

**PwC's PROPOSED SHORT MINUTES OF ORDER****COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/306222

**TITLE OF PROCEEDINGS**

Plaintiffs	<b>Innes Creighton</b>
Defendants	<b>Australian Executor Trustees Limited ACN 007 869 573</b>

**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/171592

**TITLE OF PROCEEDINGS**

Plaintiffs	<b>John Smith and Rosemary Smith</b>
Defendants	<b>Australian Executor Trustees Limited ACN 007 869 573</b>

**FILING DETAILS**

Filed for	<b>Australian Executor Trustees Limited, Defendant</b>
Filed in relation to	<b>Plaintiffs' Claims, First, Second and Third Cross Claims</b>
Legal representative	Brad Woodhouse, Corrs Chambers Westgarth
Contact name and telephone	Brad Woodhouse, (02) 9210 6500
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The Court orders that:

- 1 The following orders be vacated:
  - (a) Orders 19-23 made on 4 April 2016, as varied on 16 August 2016 and 15 December 2016;
  - (b) Orders 14-16 made on 15 December 2016, in relation to the Plaintiffs' claims; and
  - (c) Orders 5-13 made on 15 December 2016, in relation to the Insurance Cross-Claims.

### **Plaintiffs' claims**

#### ***Tender bundle***

- 2 By 17 March 2017, the Plaintiffs are to serve on ~~the Defendant~~ all parties (including all parties to the Cross-Claims) a disc or storage device containing an electronic copy of documents that the Plaintiffs propose to tender at trial together with electronic indexes of those documents (**Plaintiffs' Bundles**). Electronic documents in the Plaintiffs' bundles shall be in multiple page PDF, print enabled, text searchable format, unless the native format of any document does not lend itself to conversion to PDF (such as spreadsheets).
- 3 By ~~23 June~~ 17 August 2017, the Defendant is to serve on ~~the Plaintiffs~~ all parties (including all parties to the Cross-Claims) a disc or storage device containing an electronic copy of documents that the Defendant proposes to tender at trial together with an electronic index of those documents (**Defendant's Bundle**). Electronic documents in the Defendant's bundle shall be in multiple page PDF, print enabled, text searchable format, unless the native format of any document does not lend itself to conversion to PDF (such as spreadsheets).
- 4 By ~~17 August 2017~~ 14 April 2018, the Plaintiffs are to serve, on a disc or storage device, an electronic index and electronic copy of all documents to be tendered by the ~~parties~~ Plaintiffs and Defendants at the trial, in relation to the Plaintiffs' claims including the Plaintiffs' Bundles, the Defendant's Bundle, and any additional documents the Plaintiff wishes to tender (the **Tender Bundle**), such index is to be arranged in chronological order as far as is practicable and to be duly paginated and hyperlinked to the multiple page PDF, print enabled, text searchable format copies of the document (the **Consolidated Index**).

#### ***Expert evidence***

5 The Defendants to serve any expert reports on which they intend to rely on or  
before 26 May 2017.

6 The Plaintiffs to serve any expert reports in reply on or before 21 July 2017.

7 On or before 28 September 2017 the Plaintiffs' experts, and the Defendant's  
experts in relation to the Plaintiffs' claims:

(a) meet and confer with any other expert witness within the same area of  
expertise, such meeting to be conducted in the absence of the parties, their  
employees or agents and the parties' legal representatives;

(b) cooperate in the prompt delivery to the parties' legal representatives of a  
joint report identifying:

(i) the areas of agreement and disagreement between them; and

(ii) where there is a disagreement, a short statement explaining the basis  
of the disagreement; and

the parties and their legal or other representatives shall not direct or instruct an expert  
witness as to whether to agree or disagree with any other expert witness in the  
meeting, or as to the basis or terms upon which the expert may agree or disagree  
with any other expert or have any communication with the expert during the course  
of the conclave or the preparation of the joint report.

87 Any expert evidence required to be served pursuant to orders 5 to 6 is to also be  
served on the parties to the First, Second and Third Cross-Claims.

**Opt out**

98 By 7 April 2017, the Plaintiffs shall:

(a) Endeavour to agree:

(i) a form of notice (**Smith opt out notice**) proposed to be given to  
persons who are group members of both proceeding 2015/171592  
(**Smith proceeding**) and proceeding 2015/306222 (**Creighton  
proceeding**) for the purpose of section 162 of the *Civil Procedure Act*  
2005 (**Act**);

(ii) a form of notice (**Creighton opt out notice**) proposed to be given to  
persons who are group members of the Creighton proceeding only for  
the purpose of section 162 of the Act;

- (b) Serve on each other notices (**further notice**) proposed to be given to persons who are group members of both the Smith proceeding and the Creighton proceeding with the Smith opt out notice, that each Plaintiff(s) which will seek approval of the Court in respect of pursuant to section 175 of the Act;
- (c) Correspond as to any suggestions, omissions and deficiencies as to each other's further notice with the aim of reducing disputation as to the terms of each further notice;
- (d) Endeavour to agree a draft form of order (**form of order**) as to the proposed manner and timing of the giving of:
  - (i) the Smith opt out notice, the Creighton opt out notice and the further notices;
  - (ii) the selection, appointment and costs of an independent lawyer (**independent lawyer**) for the purpose of assisting persons who are group members of both the Smith proceeding and the Creighton proceeding in making an election as to which proceeding (if any) of which that group member wishes to remain part; and
- (e) Endeavour to agree on the identity of the independent lawyer or provide each other a short list (**short list**) of three candidates for appointment as the independent lawyer.

409 By 21 April 2017, the Plaintiffs in the proceeding shall inform the Defendant and Cross-Defendants of the outcome of order 8 and serve on the Defendant and Cross-Defendants the Smith opt out notice (or versions contended for by each Plaintiff as the case may be), the Creighton opt out notice and the further notices.

4110 By 5 May 2017, the Defendant and Cross-Defendants shall indicate its position as to the Smith opt out notice, the Creighton opt out notice, the further notices, the form of order, and the identity of the independent lawyer (or the names on the short list as the case may be).

### **First Cross-Claims**

4211 By 15 February 2017 the Fourth Cross-Defendant to the First Cross Claim respond to the letter dated 22 December 2016 from Minter Ellison to Clyde & Co indicating whether it accepts the matters there raised and will amend its defence accordingly.

**Pleadings**

1312 By 20 February 2017, the Cross-Defendants to the First Cross Claim inform the Cross-Claimants to the First Cross Claim as to whether they consent to the filing of the proposed Further Amended Statement of Cross-Claim and, if not, the basis of the opposition.

1413 In the event consent is given, the Cross-Claimants to the First Cross Claim are to file and serve their Further Amended Statement of Cross-Claim by 21 February 2017 and orders 15 to 18 shall follow.

1514 In the event consent is not given, the Cross-Claimants to the First Cross Claim are to file and serve any application for leave to file their Proposed Further Amended Statement of Cross-Claim by 27 February 2017.

1615 The Cross-Defendants to the First Cross Claim to file and serve Defences to the Further Amended First Cross-Claims by 13 March 2017.

1716 The Cross-Claimants to the First Cross Claim to file and serve any Replies by 27 March 2017.

**Evidence**

1817 The Cross-Claimants to the First Cross Claim to serve their lay evidence on or before 15 March 2017.

1918 The Cross-Defendants to the First Cross Claim to serve their lay evidence on or before 4 May 2017.

**Discovery**

2019 On or before 31 March 2017, the First and Second Cross-Claimants to the First Cross-Claim provide discovery of the documents within the categories that are described in annexure A to these orders.

20 The Third and Fourth Cross-Defendants to the First cross-Claim provide discovery of documents in accordance with annexures B and C respectively on or before 17 February 2017.

20A Any pleadings, evidence and discovery required to be served pursuant to Orders 12 to 20 are also to be served on the Plaintiffs, the Defendants and the parties to the Second and Third Cross-Claims.

## Second and Third Cross-Claims

### Pleadings

- 21 The Cross-Defendants to the Second Cross-Claims (**PwC**) are to file and serve their Defences to the Second Cross-Claims on or before 28 April 2017.
- 22 The Cross-Defendants to the Third Cross-Claims (**HLB**) are to file and serve their Defences to the Third Cross-Claims on or before 28 April 2017.
- 23 The Cross-Claimant to the Second and Third Cross-Claims (**AET**) is to file and serve any Replies to PwC's and HLB's Defences on or before 12 May 2017.

### Discovery

24 AET and PwC, and AET and HLB, are to endeavour to agree on categories of documents to be discovered by AET, PwC and HLB on or before 26 May 2017.

25 To the extent that any categories for discovery remain in dispute, AET, PwC or HLB (as the case may be) is to file a Notice of Motion seeking discovery of such documents from AET, PwC or HLB (as the case may be) on or before 12 May 9 June 2017.

26 Subject to Order 25, AET, PwC and HLB are to give discovery of documents within agreed categories on or before 8 June 31 July 2017, such

27 AET is to serve any lay evidence on which it intends to rely in relation to the Second and Third Cross-Claims on or before 26 May 1 September 2017.

2628 AET is to serve any expert evidence on which it intends to rely in relation to the Second and Third Cross-Claims on or before 15 September 2017.

PwC and HLB are to serve any lay evidence on which they intend to rely on or before 23 June 2017.

29 PwC and HLB are to serve any lay and expert evidence on which they intend to rely on or before 2 February 2018.

2730 AET to serve any lay and expert evidence in reply to PwC's and HLB's lay evidence on or before 2 March 2018.

28 AET is to serve any expert evidence in reply to PwC's and HLB's expert evidence on or before 10 November 2017.

29 On or before 1 December 2017, AET's, PwC's and HLB's experts are to:

(a) ~~meet and confer with any other expert witness within the same area of expertise, such meeting to be conducted in the absence of the parties, their employees or agents and the parties' legal representatives;~~

(b) ~~cooperate in the prompt delivery to the parties' legal representatives of a joint report identifying:~~

(i) ~~the areas of agreement and disagreement between them; and~~

(ii) ~~where there is a disagreement, a short statement explaining the basis of the disagreement; and~~

~~the parties and their legal or other representatives shall not direct or instruct an expert witness as to whether to agree or disagree with any other expert witness in the meeting, or as to the basis or terms upon which the expert may agree or disagree with any other expert or have any communication with the expert during the course of the conclave or the preparation of the joint report.~~

3031 The pleadings, evidence and discovery required to be served pursuant to Orders 21 to 30 is also to be served on the Plaintiffs, the Defendants and the parties to the First Cross-Claim (to the extent not already served).

**General**

*The Craghton Proceedings and the Smith Proceedings*  
3132 ~~The time for the parties to comply with order 21 made on 16 August 2016~~

~~(regarding the conduct of a private mediation) be extended to 16 March 2018 15~~

~~December 2017.~~

*(including all cross-claims) be referred to mediation by a private mediator to be agreed by the parties*

3233 ~~The matter be listed for hearing on 30 July 2018 with an estimated hearing length of 12 weeks.~~

3334 ~~The proceedings be listed for further directions on [19 May 2017]. [Note: AET proposes the next listing be after 12 May 2017, so the Court can address any outstanding issues in relation to the opt out procedures and discovery in the audit claims.]~~

*at 9.15am on 16.6.17*

*commence no later than 12 March 2018.*

3435 Liberty to apply on two days' notice.

## Annexure A

### Categories of documents for discovery from the cross-claimants

1. All correspondence, minutes, memoranda, reports and other documents dated between 30 June 2010 and 27 June 2012 recording, constituting or referring to:
  - 1.2 the financial position of Provident Capital Limited (PCL) and/or the debenture fund operated by PCL;
  - 1.3 concerns raised by the first cross-claimant with PCL referring to the financial position of the debenture fund;
  - 1.4 the first cross-claimant's application to the Federal Court of Australia for directions with respect to PCL;
  - 1.5 the order of the Federal Court of Australia to freeze the debenture fund on an interim basis;
  - 1.6 any report, including draft reports, prepared by PPB Advisory and commissioned by the first cross-claimant in relation to the debenture fund;
  - 1.7 concerns raised by the Australian Securities and Investments Commission (ASIC) referring to the affairs of PCL and/or the financial position of the debenture fund;
  - 1.8 communications with ASIC referring to the financial position of the debenture fund;
  - 1.9 the possibility that debenture holders could take action against the first cross-claimant or its directors;
  - 1.10 loss or potential loss suffered by debenture holders as a result of the financial position of the debenture fund.



## Annexure B

### Categories of documents for discovery from Liberty Mutual Insurance Company

- 1 All documents recording or referring to the provision or potential provision of primary or excess professional indemnity insurance by Liberty Mutual Insurance Company (**Liberty**) and/or any related body corporate for IOOF Holdings Limited (**IOOF**) and/or Australian Executor Trustees Limited (**AET**) in the periods:
  - (a) from 1 August 2010 to 31 December 2011; and
  - (b) from 1 June 2013 to 31 December 2014.
  
- 2 All documents comprising the guidelines of Liberty and/or any related body corporate recording or referring to the basis upon which Liberty and/or any related corporate body could or should provide primary or excess professional indemnity insurance cover to financial institutions in the Australian market of the same or similar nature to IOOF and/or AET in the period from 1 January 2010 to 30 June 2015.
  
- 3 All versions of standard financial institutions professional indemnity insurance policy wording for the Australian market issued by Liberty and/or any related body corporate in the period 1 January 2010 to 30 June 2015.
  
- 4 All financial institutions professional indemnity insurance policy wordings issued by Liberty and/or any related body corporate for any of the following trustees :
  - (c) Equity Trustees Limited;
  - (d) The Trust Company Limited;
  - (e) Perpetual Limited;
  - (f) Sandhurst Trustees Limited;
  - (g) State Trustees Limited; and
  - (h) One Investment Group Limited;

in the period 1 January 2010 to 30 June 2015.
  
- 5 All documents recording or referring to any claim or potential claim against AET in connection with Provident Capital Limited dated in the period 1 January 2015 to 3

September 2015 between any of AXIS, Liberty, Chubb and Willis Australia Limited.

- 6 All documents recording, referring to, or created in connection with the letter from Liberty to Willis Australia Limited dated 14 August 2015 with respect the proceedings brought by Innes Creighton and John and Rosemary Smith against AET up to and including 3 September 2015.
- 7 All correspondence between AXIS Speciality Europe SE (**AXIS**), Liberty and other excess insurers in relation to the following policies of professional indemnity insurance underwritten by AXIS for IOOF and its subsidiaries:
- (i) policy number 311731 for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;
  - (j) policy number 311731 for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012; and
  - (k) policy number 311731 for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015,

in relation to the claim or potential claim brought against AET by Innes Creighton and/or John and Rosemary Smith in the period 16 March 2015 to 3 September 2015.

**Annexure C****Categories of documents for discovery from Chubb Insurance Company of Australia Limited**

- 1 All documents recording or referring to the provision or potential provision of primary or excess professional indemnity insurance by Chubb Insurance Company of Australia Limited (**Chubb**) and/or any related body corporate for IOOF Holdings Limited (**IOOF**) and/or Australian Executor Trustees Limited (**AET**) in the periods:
  - (l) from 1 August 2010 to 31 December 2011; and
  - (m) from 1 June 2013 to 31 December 2014.
  
- 2 All documents comprising the guidelines of Chubb and/or any related body corporate recording or referring to the basis upon which Liberty and/or any related corporate body could or should provide primary or excess professional indemnity insurance cover to financial institutions in the Australian market of the same or similar nature to IOOF and/or AET in the period from 1 January 2010 to 30 June 2015.
  
- 3 All versions of standard financial institutions professional indemnity insurance policy wording for the Australian market issued by Chubb and/or any related body corporate in the period 1 January 2010 to 30 June 2015.
  
- 4 All financial institutions professional indemnity insurance policy wordings issued by Chubb and/or any related body corporate for any of the following trustees :
  - (n) Equity Trustees Limited;
  - (o) The Trust Company Limited;
  - (p) Perpetual Limited;
  - (q) Sandurst Trustees Limited;
  - (r) State Trustees Limited; and
  - (s) One Investment Group Limited;in the period 1 January 2010 to 30 June 2015.

- 5 All documents recording or referring to any claim or potential claim against AET in connection with Provident Capital Limited dated in the period 1 January 2015 to 3 September 2015 between any of AXIS, Liberty, Chubb and Willis Australia Limited.
- 6 All documents recording, referring to, or created in connection with the letter from Chubb to Willis Australia Limited dated 14 August 2015 with respect the proceedings brought by Innes Creighton and John and Rosemary Smith against AET up to and including 3 September 2015.
- 7 All correspondence between AXIS Speciality Europe SE (**AXIS**), Chubb and other excess insurers in relation to the following policies of professional indemnity insurance underwritten by AXIS for IOOF and its subsidiaries:
- (t) policy number 311731 for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;
  - (u) policy number 311731 for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012; and
  - (v) policy number 311731 for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015,

in relation to the claim or potential claim brought against AET by Innes Creighton and/or John and Rosemary Smith in the period 16 March 2015 to 3 September 2015.