



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

No: NSD1908/2016

**GAVIN SMITH** and others named in the schedule  
Applicant

**COMMONWEALTH OF AUSTRALIA**  
Respondent

## ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 06 April 2020

**WHERE MADE:** Sydney

### THE COURT ORDERS THAT:

#### Settlement approval application

- 1 By 4.00pm on 17 April 2020, the Applicants are to file and serve an interlocutory application or proposed minute of order seeking orders approving the proposed settlement of the proceeding pursuant to s 33V of the *Federal Court of Australia Act 1976 (FCA Act)* and any consequential orders (**Settlement Approval Application**).
- 2 The Settlement Approval Application be listed for hearing before Justice Lee on 4-5 June 2020 at 10.15 am with an estimate of 2 days (**Settlement Approval Hearing**), with such Settlement Approval hearing to be heard concurrently with the settlement approval hearings in *Hudson & Ors v Commonwealth of Australia* (NSD1155/2017) and *Bartlett & Anor v Commonwealth of Australia* (NSD1388/2019).

#### Timing and mode of distribution of Settlement Notice

- 3 Pursuant to ss 33X and 33Y(2) of the FCA Act, the form and content of the notice to group members of the Settlement Approval Application and to inform group members of the requirement to register which is Annexure A to these orders (**Settlement Notice**).
- 4 Pursuant to ss 33X(4), (5) and 33Y(3) of the FCA Act, the Settlement Notice is to be distributed to group members by 9 April 2020 through the following procedures:



- (a) the solicitors for the applicants, Dentons Australia Limited (**Dentons**), and/or the funder of the proceeding, Omni Bridgeway Ltd (formerly known as IMF Bentham Ltd) (**Funder**) will send the Settlement Notice to each group member by email along with a covering email to the email address specified by them in their funding agreement or otherwise provided to Omni Bridgeway Ltd, or by prepaid ordinary post in the event that the group member has not specified an email address;
- (b) the Funder will cause the Settlement Notice to be published on the website maintained by it in relation to the proceeding (<https://www.imf.com.au/cases/detail/williamtown>);
- (c) the respondent will cause the Settlement Notice to be published on the website maintained by it in relation to RAAF Base Williamtown PFAS investigation (<https://www.defence.gov.au/environment/pfas/williamtown/>); and
- (d) the District Registrar of the New South Wales District Registry of the Federal Court of Australia shall cause the Settlement Notice to be posted on the Federal Court of Australia Website.

5 The costs of and incidental to the procedure set out in Order 3 (except paragraph (c), which shall be paid by the respondent) shall be paid by the applicants in the first instance or on their behalf, but otherwise shall be costs in the proceeding. For the avoidance of doubt, answering enquiries by class members and members of the public in relation to the Settlement Notice is work incidental to Order 3.

### **Objections and support for Settlement Approval Application**

- 6 Any group member who wishes to be heard in respect of the Settlement Approval Application (including any objection to settlement approval) following receipt of the Settlement Notice must, by no later than 4.00 pm on 7 May 2020 provide to the Court at [nswdr@fedcourt.gov.au](mailto:nswdr@fedcourt.gov.au):
- (a) an outline of their grounds for supporting or opposing the Settlement Approval Application and any other document relied upon; and
  - (b) an indication as to whether not they seek to supplement their written material with oral submissions at the Settlement Approval Hearing.



7 The solicitors for the Applicants will provide to the Court at [nswdr@fedcourt.gov.au](mailto:nswdr@fedcourt.gov.au) (copied to the Respondent) any non-privileged communications from group members which ought to have been provided to the Court pursuant to Order 6.

8 The parties have leave to inspect the court file and take copies of any objections filed directly with the Court pursuant to Order 6.

*[The Court notes that it will provide a copy of any communication received by the Court pursuant to Order 7 above to the parties by 8 May 2020].*

9 The Court may consider any material received by Group Members in relation to the Settlement Approval Application received after the dates referred to in Order 6.

### **Timetable for the Settlement Approval Application**

10 Save for any affidavit or written submissions in respect of which confidentiality orders will be sought, on or before 28 May 2020 the Applicant file and serve (including on each group member who has indicated they wish to be heard at the Settlement Approval Hearing in accordance with Order 6(b)) any affidavit(s) and written submissions on which it proposes to rely in support of the Settlement Approval Application.

11 Subject to any further order, the Applicants have leave to file any affidavit or annexure or part thereof, in respect of which it seeks confidentiality orders, by email to the Associate of Justice Lee marked in the subject line with the word “confidential” and is excused from any requirement to electronically file, or serve any such affidavit or annexure or any part thereof on any party in that form, but shall instead electronically file and serve that affidavit or annexure in redacted form, such evidence to be filed and served in this manner on the date referred to in Order 10.

12 The Respondent be granted leave to file and serve any affidavit material and any outline of submissions in relation to the Settlement Approval Application by 4.00pm on 2 June 2020.

### **Costs reference**

13 Pursuant to s 54A of the FCA Act Roland Matters is appointed as a referee (**Referee**) to inquire and report to the Court, in relation to the reasonableness of the legal costs proposed to be charged to the Applicants and Group Members (the legal costs being the professional fees rendered by Dentons to the date of the mediation) (**Reference**).

14 The Reference will commence forthwith and:



- (a) the Referee is to consider and implement the Reference without undue formality or delay so as to enable a just, efficient and cost-effective resolution of the reference. This may include enquiries by telephone and direct communication, without intervention of lawyers, with any person who the Referee believes may have relevant information. The Referee may seek submissions from the applicants' solicitors and shall take such submissions into account;
- (b) to facilitate the just, efficient and cost-effective resolution of the reference the Referee is to make such directions as the Referee considers appropriate as to the conduct of the reference, including for the attendance of any person, the production of documents and records relevant to legal costs, and/or the provisions of any submissions;
- (c) the Referee shall submit the report arising from the reference to the Court and to the applicants on or before 5.00 pm on 1 June 2020 or such further date as the Court may determine;
- (d) the applicants' solicitors shall forthwith and without delay deliver to the Referee a copy of this order and immediately make available all information and records which the Referee believes are relevant to the reference; and
- (e) the Referee and parties shall have liberty to seek directions with respect to any matter arising in the Reference upon 24 hours' notice, or such other notice ordered by the Court;
- (f) the costs of and incidental to the appointment of the referee (and the Referee's reasonable costs) shall be paid by the applicants in the first instance or on their behalf, but otherwise shall be costs in the proceeding;
- (g) the referee's costs in this proceeding are fixed at no more than \$15,000 (inclusive of GST) subject to further order.

15 The question of whether there ought be a further reference pursuant to s 54A of the FCA Act in relation to:

- (a) the costs claimed by the Applicants in relation to the period from the date of the mediation to the date of the Settlement Approval Hearing ("Approval Costs"); and/or



- (b) the estimated costs of administering the settlement (if it is approved) (“Administration Costs”),

be reserved to the Settlement Approval Hearing.

### **Costs**

- 16 All of the applicants’ costs arising from these orders (including those referred to in order 4-5 and 14 above) will be dealt with by the Court as part of the applicants’ costs of the proceeding and shall be deducted from the Settlement Sum prior to any distribution of the Settlement Sum to group members if the settlement is approved by the Court.

### **Other**

- 17 The parties have liberty to apply on two days’ notice to the Court.

Date that entry is stamped: 7 April 2020

*Sia Lagos*  
Registrar

**Schedule**

No: NSD1908/2016

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

Second Applicant	KIM SMITH
Third Applicant	ANN AND LINDSAY CLOUT SMSF PTY LTD ACN 154 516 006
Fourth Applicant	ANN CLOUT
Fifth Applicant	LINDSAY CLOUT
Sixth Applicant	JOHN ARTHUR HEWITT
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL



**Annexure**

[Overleaf]



# FEDERAL COURT OF AUSTRALIA

## NOTICE AS TO PROPOSED SETTLEMENT OF THE WILLIAMTOWN PFAS CONTAMINATION CLASS ACTION

### A. Important Information

1. This is being sent to you because you are a class member in the class action against the Commonwealth of Australia (**Commonwealth**) claiming compensation for damages to property and business values as a result of PFAS contamination around Williamstown.
2. The solicitors acting for the applicants are Dentons Australia Limited (**Dentons**), and a company called Omni Bridgeway Ltd (which used to be called IMF Bentham) (**Omni Bridgeway**) has funded the case.
3. As you may have heard or read, settlement terms have been agreed. But because this is a class action, a judge of the Federal Court must decide whether it is a fair settlement for the class members. The judge will have a hearing to decide whether the settlement is fair at 10:15 4-5 June 2020.
4. This notice is approved by the Court and explains some things about the settlement to allow you to work out whether you agree or disagree with it.

### B. What is the settlement?

5. Under the proposed settlement:
  - (a) the Commonwealth will pay **\$86 million** (without admitting liability) to settle all claims by class members for property value losses, business losses and for inconvenience and distress (but not any present or future claim for personal injury);
  - (b) before any of this money goes to the class members, there will be deductions from the settlement, being:
    - (i) **[\$9,044,157.70]** for the legal costs;
    - (ii) **[\$21,500,000.00]** to Omni Bridgeway for funding (which is less than the funding commission agreed to be paid by class members);
    - (iii) **[\$655,056.00]** to Omni Bridgeway for other relevant out-of-pocket expenses;
    - (iv) **[\$240,000.00]** to the applicants, sample group members and steering committee members for their time and expense in representing class members; and
    - (v) **[\$605,000]** being the estimated costs of getting what is owed to class members to them, but any interest earned on the settlement sum will be used to reduce these costs;
  - (c) What is left (which is estimated by the solicitors to be about **[\$53,955,786.30]**) is to be paid to class members, according to a formula.

### C. How much will you receive under the settlement?

6. If the settlement goes ahead, your settlement entitlement will be based on what is said by the applicants and their solicitors to be the reduction in the value of the land of class



members. This value was affected by the location of property you had and in particular its proximity to the Williamstown Base and whether it is located within the Management Zone.

7. An amount of money has also been fixed for inconvenience and distress on a per person basis of \$50,000.
8. The only other type of claims, being business claims, are being paid on a per business basis, depending upon business size, and any overlap with the relevant class member's other claims.
9. Please note:
  - Class members will not receive the full value of their claims under the settlement (as it is a compromise, and has to take into account the risk the class action might lose);
  - If you are unsure you are a class member, please contact Dentons using the details at the end of this notice.
  - As to legal costs, the court has put in place a process by which the fairness of those legal costs will be reviewed by a third party who understands these things.

#### D. Your 2 Options:

<i>If you <u>support</u> the proposed settlement</i>	<ul style="list-style-type: none"><li>• You do not have to do anything, and you will get the money payable to you once it has been finally calculated.</li></ul>
<i>If you <u>disagree with</u> the proposed settlement (or how it is proposed to be distributed)</i>	<ul style="list-style-type: none"><li>• You should tell the Judge and the parties why.</li><li>• This is best done by sending written material for the Court to consider well before the hearing. This should be done by sending the material to <a href="mailto:nswdr@fedcourt.gov.au">nswdr@fedcourt.gov.au</a>, and the court would prefer if this was sent by 7 May 2020. You can also tell the Court your concerns at the hearing. Arrangements will be made to allow you do this if you want. Due to the coronavirus, a hearing will probably not happen in a courtroom where people come along in person, and if you want to speak, this will likely involve providing you with a video link or telephone link. If you want to speak to the Judge about the settlement at the hearing this can be arranged by you sending an email <a href="mailto:nswdr@fedcourt.gov.au">nswdr@fedcourt.gov.au</a>.</li></ul> <p>Please note, even if you object, you will still receive money from the settlement if it goes ahead.</p>

#### E. Where can you get further information?

10. If you want any more information or documents, you should not contact the Court but either:



- a) email Dentons at [WilliamtownPFAS@dentons.com](mailto:WilliamtownPFAS@dentons.com);
- b) email Omni Bridgeway at [williamtown@imf.com.au](mailto:williamtown@imf.com.au); or telephone Omni Bridgeway on 1800 016 464

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Dentons, Omni Bridgeway or seek your own legal advice from your family solicitor. Please bear in mind that while you should contact Dentons for further information as necessary, if you do not require further assistance, it is in the interests of all class members to keep any further costs to a minimum.