



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD724/2016

BILJANA CAPIC
Applicant

FORD MOTOR COMPANY OF AUSTRALIA LIMITED ACN 004 116 223
Respondent

ORDER

JUDGE: JUSTICE PERRAM

DATE OF ORDER: 22 December 2017

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Opt Out Procedure

1. Orders 3 - 5 of the orders made on 17 November 2017 be vacated.
2. The parties shall confer with respect to the opt out notice and procedure in this proceeding with a view to reaching an agreement with respect to the appropriate process for this proceeding by no later than 30 March 2018.
3. By 4.00pm on 6 April 2018, either:

the Applicant file with the Court an agreed draft Opt Out Notice and proposed consent orders in respect of the approval of the opt out notice and the opt out procedure under section 33X of the *Federal Court of Australia Act 1976* (Cth); or

the parties file their respective versions of the opt out notice, respective proposed orders for the opt out process, and succinct submissions in support.
4. The application for approval of the form of the opt out notice and opt out procedure be listed for hearing on a date to be fixed.

Evidence



5. Orders 12 – 20 of the orders made on 17 November 2017 be vacated.
6. The Applicant shall file and serve any lay witness statements and expert evidence on which she seeks to rely by 4.00pm on 11 May 2018.
7. The Respondent shall file serve any lay witness statements and expert evidence on which it seeks to rely by 4.00pm on 26 June 2018.
8. The Applicant shall file and serve any evidence in reply by 4.00pm on 13 July 2018.
9. The parties' experts are to:
 - a. meet and confer, as appropriate, by no later than 3 August 2018; and
 - b. provide the Court and the parties with joint report(s) (the **Joint Report(s)**), containing their joint opinion and, to the extent that the experts are unable to express a joint opinion on any matter, the Joint Report(s) must describe the differences between the opinions and set out their respective reasons for disagreeing by 4.00m on 17 August 2018.

Other pre-trial steps

10. The parties attend mediation before a mediator to be appointed by agreement of the parties or, if the parties are unable to agree, by further order, by 28 September 2018.
11. Subject to further order:
 - a. the Applicant shall provide the Respondent with a draft index of documents to be included in the electronic court book by 21 September 2018;
 - b. the Respondent shall respond with a list of documents to be included or documents to be excluded from the electronic court book by 5 October 2018;
 - c. the parties shall consult as to and agree upon the contents of the electronic court book by 12 October 2018; and
 - d. the Applicant shall serve on the Respondent and file for the use of the Court a copy of the electronic court book by 4.00pm on 22 October 2018.
12. The Applicant shall file and serve her outline of opening submissions by 4.00pm on 22 October 2018.
13. The Respondent shall file and serve its outline of opening submissions by 4.00pm on 12 November 2018.



Directions

14. The proceeding is listed for further directions at 9.30am on 15 November 2018.
15. Liberty to apply.

Interlocutory orders sought

16. Austroads Ltd to provide to the Respondent for use in these proceedings the names, email and postal addresses of persons who acquired an interest in an Affected Vehicle between January 2011 and 11 May 2016, an Affected Vehicle being one of the following models:

Ford Model	Model (Petrol)	Build Year	Ford Model	Model (Petrol)	Build Year
Focus	Titanium LW	2011 - 2012	Fiesta	Zetec WT	2010 - 2013
	Sport LW	2011 - 2012		LX WT	2010 - 2013
	Trend LW	2011 - 2012		CL WT	2010 - 2013
	Ambiente LW	2011 - 2012		Sport EcoBoost WZ	2012 – 2015
	Sport LW MKII	2012 - 2015		Trend WZ	2013 – 2016
	Titanium LW MKII	2012 - 2015		Ambiente WZ	2013 – 2016
	Ambiente LW MKII	2012 - 2015	EcoSport	Titanium BK	2013 – 2016
Trend LW MKII	2012 - 2015	Trend BK		2013 – 2016	
		Ambiente BK		2013 – 2016	

17. Pursuant to section 33X(5) of the *Federal Court of Australia Act 1976* (Cth) (**FCCA**), notice (**Notice**) be given to Group Members of the intention of the Applicant to seek relief in terms of the orders sought in paragraph 13 below (**Funding Order**).



18. The form and content of the Notice attached as Annexure A be approved for the purposes of section 33Y(2) of the FCAA.
19. Pursuant to 33Y(3) of the Act, the Notice be sent directly to Group Members according to the following procedure:
- a. *On or before 8 January 2018, the Respondent provide to Austroads Ltd the Vehicle Identification Number of each of the Affected Vehicles, as that term is defined in the Second Further Amended Statement of Claim.*
 - b. on or before 22 January 2018:
 - i. the Respondent provide to [a third party mail house distribution service nominated by the Applicant, and approved by the Respondent] details of the emails or postal addresses of:
 1. Group Members recorded in its customer database; and
 2. Any NEVDIS data provided by Austroads Ltd to the Respondent pursuant to any court order made in relation to the Applicant's interlocutory application filed 15 December 2017; and
 - ii. The Applicant shall cause the distribution of a copy of the Notice (in the form of Annexure A) via a third party mail house distribution service, by sending Annexure A by email where possible and by sending Annexure A by post to those addressees where no email address is available or where the particular email address does not accept the requisite notification;
 - c. prior to 8 January 2018, the Applicant shall cause, through her solicitors, a copy of the Notice (in the form of Annexure A) to be sent by email to each Group Member who has, at the date of this order, entered into a Funding Agreement with Martin Place Litigation Services Pty Ltd ("MPLS") and for whom the Applicant's solicitors hold a current email address; and
 - d. prior to 8 January 2018, the Applicant shall cause, through her solicitors, a copy of the Notice (in the form of Annexure A) to all other Group Members for whom her legal representatives have email or postal addresses in their possession, by sending Annexure A by email where possible and by sending



Annexure A by post to those addressees where no email address is available or where the particular email address does not accept the requisite notification.

20. The Notice be advertised until such date as the common fund application is heard, according to the following procedure:

- a. The Applicant shall cause a copy of the Short Form Notice (in the form of Annexure B), together with copies of the current Originating Application and Statement of Claim, this Interlocutory Application and any orders of the Court relating to this Interlocutory Application to be displayed on the website of the Applicant's solicitors, www.fordclassaction.com.au, and to remain continuously so displayed up to and including a date to be fixed by the Court;
- b. A copy of the Short Form Notice (in the form of Annexure B) to be displayed on the Federal Court website;
- c. A copy of the Short Form Notice (in the form of Annexure B) to be displayed on the Respondent's website until a date to be fixed by the Court; and
- d. The Applicant shall cause a copy of the Short Form Advertising Notice (in the form of Annexure B) to be published on three weekday publications in the following newspapers from 8 January 2018 until 25 January 2018:

Publication	State/Territory
Herald Sun	Victoria
The Daily Telegraph	New South Wales
Adelaide Advertiser	South Australia
The Courier Mail	Queensland
The Centralian Advocate	Northern Territory
Canberra Times	Australian Capital Territory
The West Australian	Western Australia
The Mercury	Tasmania

21. The costs of distributing the Notice in accordance with order 18 and 19(d) above be reserved.

Notices of Objection & Evidence



22. On or before 5 February 2018, any Group Member who wishes to be heard in respect of the Funding Order is to notify the Court of the Group Member's desire to be heard by filing a notice of that intention in the "*Notice of Intention to Object*" attached to the Notice at Annexure A.
23. The parties have leave to inspect the Court file and copy any notices filed pursuant to order 22 above.
24. On or before 12 February 2018, the Applicant file and serve on the Respondent and on each Group Member who has given notice in accordance with order 22 above:
 - a. Any evidence on which it proposes to rely; and
 - b. Written submissions,in relation to the Funding Order.
25. On or before 19 February 2018, the Respondent, if it wishes to be heard in relation to the Funding Order, file and serve on the Applicant and on each Group Member who has given notice in accordance with order 22 above:
 - a. Any evidence on which it proposes to rely; and
 - b. Written submissions,in relation to the Funding Order.
26. On or before 1 March 2018, any Group Member who has given notice in accordance with order 22 above of their desire to be heard in relation to the Funding Order file and serve on the Applicant and the Respondent;
 - a. Any evidence on which it proposes to rely; and
 - b. Written submissions,in relation to the Funding Order.
27. On or before 8 March 2018, the Applicant file and serve on the Respondent and on each Group Member who has given notice in accordance with order 22 above:
 - a. Any evidence in reply; and
 - b. Any written submissions in reply,in relation to the Funding Order.



28. The application for relief in terms of the Funding Order be listed for hearing on 16 March 2018.
29. The costs of the Applicant's interlocutory application dated 15 December 2017 be costs in the cause.

Date that entry is stamped: 22 December 2017

Warrick Soden
Registrar



ANNEXURE A

NOTICE

FORD CLASS ACTION

Biljana Capic v Ford Motor Company of Australia Limited (ACN 004 116 223)
Federal Court Proceedings NSD 724 of 2016

A class action has been commenced by Bannister Law in the Federal Court of Australia on behalf of all persons who at some time during the period between January 2011 and 11 May 2016 inclusive (**the Relevant Period**) purchased or leased a Ford motor vehicle fitted with a PowerShift DPS6 transmission (**Affected Vehicles**).

The Affected Vehicles covered by the Bannister Law proceedings are as follows:

Ford Model	Model (Petrol)	Build Year
Focus	Titanium LW	2011 - 2012
	Sport LW	2011 - 2012
	Trend LW	2011 - 2012
	Ambiente LW	2011 - 2012
	Sport LW MKII	2012 - 2015
	Titanium LW MKII	2012 - 2015
	Ambiente LW MKII	2012 - 2015
	Trend LW MKII	2012 - 2015
Fiesta	Zetec WT	2010 - 2013
	LX WT	2010 - 2013
	CL WT	2010 - 2013
	Sport EcoBoost WZ	2012 – 2015
	Trend WZ	2013 – 2016
	Ambiente WZ	2013 – 2016
EcoSport	Titanium BK	2013 – 2016
	Trend BK	2013 – 2016
	Ambiente BK	2013 – 2016

If you purchased an Affected Vehicle during the Relevant Period, you may be a Group Member in this class action. You have received this notice because you are potentially a Group Member in the class action.

You should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be direct to the Court. If there is anything in it that you do not understand, you should seek legal advice.

In summary, the Applicant alleges that there have been contraventions of the Australian Consumer Law including:



- (a) That the DPS 6-Speed Dry dual clutch PowerShift transmission (the Powershift transmission) contained a defect in the Affected Vehicles;
- (b) That the Affected Vehicles fitted with the PowerShift transmission were not of acceptable quality;
- (c) That the Respondent made representations regarding the PowerShift Transmission that were misleading or deceptive, or likely to mislead or deceive;
- (d) That the failure to disclose the existence of the Defects in the Affected Vehicles was conduct that was misleading or deceptive, or likely to mislead or deceive; and
- (e) That the Respondent did not comply with the consumer guarantee that the Affected Vehicles were of acceptable quality.

The Applicant is claiming damages for breach of the Australian Consumer Law, including damages for diminution in value of the Affected Vehicle, any amounts paid for repairs, car hire, taxi fares, additional finance costs, and any additional expenses and costs incurred as a result of the necessity to replace the Affected Vehicle and obtain a different vehicle and costs of the proceedings.

The Applicant in the proceedings has entered into a Funding Agreement with Martin Place Litigation Services Pty Ltd (MPLS), which provides for MPLS:

- to pay the Applicant's legal costs of the action;
- to indemnify the Applicant in respect of any adverse costs orders which may be made against the Applicant in the action; and
- to provide any security for costs in the action.



Approximately 1,800 other Group Members have also entered into Funding Agreements with MPLS to date, but not all Group Members have done so.

The Applicant has applied to the Court for orders with respect to the funding of the action pursuant to proposed court-approved 'funding terms'.

The proposed funding terms provide that, in the event of a successful outcome in the action (either by way of settlement or judgment), the settlement or judgment sum recovered for those Group Members who have not entered in to a Funding Agreement with MPLS as at 22 December 2017, will be used, before any distribution to Group Members, to:

- reimburse the funder for the legal fees and expenses incurred in funding the class action; and
- provide for a commission of 30% or such percentage determined by the Court to be paid to the funder out of any monies recovered by or on behalf of Group Members.

The proposed funding terms provide that, in the event of a successful outcome in the action (either by way of settlement or judgment), the settlement or judgment sum recovered for those Group Members who have entered in to a Funding Agreement with MPLS as at 22 December 2017, will be used, before any distribution to Group Members, to

- reimburse the funder for the legal fees and expenses incurred in funding the class action; and
- provide for a commission of 20% or such percentage determined by the Court to be paid to the funder out of any monies recovered by or on behalf of Group Members.

No Group Member will be liable to pay any amount of money to MPLS unless and until there is a successful outcome in the action, and then (subject to any other order the Court may make) the above amounts payable to the funder will be deducted from the settlement or judgment sum before the balance is distributed to Group Members.

For those Group Members who have entered into a Funding Agreement with MPLS as at 22 December 2017 those agreements will continue to apply, but the proposed 'funding terms' will prevail over any inconsistent provision in the Funding Agreements.

The Applicant's Application for approval of the proposed funding terms has been listed for hearing before the Federal Court in Sydney at 9.30am on 2 March 2018. Any Group Member who wishes to be heard by the Court, either in support of, or in opposition to, the application:

- a) Must, on or before 5 February 2018, notify the Court of the Group Member's desire to be heard by filing a Notice of Intention to Object in the form attached to this notice;



- b) Must, on or before 1 March 2018, file with the Court any evidence and any written submissions on which the Group Member proposes to rely; and
- c) May attend the hearing on x March 2018.

Further information in relation to the action, including copies of relevant documents, can be obtained from the website of the applicant's solicitors, <http://fordclassaction.com.au> or <http://bannisterlaw.com.au>.

In addition, any Group Member who wishes to obtain a copy of any relevant documents filed in relation to the application may do so by contacting the Applicant's solicitors on (02) 8001-6604 or by email to fordclassaction@bannisterlaw.com.au.

Any Group Member who does not wish to remain as a Group Member in the action will at some point in the future be given appropriate notice enabling them to opt out of the action, and those Group Members who opt out of the action would not then be bound by the funding terms sought from the Court.



Notice of Intention to Object

Biljana Capic v Ford Motor Company of Australia Limited (ACN 004 116 223)

Federal Court Proceedings NSD724 of 2016

Respond To:

Registrar of the Federal Court of Australia,
Commonwealth Law Courts Sydney,
184 Philip Street, Sydney NSW 2000

Name of Group Member:

Address:

Email address:

If you are legally represented, please fill out the following:

Lawyer who is representing you:

Name of Law Firm:

Address:

Email Address:

I am a Group Member in these proceedings and I wish to be heard on the Applicant's Interlocutory Application filed **22 December** 2017 because:

Please indicate whether you intend to give or lead evidence in support of your objection

I intend to give or lead evidence in support of my objection

I do not intend to give or lead evidence in support of my objection

Please indicate whether you intend to appear at the hearing of the application (your objection will be before the court whether you choose to appear at the hearing or not):

I intend to appear at the hearing

I do not intend to appear at the hearing

Date:

Signature:

Name of person signing notice:

Position in Company (if on behalf of a company):



ANNEXURE B

SHORT FORM NOTICE

FORD CLASS ACTION

A representative proceeding or “**Class Action**” has been commenced in the Federal Court of Australia by Biljana Capic (“**Applicant**”) against Ford Motor Company of Australia Limited (ACN 004 116 223) (“**Respondent**”). The Class Action has been commenced by Bannister Law due to the alleged defect with the DSP 6-speed dry dual-clutch PowerShift Transmission installed in the following Ford vehicles (**Affected Vehicles**):

Ford Model	Model (Petrol)	Build Year	Ford Model	Model (Petrol)	Build Year
Focus	Titanium LW	BY 2011 - 2012	Fiesta	Zetec WT	BY 2010 - 2013
	Sport LW	BY 2011 - 2012		LX WT	BY 2010 - 2013
	Trend LW	BY 2011 - 2012		CL WT	BY 2010 - 2013
	Ambiente LW	BY 2011 - 2012		Sport EcoBoost WZ	BY 2012 – 2015
	Sport LW MKII	BY 2012 - 2015		Trend WZ	BY 2013 – 2016
	Titanium LW MKII	BY 2012 - 2015		Ambiente WZ	BY 2013 – 2016
	Ambiente LW MKII	BY 2012 - 2015	EcoSport	Titanium BK	BY 2013 – 2016
Trend LW MKII	BY 2012 - 2015	Trend BK		BY 2013 – 2016	
		Ambiente BK		BY 2013 – 2016	

If you purchased an Affected Vehicle during the Relevant Period, being January 2011 until 11 May 2016 inclusive, you may be a Group Member in this class action.

The Federal Court has ordered that this notice, and a longer-form notice available at www.fordclassaction.com.au, be published to provide information to persons who might have claims affected by the class action.

You should read this and the Long Form notice carefully.

Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

The class action has been commenced by the Applicant on her own behalf and on behalf of all persons who are Group Members. You are a Group Member if you acquired, including by purchase or lease, an interest in a Ford motor vehicle fitted with a DSP 6-speed dry dual-clutch PowerShift transmission, as listed above, between January 2011 until 11 May 2016 (inclusive). Remedies being sought by the Applicant for alleged contraventions of various provisions of the Australian Consumer Law include compensation for the reduction in value of the Affected Vehicle.

Approximately 1,800 other Group Members have entered into Funding Agreements with Martin Place Litigation Services Pty Ltd (MPLS), to date in the Bannister Law class action, but not all Group Members have done so. The Applicant has applied to the Court for orders with respect to the funding of the action pursuant to proposed court-approved ‘funding terms’.

The proposed funding terms provide, that in the event of a successful outcome in the action (either by way of settlement or judgment), the settlement or judgment sum recovered for all Group Members, who have not entered in to a Funding Agreement as at 22 December 2017, will be used, before any distribution to Group Members, to:

- Reimburse the funder for the legal fees and expenses incurred in funding the class action; and
- Provide for a commission of 30 percent or such percentage as determined by the Court, to be paid to the funder out of any monies recovered by or on behalf of Group Members.

The proposed funding terms also provide, that in the event of a successful outcome in the action (either by way of settlement or judgment), the settlement or judgment sum recovered for all Group Members who have entered in to a Funding Agreement with MPLS as at 22 December 2017, will be used, before any distribution to Group Members, to:

- Reimburse the funder for the legal fees and expenses incurred in funding the class action; and
- Provide for a commission of 20 percent or such percentage as determined by the Court, to be paid to the funder out of any monies recovered by or on behalf of Group Members.

The Applicant’s application has been listed for hearing before the Federal Court in Sydney on **x** March 2018. Any Group Member who wishes to be heard by the Court, either in support of, or in opposition to, the application:

1. Must, on or before 5 February 2018, notify the Court of the Group Member’s desire to be heard by filing a “Notice of Intention to Object” in the form available on www.fordclassaction.com.au;
2. Must, on or before 1 March 2018, file in the Court any evidence and any written submissions on which the Group Member proposes to rely; and
3. May attend the hearing on **x** March 2018.

More information on the class action, including copies of relevant documents, including the Notice of Intention to Object may be obtained from **Bannister Law**, the solicitors acting for the Applicant and Group Members in the class action, on their website www.fordclassaction.com.au; by email at fordclassaction@bannisterlaw.com.au; or by telephoning (02) 8001-6604.

Any Group Member who does not wish to remain as a Group Member in the action will at some point in the future be given appropriate notice enabling them to opt out of the action, and those Group Members who opt out of the action would not then be bound by the funding terms sought from the Court.



ANNEXURE C

FUNDING TERMS / COMMON FUND ORDER

Definitions

1. The following definitions apply in these Funding Terms:

“Applicant” means Biljana Capic, and any other person who is a lead applicant or representative party in the Proceedings;

“Claims” means the claim or claims the Applicant and the Group Members have or may have against the Respondent in the Proceedings arising out of, or connected with, the alleged defect in Affected Vehicles by Ford Motor Company of Australia Limited (ACN 004 116 223) in the period January 2011 until 11 May 2016 or such other period as the Lawyers advise and the Funder accepts;

“Common Benefit Work” means Legal Work for the common benefit of Group Members, or a sub-group of Group Members;

“Costs Order” means an order made by a Court requiring one or more parties to the Proceedings to pay the costs incurred by another party or parties to the Proceedings;

“Disbursement” means any expense the Lawyers incur on the Group Members’ behalf in relation to the Legal Work, including counsels’ and other experts’ fees, filing fees, courier fees and photocopying fees;

“Funder” means Martin Place Litigation Services Pty Ltd;

“Funding Agreements” mean the funding agreement between the Funder and the Applicant signed by the Applicant on 20 January 2017 and any Funding Agreements between the Funder and other Group Members in respect of the Claims;

“Funding Period” means the period commencing on the date orders are made pursuant to the Interlocutory Application filed on **22 December** 2017;



“**Gross Recovery**” means the gross amount payable by way of Settlement or judgment in respect of the Claims, excluding any costs;

“**Group Members**” means all persons who are identified as Group Members in the Proceedings, and who do not opt out of the Proceedings by the time specified by the Court for doing so;

“**GST**” means Goods and Services Tax as defined in A New Tax System (Goods and Services) Act 1999 (Cth);

“**Individual Legal Work**” means Legal Work in connection with the specific Claims of a specific Group Member, not including Common Benefit Work;

“**Lawyers**” means the lawyers, Charles J Bannister t/as Bannister Law (ABN 45 359 0487 709), or any firm of lawyers appointed in their place by the Applicant after consultation with the Funder;

“**Legal Work**” means such advice and legal services to the Group Members or for the Group Members’ benefit, including the Common Benefit Work and any Individual Legal Work, as the Lawyers may consider reasonably necessary to: (a) investigate the Claims; (b) prosecute the Claims; (c) negotiate a Settlement of the Claims; and (d) negotiate to secure and maintain funding on behalf of the Group Members in relation to the Claims;

“**Other Parties**” means any other entity which the Lawyers recommend be joined to the Proceedings commenced or to be commenced against the Respondents, the joinder of whom the Funder agrees to fund;

“**Proceedings**” means NSD 724/2016 of Federal Court of Australia proceedings to prosecute the Claims and claims of Funded Persons;

“**Resolution**” means when all or any part of the Resolution Sum is received and where the Resolution Sum is received in parts, a “Resolution” occurs each time a part is received;



“**Resolution Sum**” means the amount or amounts, or the value of any goods or services, for which the Claims are settled, or for which judgment is given, including the value of any favourable terms of future supply of goods or services and including any interest and including costs recovered pursuant to a Costs Order or by agreement;

“**Respondent**” means Ford Motor Company of Australia Limited (ACN 004 116 223) and any Other Parties named as respondents in the Proceedings;

“**Retainer Agreement**” means the retainer and costs agreement between the Lawyers and the Applicant signed by the Applicant on 6 May 2016 and any retainer and costs agreements between the Lawyers and other Group Members in relation to the Claims; and

“**Settlement**” means any settlement, compromise, discontinuance or waiver of the Claims or part of the Claims and “settles” shall be construed accordingly.

Obligations of the Funder

2. The Funder must:

- (a) pay to the Lawyers all reasonable Disbursements upon receipt of each bill from the Lawyers, including of the Applicant reasonably incurred by and payable to the Lawyers including any amounts in relation to GST payable by the Lawyers, in so far as those costs were incurred either before or during the Funding Period;
- (b) pay any Costs Order which the Court makes in the Proceedings against the Applicant or other Group Member in favour of the Respondent and Other Parties (or any one or more of them), in so far as those costs were incurred either before or during the Funding Period; and
- (c) provide any security for costs in the Proceedings, in the form that the Court orders, or in the absence of any order, in such other form as the Funder determines and the Respondent and Other Parties accept, relating to costs incurred during the Funding Period.

Receipt of Resolution Sum

3. Any Resolution Sum will be received by the Lawyers and paid immediately into an account kept for that purpose.



4. If the Applicant obtains any Settlement or obtain any judgment in respect of the Claims, she will:
 - (a) treat any money, other asset or benefit received from the Respondent in connection with the Settlement or judgment as the Resolution Sum; and
 - (b) cause the money, or an amount being the reasonable market value of the asset or benefit, to be delivered to the Lawyers to be dealt with as part of the Resolution Sum.

5. Subject to any Court order, the Lawyers will pay to the Funder out of the account referred to in paragraph 3 above all payments referred to in paragraph 6 below, with the balance to be distributed to the Group Members on a pro rata basis by reference to the Gross Recovery of all Group Members in accordance with any distribution scheme approved by the Court.

Costs and Commission

6. Upon Resolution, the Funder or its nominee shall be paid the following amounts from the Resolution Sum, prior to any distributions to Group Members:
 - (a) An amount equal to the total monies paid by the Funder pursuant to paragraph 2 above;
 - (b) an amount, as consideration for the funding of the Proceedings:
 - a. for those Group Members who have not entered in to a Funding Agreement as at 22 December 2017 an amount equal to 30% of the Resolution Sum or such percentage as determined by the Court, excluding any component thereof relating to costs recovered; and
 - b. for those Group Members who have entered in to a Funding Agreement as at 22 December 2017 an amount equal to 20% of the Resolution Sum or such percentage as determined by the Court, excluding any component thereof relating to costs recovered;
 - (c) an additional amount, on account of GST, being the amount obtained by multiplying the prevailing rate of GST by an amount equal to the consideration to be received by the Funder for any taxable supply made to the Applicant by the Funder under or in connection with these Funding Terms.



7. The amounts referred to in paragraph 6 above will not become due or owing by the Group Members to the Funder unless and until Resolution, and then will not exceed the Resolution Sum.

Relationship between the Applicant, the Lawyers and the Funder

8. The Lawyers' professional duties are owed to the Applicant and not to the Funder. The Applicant, as the representative Applicant in the Proceedings, will give binding instructions to the Lawyers and make binding decisions on behalf of the Group Members in relation to the Claims up to the time of any court approval of settlement of the Claims or the delivery of judgment of the common issues in the Proceedings (including, but not limited to, instructions and decisions in relation to Settlement), save where, in the reasonable professional opinion of the Lawyers, separate instructions are required from the Group Members.

9. The Lawyers will:

- (a) immediately advise the Funder of any settlement discussions with the Respondent or their advisors and to invite the attendance of a representative of the Funder to attend the same;
- (b) immediately report in detail to the Funder any settlement discussions that occur at which a representative of the Funder is not in attendance;
- (c) consult with the Funder as to the terms of any proposed settlement;
- (d) arrange a joint conference as to the terms of any proposed settlement, if requested by the Funder to do so, between the Funder, the Representative, the Lawyers and Senior Counsel briefed in the Proceedings;
- (e) provide the Funder with confidential updates of the progress of the Proceedings;
- (f) consult with the Funder with regard to any significant issue in the Proceedings;
- (g) properly consider the Funder's views as to the conduct of the Proceedings; and
- (h) promptly respond to any reasonable request by the Funder for information relating to the Proceedings.

Confidentiality

10. The Funder shall strictly maintain the confidentiality of any information provided to the Funder by the Applicant or the Lawyers for a purpose connected to the Proceedings, and



shall adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information.

Settlement

11. If there is a disagreement between the Funder and the Applicant as to the appropriate terms for settlement of the Proceedings:
 - (a) the Lawyers will brief Senior Counsel to provide an advice as to whether the proposed settlement is reasonable having regard to all the circumstances;
 - (b) a representative of the Funder may attend any conference with Senior Counsel at which the issue is to be discussed;
 - (c) the legal costs of obtaining the advice shall be met by the Funder as part of the reasonable costs of the Proceedings; and
 - (d) the advice of Senior Counsel will be final and binding on both the Claimant and the Funder.

12. Under paragraph 11 above, in determining whether a proposed settlement is reasonable having regard to all the circumstances, Senior Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her advice, but any such determination shall include the following considerations:
 - (a) the strengths and weaknesses of the claims of all Group Members;
 - (b) the quantum of the claims of all Group Members and any difficulties which might exist in proving that quantum;
 - (c) the recoverability of a judgment sum from the Respondents or any one of them;
 - (d) the extent to which further legal costs incurred in the Proceedings are likely to be recoverable from the Respondents;
 - (e) the risk of the Funder being ordered to pay adverse costs and the quantum of such costs;
 - (f) the matters set out in paragraph [248.95] of the ASIC Regulatory Guide 248: Litigation schemes and proof of debt schemes: Managing conflicts of interest (2013); and
 - (g) any other matter Senior Counsel considers relevant.

Termination



13. The funding arrangements under these Funding Terms may only be terminated by order of the Court, granted on application made by the Applicant, the Funder or a Group Member, upon notice to the Applicant, the Funder and such other persons as ordered by the Court.

14. If an application is made by the Funder under paragraph 13 above, and the Court grants that application then (subject to any contrary order of the Court):
 - (a) The Funder will not be entitled to receive any payment from any Resolution Sum pursuant to paragraph 6(b) and 6(c) above;
 - (b) The Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to paragraphs 6(a) and 6(d) above; and
 - (c) All obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
 - (i) Payment of any outstanding costs pursuant to paragraph 2 above incurred up to the date of termination;
 - (ii) Indemnification of the Group Members for any costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and
 - (iii) Payment of any quantified Costs Order against any Group Members in the Proceedings in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.

15. If an application is made by the Applicant or a Group Member under paragraph 13 above, and the Court grants that application, then (subject to any contrary order of the Court):
 - (a) The Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to paragraph 6 above;
 - (b) All obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
 - (i) payment of any outstanding costs pursuant to paragraph 2 above incurred up to the date of termination;



- (ii) indemnification of the Group Members for any costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and
- (iii) payment of any quantified Costs Order against any Group Members in the Proceedings in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.

Funding Agreements and Retainer Agreements

16. These Funding Terms limiting the commission paid to the funder to no more than 20% prevail over any inconsistent provision in the Funding Agreements, but do not otherwise modify the provisions or effect of the Funding Agreements.
17. These Funding Terms prevail over the terms of the Retainer Agreements to the extent of any inconsistency but do not otherwise modify the provisions or effects of the Retainer Agreements.