. Disbursements for work carried out or invoiced in relation to ELPD Settlement

Administration between 1 February 2016 and 30 April 2016 amounted to \$709,190.41, and include payments of:

- (a) \$322,050.00 to Hall & Wilcox Lawyers for conducting ELPD assessments;
- (b) \$251,478.00 to RMCG for conducting ELPD assessments;
- (c) \$102,966.19 to Crawford and Company for conducting ELPD assessments;
- (d) \$13,577.32 to Law in Order for photocopying charges;
- (e) \$11,033.55 to Crawford and Company for retrofitting subrogated loss entry work;
- (f) \$4,599.99 to Crawford and Company for attendance at audit conference and auditing assessments completed by other ELPD loss assessors;
- (g) \$2,973.58 to Crawford and Company for providing training to Technical Assessing;




- (h) Miscellaneous administrative disbursements, including telephone calls and photocopying, and courier fees totalling \$511.78.

III. Combined total of settlement administration costs and disbursements incurred between 1 February 2016 and 30 April 2016

236. The combined settlement administration costs and disbursements for work carried out between 1 February 2016 and 30 April 2016 is \$3,619,677.85. I seek approval to pay that sum from the Distribution Sum.

TOTAL ANTICIPATED SETTLEMENT ADMINISTRATION COSTS

237. I refer to my Affidavit in support of the settlement approval dated 10 November 2014 and to my Affidavit of 13 April 2015 and the Affidavit of Rory Walsh dated 17 June 2015 in respect of the progress of the settlement administration. These Affidavits estimated that the total anticipated settlement administration costs would be between \$20 million and \$24 million. Based on the costs incurred to date, I consider that this estimate remains reasonable.

238. Based on the costs incurred and the interest earned to date, the total anticipated settlement administration costs should be defrayed by the interest earned on the Distribution Sum. However, this will 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 17th day of June 2016)



Before me:



FILED on behalf of the Plaintiff

KATE ROSE MCFARLANE
of 456 Lonsdale Street, Melbourne
an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)