

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

No. 4788 of 2009

BETWEEN:

CAROL ANN MATTHEWS

Plaintiff

and

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

Defendants

(by original proceeding)

AND BETWEEN:

SPI ELECTRICITY PTY LTD (ACN 064 651 118)

Plaintiff by Counterclaim

and

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

Defendants by Counterclaim

(by counterclaim)

AFFIDAVIT OF ANDREW JOHN WATSON

Date of Document:	25 May 2017
Filed on behalf of:	The Plaintiff
Prepared by:	
Maurice Blackburn Lawyers	Solicitor's Code: 564
Level 10, 456 Lonsdale Street	Tel: (03) 9605 2700
Melbourne Vic 3000	DX: 466 Melbourne
	Ref: AW/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 and pursuant to the 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.

PROGRESS IN RELATION TO I-D SETTLEMENT DISTRIBUTION

Remaining distributions

3. There are four I-D Claimants who are yet to receive their compensation. These claimants are comprised of:

(a) Three deceased estates. In relation to one of these I-D claims, probate has been filed but not granted. In relation to the remaining two I-D claims, applications for a grant of probate have been made in the Supreme Court of Victoria but are at the outstanding requisition stage, requiring further affidavit and/or materials before a grant will be made.

(b) One DVA claimant. The circumstances of this claim are set out in paragraph 10 of my affidavit dated 28 February 2017 (**February Affidavit**) and remain unchanged.

Unpresented cheques

4. As at 23 May 2017, two I-D Claimants are yet to present their cheques to the bank. Of these two I-D Claimants:

(a) One claimant continues to refuse to accept their settlement cheque. The circumstances of this claimant's claim are set out in Confidential Exhibit AJW-13 to my affidavit dated 28 March 2017 and were the subject of this Court's consideration in *Matthews v Ausnet Electricity Services Pty Ltd & Ors (Ruling No 45)* [2017] VSC 187; and

(b) The remaining claimant has confirmed they have received their cheque, but they are yet to present it.

Potentially unpaid I-D Claimant – Claimant not assessed

5. I refer to paragraphs 30 – 33 and Confidential Exhibit AJW-3 of my February Affidavit. Since the March CMC in order to assess this ID-Claimant's claim pursuant to the SDS, the SDS Team has conducted the telephone questionnaire, obtained signed authorities



and requested and obtained multiple medical records. The Claimant is now scheduled to meet with assessing counsel on 2 June 2017.

Finalising the I-D distribution

6. The SDS Team continues to attend to the following:
 - (a) Resolving remaining distributions;
 - (b) Following up any I-D Claimants who have failed to present their cheques; and
 - (c) Responding to I-D Claimant enquiries.

PROGRESS IN RELATION TO ELPD SETTLEMENT DISTRIBUTION

Progress of ELPD distributions

7. Since the March CMC, of the 3,092 above insurance claimants entitled to receive compensation in the ELPD settlement distribution:
 - (a) Payment has been made to 3,053 above insurance claimants. Of these payments, 2,916 were processed by the external mailing house Dynamic Direct on 27 March 2017 and 137 payments were processed in-house by the SDS Team;
 - (b) Two claimants have been identified as having exhausted their ELPD compensation by way of interim payment and other deductions; and
 - (c) 37 payments remain to be processed by the SDS Team.
8. The remaining 37 ELPD above insurance claims concern:
 - (a) 6 claimants involved in an ongoing disputes as to how the funds should be allocated as between claimants with joint property interests;
 - (b) 26 claimants who are either estate claimants or claimants who share an assessment with an estate claimant in circumstances where a grant of representation is yet to be obtained for the estate; and
 - (c) 5 other individual issues requiring resolution prior to payment being made.
9. The SDS Team continues to work with affected group members with a view to resolving and paying the remaining 37 claims as soon as practicable.



10. Since the March CMC, the ELPD settlement distribution has been made in respect of all 4,911 subrogated claims assessed as being entitled to compensation. These payments were processed in-house by the SDS team.

Unpresented Cheques

11. As at 16 May 2017, 186 above insurance claimants had not presented their cheques to the bank. The SDS Team has written to all such claimants requesting that they contact the SDS Team if they have not received their cheque.

Finalising the ELPD distribution

12. The SDS Team continues to attend to the following:
 - (a) Resolving remaining distributions;
 - (b) Following up any ELPD Claimants who have failed to present their cheques;
 - (c) Cancelling ELPD compensation cheques and re-processing payments where the SDS Team has received notice such action is required due to group members being deceased, unable to bank their cheques due to naming issues and/or cheques being mislaid; and
 - (d) Responding to ELPD Claimant enquiries.

RETAINER OF KPMG

13. On 7 April 2017, KPMG proposed that Mr Martin Dougall, Partner and head of KPMG's Forensics practice assume the role of expert witness in this proceeding due to a staffing change at KPMG.
14. On 11 April 2017, I sent Mr Dougall an expert retainer and letter of further instruction which mirrored the previous retainer and instructions.
15. On 12 April 2017, Mr Dougall signed and returned the letter of retainer. Now produced and shown to me marked, "**Exhibit AJW-1**" is a copy of the signed letter of retainer and the letter of further instruction sent to Mr Dougall.
16. The SDS Team continues to liaise with Mr Dougall and his team regarding the remaining I-D and ELPD distributions as required, with a view to Mr Dougall finalising and filing his expert report in these proceedings upon finalisation of most, if not all, of such remaining distributions.



COSTS

17. Consistent with prior income taxation years, on 24 May 2017 PwC confirmed that in order to reduce the taxation burden on the interest generated on the Distribution Sum during this financial year, it would be prudent to seek court approval of settlement administration costs incurred or anticipated to be incurred during FY17 prior to 30 June 2017.
18. Accordingly, I seek approval to pay settlement administration costs for the period 1 January 2017 to 30 June 2017 in an amount of up to \$3,810,117.94 or the amounts showing on Maurice Blackburn's finalised invoices for these periods, whichever is the lesser.
19. In fact based on my analysis of costs incurred to date, I anticipate that the likely costs for this period will be substantially less than \$3,810,117.94 but as a matter of prudence seek approval for up to that amount because it is consistent with the estimates previously referred to in Mr White's reports. Consistent with previous orders, I would propose that any payment of administration expenses would only take place upon review and approval by Mr John White, Special Referee and any subsequent orders deemed necessary by the Court following receipt of such report. Such a report will not be filed prior to the 9 June 2017 Case Management Conference as on 30 March 2017, Mr White advised that he would have difficulty completing a report prior to this date due to an extended overseas holiday scheduled for May.

TAXATION ISSUES

20. I refer paragraphs 85 to 87 of the February Affidavit and to Confidential Exhibit AJW 10 to that affidavit. I and other members of the SDS Team continue to work closely with our taxation advisors PwC and counsel on the taxation issues relating to the settlement administration.
21. Now produced and shown to me marked "**Confidential Exhibit AJW-2**" is a summary of progress made since the February Affidavit. I make application for this exhibit to be confidential so as to ensure the maintenance of privilege.



SWORN by the deponent at)
Melbourne in the State of Victoria)
this 25th day of May 2017)



Before me:



JONATHAN DANIEL PECK
of 456 Lonsdale Street, Melbourne
an Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)