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SHORT MINUTES OF ORDER — 24 NOVEMBER 2017 HEARING

COURT DETAILS

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

TITLE OF PROCEEDINGS

Plaintiffs **Innes Creighton**

Defendants **Australian Executor Trustees Limited**
ACN 007 869 573

COURT DETAILS

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

TITLE OF PROCEEDINGS

Plaintiffs **John Smith and Rosemary Smith**

Defendants **Australian Executor Trustees Limited**
ACN 007 869 573

FILING DETAILS

Filed for **Innes Creighton, Plaintiff**
Filed in relation to Plaintiffs' Claims
Legal representative Ben Hardwick, Slater and Gordon
Contact name and telephone Tristan Moseby, (03) 8644 8467
Contact email tristan.moseby@slatergordon.com.au

The Court orders that:

Opt out process and election between proceedings

1. Pursuant to s 162(1) of the *Civil Procedure Act 2005 (Act)*, the time and date by which:
 - (a) a group member of only proceeding number 2015/306222 (**Creighton Proceeding**) may opt out of that proceeding; and
 - (b) a group member of both proceeding number 2015/171592 (**Smith Proceeding**) and the Creighton Proceeding:
 - (i) may opt out of the Smith Proceeding but remain a group member of the Creighton Proceeding;
 - (ii) may opt out of the Creighton Proceeding but remain a group member of the Smith Proceeding; or
 - (iii) may opt out of both proceedings

be fixed as 4pm on 16 February 2018 (**Class Deadline**).
2. Pursuant to ss 175(1)(a) and 176(1) of the Act, the Court approves:
 - (a) the notice at Annexure A for the purpose of those group members referred to in order 1(a) (**Creighton Notice**); and
 - (b) the notice at Annexure B for the purpose of those group members referred to in order 1(b) (the **Smith Notice**).
3. Any person who is a group member of the Smith Proceeding, who after receipt of the Smith Notice does not make any of the elections (i) to (iii) subjoined to order 1(b) by the Class Deadline, shall be deemed to have made the election in order 1(b)(ii), and shall further be deemed to have opted out of the Creighton Proceeding only as if a notice of same had been filed pursuant to s 162(2) of the Act.
4. The solicitors for the plaintiffs in the Smith Proceeding (**Smith**) are to provide to the solicitors for the plaintiff in the Creighton Proceeding (**Creighton**) by 8 December 2017:
 - (a) a list of all group members of the Smith Proceeding (including the names, birth dates or ABN or like identifying information (if known), last known postal addresses, and last known email addresses of

those group members) in mail merge-able format (**Smith Mail Merge List**); and

- (b) an affidavit which exhibits the Smith Mail Merge List and states that the deponent, based on reasonable enquiries, reasonably believes that each person or entity in the Smith Mail Merge List, or their duly appointed representative(s), executed a funding agreement with Litman Holdings Pty Ltd which group members of the Smith proceedings have or are required to have signed by 5 pm on 16 July 2015.

- 4A. On 20 December 2017 by 4 pm, for the purposes of including a total legal costs figure in the Smith Notice, Creighton and Smith each serve a letter on the other setting out their costs to that date (assuming a successful outcome at that date), whether invoiced or work in progress, broken down into:
 - (a) professional fees;
 - (b) disbursements;
 - (c) the amount of any uplift;
 - (d) insurance premium amount;
 - (e) any other fees or charges, including GST.
- 4B. On 21 December 2017 by midday, Smith serve on Creighton the Smith Notice in the final form to be distributed pursuant to order 6.
- 4C. For the purpose of distributing the Smith Notice, the solicitors for Smith are to rely on the register of debenture holders which will be produced to the Court by Link Market Services.
- 5. For the purpose of distributing the Creighton Notice, Creighton's solicitors are to rely on the register of debenture holders which will be produced to the Court by Link Market Services, excluding those persons who appear on the Smith Mail Merge List (**Creighton Mail Merge List**).
- 6. The Smith Notice is to be given to persons who are group members of both proceedings only (being the persons in the Smith Mail Merge List) according to the following procedure:

- (a) by 5 January 2018, Smith's solicitors are to send the Smith Notice by pre-paid ordinary post and email to each of the postal and email addresses in the Smith Mail Merge List; and
- (b) from 5 January 2018, the Smith Notice is to be:
 - (i) posted on <http://www.investorsactiongroup.com.au/provident-debenture-scheme/>;
 - (ii) posted on the Court's website; and
 - (iii) be available for inspection at the Registry of the Court in Sydney,

and to remain there until at least the Class Deadline.

7. The Creighton Notice is to be given to persons who are group members of the Creighton Proceeding only (being persons other than those in the Smith Mail Merge List) according to the following procedure:

- (a) from 5 January 2018, the Creighton Notice is to be:
 - (i) posted on <https://www.slatergordon.com.au/class-actions/current-class-actions/provident-capital-ltd/>;
 - (ii) posted on the Court's website; and
 - (iii) be available for inspection at the Registry of the Court in Sydney,

and to remain there until at least the Class Deadline; and

- (b) by 5 January 2018, Creighton's solicitors are to send the Creighton Notice by pre-paid ordinary post and email to each of the postal and email addresses in the Creighton Mail Merge List.

8. The Registry is to accept for filing any notice purporting to be an opt out form referable to the Creighton Proceeding and/or the Smith Proceeding (**Opt Out Form**) received by the Court before the Class Deadline, whether or not the opt out form is an original document or copy, and whether it is provided to the Court by post, by facsimile, or by electronic means.

9. If, on or before the Class Deadline, any party (or their solicitors or funders) in the Creighton Proceeding or the Smith Proceeding, or the person appointed by the Court pursuant to Order 13 (**Form Recipient**), receives an Opt Out

Form whether or not the Opt Out Form is an original document or copy, and whether it is provided to the Form Recipient by post, by facsimile, or by any electronic means, then:

- (a) that Form Recipient must cause the Opt Out Form to be filed in the Registry within 7 days of receipt;
 - (b) the Opt Out Form shall be treated as an Opt Out Form received by the Court at the time it was received by the Form Recipient (whichever is earlier), with the effect that if the Opt Out Form was received by the Form Recipient before the Class Deadline the Opt Out Form will be deemed to have been filed before the Class Deadline;
 - (c) that Form Recipient must, in writing, inform the other parties of receipt of any Opt Out Form; and
 - (d) that Form Recipient must, in writing, inform the parties and the associate to the Honourable Justice Ball if any of the following circumstances transpires in relation to any Opt Out Form received before the Class Deadline:
 - (i) the Opt Out Form is 'stamped' by the registry as having been filed after the Class Deadline (or alternatively is 'sealed' by the Online Registry pursuant to rule 3.15 of the *UCPR* as having been filed after the Class Deadline);
 - (ii) the Opt Out Form is rejected for filing by the Registry or the Online Registry for any reason including if no specific reason for rejection is given.
10. The parties' solicitors have leave to inspect the court file and to copy any Opt Out Forms filed.
11. Within three weeks of the Class Deadline:
- (a) Smith's solicitors are to provide to the solicitors for all other parties a list of the group members who remain group members of the Smith Proceeding; and

- (b) Creighton's solicitors are to provide to the solicitors for all other parties a list of the group members who remain group members of the Creighton Proceeding.

Independent expert

The Court notes that:

- mb3* 12. *Jennifer* Ms ~~Jenny~~ Campbell, Partner of Allens, has consented to being appointed by the Court as an independent expert to perform the functions and duties set out in Part A of these orders and to be bound by these orders.

The Court orders that:

- mb3* 13. *Jennifer* Ms ~~Jenny~~ Campbell is appointed by the Court as an independent expert (**Expert**).
14. The Expert's appointment will terminate at the Class Deadline.
15. The Expert's appointment shall be deemed to have ceased on and from the date the Expert ceases partnership at Allens, or is otherwise incapacitated from performing the functions and duties specified in Part A, below.

A. Role of the independent expert

16. This Part A of the orders defines the functions and duties of the Expert.
17. Subject to the limitation set out in Order 18, the Expert is to provide:
- (a) oral advice; or
- (b) written advice, but only if it is specifically requested that the advice be given in writing;
- to group members in the Smith Proceeding as may be requested of the Expert by those group members.
18. The Expert's advice is to be directed to matters which will assist the group member in making a decision as to whether the group member wishes to:
- (a) remain in the Creighton Proceeding and opt out of the Smith Proceeding; or
- (b) remain in the Smith Proceeding and opt out of the Creighton Proceeding.

19. Without limitation to order 17, the oral advice to be given under order 17(a) above may be oral advice given to multiple group members at a meeting venue or by telephone conference call.
20. The duty of the Expert is to the Court and the Expert must:
 - (a) act impartially and fairly;
 - (b) be, and be seen to be, independent of the parties (and the representatives of the parties) in the Creighton Proceeding and the Smith Proceeding; and
 - (c) seek to reduce or avoid costs where possible.
21. The Expert may appoint staff members (**Staff**) to whom the Expert may delegate any task in connection with the Expert's functions and duties, other than:
 - (a) the discretion to apply to the Court pursuant to orders 22, 37 and 38; and
 - (b) this power of delegation itself.
22. The Expert may apply to the Court for directions to assist the Expert in the performance of the Expert's functions in any respect provided that:
 - (a) any such application must be made by sending a written request for directions to the Court, specifying the matter in relation to which directions are sought; and
 - (b) a copy of the request must be sent to the solicitors for the plaintiff in the Creighton Proceeding and the solicitors for plaintiffs in the Smith Proceeding.

B. Documents for the independent expert

23. This Part B of the orders specifies the documents to which the Expert may have regard in fulfilling the functions and duties specified in Part A.
24. Creighton and Smith shall serve upon each other, and provide to the Expert:
 - (a) by 5 pm on 8 December 2017, above, a submission (**Primary Submission**) not exceeding 25 pages (in at least 11-point font size with 1.5 lines spacing from each other) as to the differences between the Creighton proceeding and the Smith proceeding and how those

differences will impact on group members who remain in one or other proceeding; and

- (b) by 5 pm on 22 December 2017, a submission in reply to the Primary Submission not exceeding 8 pages (in at least 11-point font size with 1.5 lines spacing from each other) (**Reply Submission**).

25. Creighton is to provide the Expert with the following documents (**Additional Creighton Documents**) at the same time as providing the Expert with his Primary Submission:

- (a) the extant version of the Statement of Claim filed in the Creighton Proceeding;
- (b) the extant version of the defence filed in the Creighton Proceeding;
- (c) any costs agreement between Creighton and Slater and Gordon;
- (d) a current estimate of Creighton's legal costs to the resolution of trial of common questions in the Creighton Proceeding (**Creighton Costs Estimate**);
- (e) records of all Creighton's legal costs incurred to date, whether invoiced or work in progress broken down between costs incurred by experts, legal practitioners and administrative costs incurred by non legally qualified persons (**Creighton Costs Incurred**);
- (f) any policy of insurance which relates to Creighton's liability or potential liability for adverse costs; and
- (g) any notice approved by the Court pursuant to s 175(1)(a) of the Act for group members of the Smith Proceeding.

26. Smith is to provide the Expert with the following documents (**Additional Smith Documents**) at the same time as providing the expert with their Primary Submission:

- (a) the extant version of the Statement of Claim filed in the Smith Proceeding;
- (b) the extant version of the defence filed in the Smith Proceeding;
- (c) a template of any funding agreement with Litman Holdings Pty Ltd (**Litman**) which group members of the Smith proceedings have or are

required to have signed by 5pm on 16 July 2015 in order to be a group member of the Smith proceeding;

- (d) any costs agreement between Smith and Meridian Lawyers;
- (e) a current estimate of Smith's legal costs to the resolution of trial of common questions in the Smith Proceeding (**Smith Costs Estimate**);
- (f) any budgets agreed between Meridian Lawyers and Litman (or other person or entity to which Litman's rights under the funding agreements have been assigned);
- (g) records of all Smith's legal costs incurred to date, whether invoiced or work in progress broken down between costs incurred by experts, legal practitioners and administrative costs incurred by non legally qualified persons (**Smith Costs Incurred**);
- (h) any policy of insurance which relates to Smith's liability or potential liability for adverse costs; and
- (i) a list of the names, addresses, and any other contact details held for Smith Proceeding group members.

27. For the purposes of fulfilling the functions and duties specified in Part A the Expert must have regard to:

- (a) the Primary and Reply Submissions served by Creighton and Smith;
- (b) the Additional Creighton Documents; and
- (c) the Additional Smith Documents.

28. The Expert may request that Creighton provide copies of one or more of the following documents, being the non-property valuation expert evidence to be relied upon by Creighton, and may have regard to those documents, if she is of the opinion that they are required by the Expert to discharge the functions and duties referred to in Part A of these orders:

- (a) report of Andrew Malarkey dated 20 October 2016;
- (b) report of Edward Psaltis dated 13 October 2016;
- (c) report of Sharman Grant dated 20 October 2016;
- (d) supplementary report of Andrew Malarkey dated 16 December 2016; and/or

- (e) second supplementary report of Andrew Malarkey dated 19 May 2017.
29. The Expert may request that Smith provide copies of one or more of the following documents, being the non- property valuation expert evidence to be relied upon by Smith, and may have regard to those documents, if she is of the opinion that they are required by the Expert to discharge the functions and duties referred to in Part A of these orders:
- (a) report of Michael Potter dated 30 September 2016;
 - (b) report of Clive Guthrie dated 29 September 2016;
 - (c) affidavit of Clive Guthrie sworn on 22 December 2016;
 - (d) second report of Michael Potter dated 6 February 2017; and
 - (e) affidavit of Clive Guthrie sworn on 29 June 2017.
30. The Expert may request that Australian Executor Trustees Limited provide copies of one or more of the following documents, being the expert evidence to be relied upon by the defendant, and may have regard to those documents, if she is of the opinion that they are required by the Expert to enable the discharge of the functions and duties referred to in Part A of these orders:
- (a) report of Neil Gray dated 27 September 2017;
 - (b) report of David Lombe dated 28 September 2017; and
 - (c) report of Hayden Williams dated 29 September 2017.
31. The Expert is not to have regard to any document other than the documents specified in this Part B, in discharging the functions and duties referred to in Part A of these orders.
32. The Expert must not provide to the Defendant or its legal representative the information contained in or the content of any document provided to the Expert pursuant to orders 24, 25 or 26 above.
33. The right of any party (or the legal representatives of any party) to resist production of any document specified in this Part B of the orders by reason or privilege or confidentiality, or on any other lawful basis, is not diminished or affected by compliance with these orders, and the provision of documents to

the Expert in compliance or purported compliance with these orders is not a waiver of privilege.

34. The Expert must, when providing advice pursuant to Part A of this order, provide an appropriate warning before disclosing to group members information or the contents of documents provided pursuant to orders 24, 25 or 26 which may be privileged, confidential or not liable to be produced to a court on a lawful basis, that the further disclosure of the information may prejudice the interests of the plaintiffs in the Creighton Proceeding or Smith Proceeding (as appropriate) in the litigation and should be treated in strict confidence and not discussed except (if desired) with their own professional legal or financial advisor.

C. Costs of the expert

35. In accordance with this Part C of the orders, the Expert may seek payment of the costs incurred in the discharge of the functions and duties referred to in Part A of these orders by the Expert and the Staff (**Expert's Costs**).
36. The Expert's Costs:
- (a) shall consist of:
 - (i) professional fees incurred at reasonable hourly rates (in 6 minute increments) applicable to the employment classifications of the persons who perform that work; and
 - (ii) reasonable disbursements charged at cost; and
 - (b) shall not exceed the sum of \$110,000, plus \$11,000 for every additional 100 group members (or part thereof) who obtain advice in excess of 435 group members (excluding GST) (**Cap**).
37. The Expert may apply to the Court for an order varying the Cap provided that a copy of any such application and supporting material must be served on the solicitors for Creighton and the solicitors for Smith.
38. Upon the conclusion of the Expert's task by operation of orders 14 or 15, above, the Expert may seek approval of the Expert's Costs, by making an application which is to be dealt with on the papers and in the absence of the parties, which application is to be served with the following supporting material on the solicitors for Creighton and the solicitors for Smith:

- (a) a brief affidavit of the Expert describing the work undertaken by the Expert and the Staff; and
 - (b) an itemised list of the Expert's Costs, which is to be an annexure to that affidavit.
39. The costs of the Expert in making any application under orders 22, 37 and 38, or in making any other application to the Court pursuant to these orders, may be claimed by the Expert as part of the Expert's Costs, unless good cause is shown to the contrary.
40. Liability for the Expert's Costs approved according to order 38 shall be payable, in the first instance, by the solicitors for Creighton and Smith in equal share, and that liability is to be satisfied by payment to (or at the direction of) the Expert within 28 days of the date on which those costs are approved, however any such costs paid by the solicitors for Creighton and Smith may be passed on to their respective clients as a disbursement, as may be permitted by the terms of their respective retainers.
41. The costs of the Expert, and Creighton and Smith's costs of or relating to the appointment of and dealings with the Expert, are not recoverable by Creighton or Smith against any other party.

Other orders

42. The motion filed by Creighton on 27 October 2015 in the Smith Proceeding be dismissed, with no order as to costs of the motion.
43. The parties' costs of the following motions be costs in the cause:
- (a) the motions filed by Creighton in the proceedings dated 14 November 2017; and
 - (b) the motion filed by Smith in the Smith Proceeding dated 14 November 2017.
- 43A. The time for compliance with order 6 of the Order of Justice Ball made on 17 February 2017 (service of the plaintiffs' expert evidence in reply) be extended to 9 February 2018.

General

44. Liberty to apply on two days' notice.

SUPREME COURT OF NEW SOUTH WALES

IMPORTANT NOTICE

DEBENTURE HOLDERS IN PROVIDENT CAPITAL LIMITED

A: ABOUT THIS NOTICE

1. Why are you receiving this notice?

- 1.1 The Supreme Court of New South Wales has ordered that this notice be provided to certain persons who held debentures in Provident Capital Limited (**Provident**). If you held debentures as at 29 June 2012, which is the date on which Provident was placed into receivership, you may be a group member of a class action which is brought against Australian Executor Trustees Ltd (**AET**).
- 1.2 Innes Creighton commenced the class action on 23 December 2014 in the Federal Court of Australia, but the proceeding is now being conducted and case-managed in the Supreme Court of New South Wales (**Court**). Slater and Gordon Lawyers are the solicitors who act for Mr Creighton.
- 1.3 The Court has ordered that this notice be published for the information of persons who are members of the group on whose behalf the class action is brought and are affected by the class action. If you think you may be a group member, you should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything that you do not understand, you should seek legal advice.

2. What is this notice and why is it important?

- 2.1 This notice gives you important information about the class action, and about your rights as a group member. In particular, it tells you about your right to opt out of the class action if you wish to do so.

The last date for opting out, should you wish to do so, is 16 February 2018.

3. What is a class action?

- 3.1 A "class action" is a legal claim made by a person (**plaintiff**) on his or her own behalf and on behalf of a group of people (**group members**) against another person (**defendant**), where the plaintiff and the group members have similar claims against the defendant.
- 3.2 The defendant may make its own legal claims against others (**cross-defendants**) for the court to decide alongside the class action.
- 3.3 Group members are eligible to share the proceeds of the litigation, and are otherwise bound by the outcome of the class action, unless they have opted out. A binding result can happen either through a judgment after a trial, or a settlement at any time.
- 3.4 If there is a judgment or a settlement, group members *will not* be able to pursue the same claims, and *may not* be able to pursue similar or related claims against the defendant in other legal proceedings. Group members should note that:

- (a) In a *judgment* following trial, the court will decide factual and legal issues common to group members' legal claims. Those decisions will bind the plaintiff, group members and the defendant unless successfully appealed. Importantly, if other legal claims are brought between a group member and the defendant, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
- (b) A *settlement* of a class action for compensation is likely to extinguish any other rights to compensation a group member might have against the defendant which arise in any way out of the events or transactions which are the subject-matter of the class action.

3.5 A settlement which includes cross-defendants may extinguish rights to compensation group members may have against those cross-defendants.

3.6 If you consider that you have claims against AET or the cross-defendants in the class action, including Provident's former auditors HLB Mann Judd and PricewaterhouseCoopers, which are based on your individual circumstances or which are additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out.

B: INFORMATION ABOUT THE CLASS ACTION

4. What is this class action about?

4.1 On 3 July 2012, the Federal Court of Australia appointed receivers to Provident, as it was likely Provident would not be able to pay sums owed to its debenture holders as and when they fell due. The receivers were appointed to collect and sell Provident's assets to repay debenture holders.

4.2 There is likely to be a substantial shortfall in repayments to debenture holders through the receivership. Provident's receivers, Christopher Hill and Ken Whittingham of PPB Advisory, estimate a total return to debenture holders of 21 cents in the dollar, inclusive of principal and interest.

4.3 The defendant, AET, was appointed by Provident as trustee for Provident debenture holders under a "trust deed", as required by company law. This meant that AET owed certain legal duties to debenture holders.

4.4 The class action alleges that AET is liable to compensate group members for their losses because:

- (a) if AET had been reasonably diligent in monitoring Provident, consistent with its legal duties, it would have identified problems with Provident's business conduct, its financial position and performance much earlier than mid-2012; and
- (b) if AET had done so, Provident debenture holders would either not have suffered loss, or would have suffered less loss.

4.5 AET has denied the allegations and is defending the class action. AET has also joined other parties as cross-defendants, including HLB Mann Judd and PricewaterhouseCoopers who were auditors of Provident. AET claims that those other parties should have to contribute to any damages awarded to the plaintiffs and group members. Those claims are also being defended.

5. On whose behalf is the class action brought?

5.1 The class action is brought by the plaintiff, Mr Creighton, on his own behalf and on behalf of people who meet certain group member eligibility requirements.

5.2 The only requirement for you to be a group member is that you held debentures in Provident as at 29 June 2012.

5.3 If you are unsure whether or not you are a group member, you should either:

(a) contact Slater and Gordon on 1800 071 827 or by email to provident@slatergordon.com.au; or

(b) seek your own legal advice without delay.

5.4 **You do not need to have signed an agreement to be a member of this class action.** If you think you might have signed a litigation funding agreement, please refer to section 10 below.

6. What is “opt out”?

6.1 The plaintiff in a class action does not need to seek permission from group members to commence a class action on their behalf. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is provided in section 11 below.

7. Will you be liable for legal costs if you remain a group member?

7.1 You **will not become liable for any legal costs** simply by remaining as a group member in the class action until the Court has held the trial to decide the issues common to group members or the matter is settled. However:

(a) If you choose to remain in the class action, and the outcome of the initial trial means that preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you may wish to engage Slater and Gordon or other lawyers to do that work for you. Slater and Gordon is acting on a ‘No Win – No Fee’ basis. A copy of the terms on which Slater and Gordon are acting may be obtained by contacting them using the contact details listed at the end of this notice.

(b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiff which are not able to be recovered from AET. The costs of the class action are explained in sections 8 below. These costs will be subject to Court approval.

(c) Class actions are often settled out of court. If this occurs, you may be able to claim from the settlement amount without retaining a lawyer. In that event, the Court may nonetheless require you to contribute to the legal costs of the in the class action from your compensation.

8. How will legal costs be paid?

8.1 The class action is being run on a ‘No Win-No Fee’ basis, with Slater and Gordon bearing the costs. If the class action is successful, Slater and Gordon will, subject to the Court’s approval of its costs, be entitled to payment of its legal fees from the

compensation recovered, and to charge an “uplift” premium on its fees which increases those fees by 25%. Slater and Gordon is only able to recover fees charged with reference to the time spent on the case, and does not take a fixed percentage of any compensation arising from the class action.

- 8.2 If the plaintiff is ordered by the Court to pay AET’s legal costs (an **Adverse Costs Order**), Slater and Gordon has indemnified the plaintiff and will pay those costs. Slater and Gordon has taken out insurance against the risk that it is required to make such a payment, and will seek reimbursement of the insurance premium from compensation if a successful outcome is reached.
- 8.3 You cannot be made liable to pay any Adverse Costs Orders by remaining in the class action until after the initial trial. Adverse Costs Orders cannot be made against group members except where the initial trial concludes and does not finally decide a group member’s claim, and that particular group member subsequently elects to appear before the Court in order to have issues relating to their individual claim determined.
- 9. Will the class action affect further payments to you from Provident’s receivers?**
- 9.1 Any compensation you receive through the class action will be paid by AET, with potential contributions from the cross-defendants, and not by Provident or its receivers and managers, PPB Advisory. This means that any compensation received through the class action will be *in addition* to, and will not reduce, further payments to debenture holders from Provident’s receivers.
- 10. Is there another class action?**
- 10.1 There is another class action against AET arising from the collapse of Provident, *Smith v Australian Executor Trustees Limited*, which is being conducted by Meridian Lawyers (the **Meridian Lawyers Class Action**).
- 10.2 A person is a member of both this class action *and* the Meridian Lawyers Class Action, if they:
- (a) held debentures as at 29 June 2012; and
 - (b) signed a litigation funding agreement with Litman Holdings Pty Ltd by 5pm on 16 July 2015.
- 10.3 If you meet the above description, then the Court has ordered that you should receive a different notice. Copies of that other notice are available from the Registry of the Supreme Court, or from Slater and Gordon or Meridian Lawyers.
- 10.4 If you are unsure of whether you are a group member of the other class action, or if you believe that you are a group member of the other class action who has received this notice by mistake, you should contact Slater and Gordon or Meridian Lawyers, or obtain your own legal advice.
- 10.5 The two class actions will both be heard together in a single trial. The trial is due to commence on 30 July 2018, and a mediation is scheduled to be held in March 2018.

C: GROUP MEMBER OPTIONS

11. What are your choices?

11.1 If you fit the description of a “group member” in the class action (see section 5, above), then you are able to select one of the following options.

Option 1: If you wish to remain in the class action

11.2 If you wish to remain as a group member of the class action, you **do not need to do anything**.

11.3 If you remain as a group member, you will be bound by the outcome of the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members.

11.4 Your rights to bring your own legal claim will be affected as explained in section 3 of this notice.

Option 2: If you wish to opt out of the class action

11.5 If you wish to opt out, you should do so by completing the “Opt Out Notice” attached and lodging it with the Court by 16 February 2018. The Court’s address, at which the Opt Out Notice may be lodged, is contained on that notice.

11.6 If you opt out:

- (a) you will not be bound by or entitled to share in the benefit of any order, judgment or settlement obtained through the class action; and
- (b) your rights to bring your own claim will not be affected by the class action, and you will be at liberty to bring your own legal claim against AET, provided that you issue court proceedings within the time limit applicable to your claim.

11.7 If you wish to bring your own claim against AET or Provident’s auditors, HLB Mann Judd or PricewaterhouseCoopers, you should seek your own legal advice about your claim and any applicable time limit for bringing it before opting out.

11.8 **You must decide what to do BEFORE 4:00pm on 16 February 2018.** If you want to opt out of the class action, you must file the attached form with the Court so that it arrives **before** that deadline.

12. If you have any questions

12.1 If there is anything in this notice of which you are unsure, or if you have any questions, you should contact Slater and Gordon, or seek your own legal advice.

12.2 Slater and Gordon’s contact details are as follows:

Slater and Gordon Lawyers
1800 071 827

provident@slatergordon.com.au

485 La Trobe Street, Melbourne Vic 3000
GPO Box 4864, Melbourne Vic 3001

Any questions you have concerning the matters contained in this notice should not be directed to the Court.

- 12.3 Copies of relevant documents, including the statement of claim and defence, can be obtained by visiting the website of the plaintiff's solicitor. Please visit www.slatergordon.com.au/class-actions/current-class-actions/provident-capital-ltd
- 12.4 Relevant documents can also be obtained from the Registry of the Supreme Court, or from the Supreme Court's website, www.supremecourt.justice.nsw.gov.au/
- 12.5 If you wish to opt out, you should not delay in doing so.
- 12.6 This Notice is published pursuant to Orders made by the Court on [date].

OPT OUT NOTICE

COURT DETAILS

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

TITLE OF PROCEEDINGS

Plaintiffs **Innes Creighton**

First Defendant **Australian Executor Trustee Limited**

GROUP MEMBER DETAILS

Name of group member _____
[insert your name above]

Contact name and telephone _____

Contact email _____

Investment Certificate
Number(s) _____

OPT OUT NOTICE

Please tick one of the following options:

I wish to **opt out** of this class action;

OR

I wish to **remain in** this class action*

* if you wish to remain in the class action you do not need to submit this form

SIGNATURE

I understand that, if I have chosen to opt out on the previous page, by doing so:

1. I forego the right to share in any relief obtained by the plaintiff in the class action.
2. I am not entitled to receive any further notification about the conduct or disposition of the class action; and
3. To the extent that I have a claim against AET, any limitation period suspended by the commencement of the class action has recommenced to run, from the date of the receipt by the court of this Opt Out Notice.

Signature _____

Capacity _____

[eg solicitor, agent, or authorised officer of person opting out. Leave blank if you are the person opting out]

Date of signature

___ / ___ / 2018

NOTICE TO PERSON OPTING OUT

If you wish to opt out, you must provide this form to the Registry of the Supreme Court of New South Wales by one of the below means so that it arrives by **16 February 2018**.

REGISTRY DETAILS

In person	Level 5 Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
By post	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
By DX	Supreme Court of NSW, DX 829 Sydney
Telephone	1300 679 272

SUPREME COURT OF NEW SOUTH WALES
IMPORTANT NOTICE
PROVIDENT CAPITAL LIMITED CLASS ACTIONS

A: ABOUT THIS NOTICE

1. Why are you receiving this notice?

- 1.1 The Supreme Court of New South Wales has ordered that this notice be provided to persons who are likely to be group members in two class actions relating to the collapse of Provident Capital Limited (**Provident**). You have been identified as a potential group member in both class actions.
- 1.2 **Please read this notice carefully.** If you have questions, you should contact the independent expert identified in section 15 of this notice, or obtain your own legal advice. Please do not direct your questions to the Court.
- 1.3 You are receiving this notice because records show you held Provident debentures as at 29 June 2012, and you signed a litigation funding agreement with Litman Holdings Pty Ltd (**Litman**) by 5pm on 16 July 2015 (**Litman Funding Agreement**).
- 1.4 There are two class actions seeking compensation for Provident investors. Both are against Australian Executor Trustees (**AET**), and both are being conducted in the Supreme Court of New South Wales. These class actions may affect your rights.

2. What is this notice and why is it important?

- 2.1 This notice gives you important information about the class actions, and about your rights as a group member. In particular, it tells you about your right to choose which of the two class actions to participate in, or to opt out of both.

The deadline for making your decision is 16 February 2018. If you do not return the attached Opt Out Notice by then, you will be deemed to have opted out of the Slater and Gordon Class Action and will remain in the Meridian Lawyers Class Action.

3. What is a class action?

- 3.1 A "class action" is a legal claim made by one or more people (**plaintiffs**) on their own behalf and on behalf of a group of people (**group members**) against another person (**defendant**), where the plaintiffs and the group members have similar claims against the defendant.
- 3.2 The defendant may make its own legal claims against others (**cross-defendants**) for the court to decide alongside a class action.
- 3.3 Group members are eligible to share the proceeds of the litigation, and are otherwise bound by the outcome of the class action, unless they have opted out. A binding result can happen either through a *judgment* after a trial, or a *settlement* at any time.

- 3.4 If there is a judgment or a settlement, group members *will not* be able to pursue the same claims, and *may not* be able to pursue similar or related claims against the defendant in other legal proceedings. Group members should note that:
- (a) In a *judgment* following trial, the Court will decide factual and legal issues common to group members' legal claims. Those decisions will bind the plaintiff, group members and the defendant unless successfully appealed. Importantly, if other legal claims are brought between a group member and the defendant, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.
 - (b) A *settlement* of a class action for compensation is likely to extinguish any other rights to compensation a group member might have against the defendant which arise in any way out of the events or transactions which are the subject-matter of the class action.
- 3.5 A settlement agreement which includes cross-defendants might extinguish group members' rights to compensation against those cross-defendants.
- 3.6 If you consider that you have claims against AET or the cross-defendants in the class action, including Provident's former auditors HLB Mann Judd and PricewaterhouseCoopers, which are based on your individual circumstances or which are additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out. **That deadline is 16 February 2018.**

B: INFORMATION ABOUT THE CLASS ACTIONS

4. What are the class actions?

- 4.1 There are two class actions being conducted by two different law firms, Slater and Gordon and Meridian Lawyers, against AET in relation to Provident debentures:
- (a) *Creighton v Australian Executor Trustees Limited* (2015/306222), conducted by Slater and Gordon (**Slater and Gordon Class Action**)
 - (b) *Smith v Australian Executor Trustees Limited* (2015/171592), conducted by Meridian Lawyers (**Meridian Lawyers Class Action**)
- 4.2 The class actions will both be heard together in a single trial by the Supreme Court of New South Wales. The trial is due to commence on 30 July 2018 and a mediation is scheduled to be held in March 2018.
- 4.3 The two class actions are brought on behalf of all persons who are group members as defined in each of the class actions. This is explained below in section 6.
- ### **5. What are the class actions about?**
- 5.1 On 3 July 2012, the Federal Court of Australia appointed receivers to Provident, as it was likely Provident would not be able to pay sums owed to its debenture holders as and when they fell due. The receivers were appointed to collect and sell Provident's assets to repay debenture holders.

- 5.2 There is likely to be a substantial shortfall in repayments to debenture holders through the receivership. Provident's receivers, Christopher Hill and Ken Whittingham of PPB Advisory, estimate a total return for debenture holders of 21 cents in the dollar, inclusive of principal and interest.
- 5.3 The defendant, AET, was appointed by Provident as trustee for Provident debenture holders under a "trust deed" (**Trust Deed**), as required by company law. This meant that AET owed certain legal duties to debenture holders.
- 5.4 There are differences between the two class actions. However, the Slater and Gordon Class Action and the Meridian Lawyers Class Action both allege that AET is liable to compensate group members for their losses because:
- (a) if AET had been reasonably diligent in monitoring Provident, consistent with its legal duties, it would have identified problems with Provident's business conduct, its financial position and performance much earlier than mid-2012; and
 - (b) if AET had done so, Provident debenture holders would either not have suffered loss, or would have suffered less loss.
- 5.5 AET has denied the allegations and is defending both class actions. AET has also joined other parties as cross-defendants, including HLB Mann Judd and PricewaterhouseCoopers who were auditors of Provident. AET claims that those other parties should have to contribute to any damages awarded to the plaintiffs and group members. Those claims are also being defended.
- 6. On whose behalf are the class actions brought?**
- 6.1 The **Slater and Gordon Class Action** has been commenced by Mr Innes Creighton on his own behalf and on behalf of all persons who held debentures issued by Provident as at 29 June 2012. You do not need to have signed an agreement to be a member of the Slater and Gordon Class Action.
- 6.2 The **Meridian Lawyers Class Action** has been commenced by John and Rosemary Smith on their own behalves and on behalf of all persons who held debentures issued by Provident as at 29 June 2012, *and* who signed a Litman Funding Agreement by 5pm on 16 July 2015.
- 7. You need to choose between class actions or opt out of them altogether.**
- 7.1 A plaintiff in a class action does not need to seek permission from group members to commence a class action on their behalf. However, group members can cease to be group members by opting out of the class action.
- 7.2 Because you signed a Litman Funding Agreement, and held debentures in Provident as at 29 June 2012, you are currently a group member of both the Slater and Gordon Class Action and the Meridian Lawyers Class Action.
- 7.3 The Supreme Court of New South Wales has decided that group members should only be in one of the two class actions, and should have the right to choose which one **before** the deadline for opting out by returning the attached 'Opt Out Notice'.
- 7.4 Group members who do not return the attached Opt Out Notice will be treated as if they chose to opt out of the Slater and Gordon Class Action and remain in the Meridian Lawyers Class Action.

7.5 Group members may also opt out of both class actions if they wish to do so.

7.6 **Group members will not have to pay any costs as a result of opting out of the Meridian Lawyers Class Action, the Slater and Gordon Class Action, or both of them.**

7.7 An explanation of how you may opt out of one or both class actions is given below in section 13.

7.8 Please note that the deadline for opting out of the class actions is 16 February 2018.

8. **Will you be liable for legal costs if you remain a group member?**

8.1 You **will not become liable for any legal costs** simply by remaining as a group member in one of the class actions until the Court has held the trial to decide the issues common to group members or the matter is settled. However:

(a) If you choose to remain in either of the class actions, and the outcome of the initial trial means that preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Slater and Gordon, Meridian Lawyers or other lawyers to do that work for you. A copy of the terms on which Slater and Gordon and Meridian Lawyers are acting in the class actions may be obtained using the contact details listed in section 15 of this notice.

(b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the class action you choose to participate in, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiff(s) in that class action which are not able to be recovered from AET. The differences in costs of the two class actions are explained in section 12 below. These costs will be subject to Court approval.

(c) Class actions are often settled out of court. If this occurs in the class action you choose to participate in, you may be able to claim from the settlement amount without retaining a lawyer. In that event, the Court may nonetheless require you to contribute to the legal costs of the in the class action you participate in from your compensation.

9. **Will the class actions affect further payments to you from Provident's receivers?**

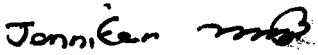

9.1 Any compensation you receive through the class actions will be paid by AET, with potential contributions from the cross-defendants, and not by Provident or its receivers and managers, PPB Advisory. This means that any compensation received through the class actions will be *in addition* to, and will not reduce, further payments to debenture holders from Provident's receivers.

C: **CHOOSING BETWEEN THE CLASS ACTIONS**

10. **How do you decide which class action to participate in?**

10.1 There are differences between the two class actions. These differences relate to the details of the claims made, the way in which the costs of the claims are funded, and the current amount of those costs. The differences in the way in which the

claims are made could affect the outcome of each case and the amount recovered. The differences in the way in which the claims are funded and in their costs could affect the proportion of any recovery that is actually shared by debenture holders in the relevant class if the claim is successful.

- 10.2 A description of the differences in the claims is given in section 11 below. A description of the differences in funding and current costs is given in section 12 below.
- 10.3 The Court has decided that group members cannot remain in *both* class actions, and has ordered that you be given a choice between participating in the Slater and Gordon Class Action and the Meridian Lawyers Class Action (if you do not opt out of both).
- 10.4 The Court has appointed an independent expert,  Jenny Campbell, to provide advice to group members on their choice between the two class actions. Ms Campbell is an experienced lawyer who will be scheduling a series of meetings and telephone conferences with group members who contact her for further information to assist with their decision.
- 10.5 The expert's contact details are as follows:

 Jenny Campbell
 Partner, Allens
 Email: jcampbell@allens.com.au
 Tel: (02) 9230 4663
 Post: GPO Box 50, Sydney NSW 2001
- 10.6 If you would like to receive advice from Ms Campbell, please contact her as soon as possible and by no later than 9 February 2018.
- 10.7 This expert is wholly independent of both plaintiffs, and is also independent of Slater and Gordon, Meridian Lawyers, and Litman. The costs of the independent expert are shared by both plaintiffs.
- 10.8 You may, of course, contact Slater and Gordon or Meridian Lawyers with questions *not* relating to the choice between class action, or seek your own independent legal advice at your own cost.

Any questions you have concerning the matters contained in this Notice should not be directed to the Court.

11. What are the differences between the claims?

- 11.1 The Slater and Gordon Class Action and the Meridian Lawyers Class Action are not the same, although both seek compensation under section 283F of the *Corporations Act 2001 (Cth)* (**Act**) from AET for breach of its duties owed under section 283DA. Key differences are as follows:
- (a) Both class actions allege that AET breached its duty to exercise reasonable diligence in identifying breaches by Provident of company law and the Trust Deed under which AET was appointed as trustee for debenture holders. The Slater and Gordon Class Action also alleges that AET breached its duty to exercise reasonable diligence in monitoring whether Provident had sufficient assets to repay debenture holders.

- (b) The Slater and Gordon Class Action alleges that AET should have stopped Provident from issuing any more debentures by early 2009 or, alternatively, by late 2010, and taken steps that would have resulted in the distribution of Provident's assets to debenture holders around those times.
 - (c) The Meridian Lawyers Class Action alleges, as a primary case, that if AET had complied with its obligations, it would have ascertained that Provident had breached the Trust Deed and, in order to protect the interests of the debenture holders, should have appointed a receiver to Provident as early as mid-September 2005. It makes similar allegations in relation to subsequent years through to December 2007.
- 11.2 The differences between the class actions mean that it is possible that one may fail while the other succeeds.
- 11.3 Further, there are important differences in the allegations and evidence in the class actions, which mean that group members may receive different amounts of compensation in respect of their alleged losses depending on which class action they choose, even if both are successful.

12. How will legal costs be paid?

- 12.1 The Slater and Gordon Class Action is being run on a 'No Win-No Fee' basis, with Slater and Gordon bearing the costs of running the class action. If the class action is successful, Slater and Gordon will, subject to the Court's approval, be entitled to payment of its legal fees from the compensation recovered, and to charge an "uplift" premium on its fees which increases those fees by 25%. Slater and Gordon is only able to recover fees charged with reference to the time spent on the case, and does not take a fixed percentage of any compensation arising from the class action.
- 12.2 The Meridian Lawyers Class Action is being funded by a litigation funder. If that class action is successful, subject to Court approval, the litigation funder will be entitled to recover the following from group members' compensation:
- (a) between 35% and 40% of group members' total compensation;
 - (b) a management fee of \$5,000 for each month after 12 September 2014; and
 - (c) Meridian Lawyers' and their barristers' legal fees, including a 25% "uplift" premium.
- 12.3 In the Meridian Lawyers Class Action, if the litigation funder or a group member decides to terminate funding, the litigation funder is entitled to recover five times the amount it would otherwise charge as reimbursement for the legal costs paid to Meridian Lawyers.

You will not have any obligation to the litigation funder if you choose the Slater and Gordon Class Action, or opt out of both class actions, even if you signed a litigation funding agreement.

- 12.4 The costs in the class actions on 20 December 2017, if the class actions had successfully resolved on that date, would have been as follows:

- (a) in the Meridian Lawyers Class Action, approx. **Insert total costs as at 20 December 2017, including professional fees, disbursements, uplift, insurance premium and GST**; and
- (b) in the Slater and Gordon Class Action, approx. **Insert total costs as at 20 December 2017, including professional fees, disbursements, uplift, insurance premium and GST**.
- 12.5 The above costs **do not include** the commission of between 35% and 40% of total compensation to be paid by group members in the Meridian Lawyers Class Action, which would be additional and separate. They **do** include insurance premiums and the 25% uplift premium on legal costs to be charged in both class actions, and Litman's management fee.
- 12.6 Please note that further legal costs will be incurred prior to the resolution of the class actions.
- 12.7 The legal costs and commission referred to above may only be recovered from any award of compensation or settlement sum if the relevant class action is successful, and *not* directly from group members. In the event that a class action is successful, the plaintiff can only recover legal costs from any award of compensation or settlement sum to the extent those costs are reasonable.
- 12.8 If a class action succeeds at trial, AET may be ordered to pay the plaintiff's reasonable legal costs in that class action. In some but not all cases, class actions may also settle for a sum which includes a requirement that the defendant pay the plaintiffs' costs. In the normal course, the amount of costs to be paid by the defendant in these circumstances is approximately 60–70% of total legal costs. This means that the balance of the legal costs (approximately 30-40% not to be paid by AET) will be required to be paid out of the award of compensation otherwise payable to group members.
- 12.9 Both Slater and Gordon and the litigation funder in the Meridian Lawyers Class Action have indemnified the plaintiffs in the respective class actions in the event that the Court makes an order against them that AET be paid its legal costs (**Adverse Costs Order**). Both Slater and Gordon and the litigation funder have taken out insurance against this risk and will seek reimbursement of the insurance premium from compensation if a successful outcome is reached.
- 12.10 You cannot be made liable to pay any Adverse Costs Orders by remaining in one of the class actions until after the initial trial. Adverse Costs Orders cannot be made against group members except where the initial trial concludes and does not finally decide a group member's claim, and that particular group member subsequently elects to appear before the Court in order to have issues relating to their individual claim determined.
- 13. What do you need to do?**
- 13.1 You are not permitted to remain a member of both the Slater and Gordon Class Action and the Meridian Lawyers Class Action. You should choose between the following 3 options by completing and returning the attached "Opt Out Notice".
- 13.2 You should consider each option carefully.

Option 1: If you wish to remain in the Slater and Gordon Class Action

- 13.3 Please tick "I wish to remain in the Slater and Gordon Class Action, and opt out of the Meridian Lawyers Class Action" on the attached Opt Out Notice, and follow the instructions on the Opt Out Notice to return it to the Court.
- 13.4 If you select this option you will cease to be a group member of the Meridian Lawyers Class Action and you will cease to have any obligations under the Litman Funding Agreement.
- 13.5 If the Slater and Gordon Class Action is successful, you may be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members. Your rights to bring your own claim may be affected as explained in section 3 of this notice.
- 13.6 You will not be affected by any orders, judgment or settlement in the Meridian Lawyers Class Action, and will likely not receive any compensation if the Slater and Gordon Class Action fails but the Meridian Lawyers Class Action succeeds.

Option 2: If you wish to remain in the Meridian Lawyers Class Action

- 13.7 Please tick, "I wish to remain in the Meridian Lawyers Class Action, and opt out of the Slater and Gordon Class Action" on the attached Opt Out Notice, and follow the instructions on the Opt Out Notice to return it to the Court.
- 13.8 If you select this option you will cease to be a group member of the Slater and Gordon Class Action and you will continue to have financial obligations under the Litman Funding Agreement (see section 12 above).
- 13.9 If the Meridian Lawyers Class Action is successful, you may be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members. Your rights to bring your own claim may be affected as explained in section 3 of this notice.
- 13.10 You will not be affected by any orders, judgment or settlement in the Slater and Gordon Class Action, and will likely not receive any compensation if the Meridian Lawyers Class Action fails, but the Slater and Gordon Class Action succeeds.

Option 3: If you wish to opt out of both proceedings

- 13.11 Please tick, "I wish to opt out of both the Slater and Gordon and Meridian Class Actions" on the attached Opt Out Notice, and follow the instructions on the Opt Out Notice to return it to the Court.
- 13.12 If you select this option, you will cease to be a group member of both class actions, and you will not be affected by any orders made in either proceeding. You will not be bound by or entitled to share in the benefit of any order, judgment or settlement obtained in the Slater and Gordon Class Action or the Meridian Class Action.
- 13.13 You will cease to have any obligations under the Litman Funding Agreement (see section 12 above).
- 13.14 Your rights to bring your own claim will not be affected by the class actions, and you will be at liberty to bring your own legal claim against AET provided that you issue court proceedings within the time limit applicable to your claim. If you wish to

bring your own claim against AET, you should seek your own legal advice about your claim and the applicable time limit before opting out.

14. When do you need to make your decision?

- 14.1 **You must decide what to do BEFORE 4:00pm on 16 February 2018.** If you want to opt out of the Meridian Lawyers Class Action, or both class actions, you must return the attached form to the Court (with the correct option selected) so that it arrives **before** that deadline.
- 14.2 If you do not return the form before the deadline, you will be deemed by the Court to have chosen option 2 – that is, you will be deemed to have elected to be a group member of the Meridian Lawyers Class Action, and you will not be entitled to share in the benefit of any order, judgment or settlement in the Slater and Gordon Class Action.

15. If you have any questions or require assistance with your decision

- 15.1 If you require any further information or advice to ^{Jenny Campbell} assist you with your choice between the two class actions, you should contact ~~Jenny~~ Jenny Campbell, the independent expert appointed by the Court. The expert is an experienced lawyer who will be scheduling a series of meetings and telephone conferences with group members who contact the expert for further information to assist with their decision. *Jenny Campbell*

- 15.2 The expert's contact details are as follows:

Jenny Campbell
 Jenny Campbell
 Partner, Allens
 Email: jcampbell@allens.com.au
 Tel: (02) 9230 4663
 Post: GPO Box 50, Sydney NSW 2001

Jenny Campbell

- 15.3 If you would like to receive advice from Ms Campbell, please contact her as soon as possible and by no later than 9 February 2018.
- 15.4 This expert is wholly independent of both plaintiffs, and is also independent of Slater and Gordon, Meridian Lawyers, and Litman. The costs of the independent expert are shared by both plaintiffs.
- 15.5 You may, of course, contact Slater and Gordon or Meridian Lawyers with questions *not* relating to the choice between class actions, or seek your own independent legal advice at your own cost.
- 15.6 Slater and Gordon may be contacted on 1800 071 827 or by email on provident@slatnergordon.com.au. Meridian Lawyers may be contacted on (02) 9017 9999 or by email on draftesath@meridianlawyers.com.au.

Any questions you have concerning the matters contained in this Notice should not be directed to the Court.

- 15.7 Copies of relevant documents, including the statement of claim and defence, can be obtained by visiting the website of each law firm.
- 15.8 For documents concerning the Creighton proceeding, please visit www.slatnergordon.com.au/class-actions/current-class-actions/provident-capital-ltd.

- 15.9 For documents concerning the Smith proceeding, please visit www.investorsactiongroup.com.au/actiongroups/providentdebenturescheme/.
- 15.10 Relevant documents can also be obtained from the Registry of the Supreme Court of NSW, or from the Supreme Court's website at <http://www.supremecourt.justice.nsw.gov.au/>.
- 15.11 You should not delay in making your decision.
- 15.12 This Notice is published pursuant to Orders made by the Court on [date].

OPT OUT NOTICE**COURT DETAILS**

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

TITLE OF PROCEEDINGS

Plaintiffs	John Smith and Rosemary Smith
Defendant	Australian Executor Trustee Limited

GROUP MEMBER DETAILS

Name of group member _____
[insert your name above]

Contact name and telephone _____

Contact email _____

Investment Certificate
Number(s) _____

OPT OUT NOTICE

If you do not return this form by 16 February 2018 with your preferred option ticked below, you will remain a group member in the Meridian Lawyers Class Action.

Please tick one of the following options:

- I wish to remain in the **Slater and Gordon Class Action**, and opt out of the Meridian Lawyers Class Action
- OR
- I wish to remain in the **Meridian Lawyers Class Action**, and opt out of the Slater and Gordon Class Action
- OR
- I wish to **opt out of both** the Slater and Gordon and Meridian Lawyers Class Actions.

SIGNATURE

By opting out of one or both of the class actions, I understand that:

1. I forego the right to share in any relief obtained by the plaintiff in that class action or those class actions;
2. I am not entitled to receive any further notification about the conduct or disposition of that class action or those class actions; and
3. If I opt out of *both* class actions, any time limit to bring any legal claim against the defendant which was suspended by the class actions has recommenced.

Signature _____

Capacity _____

[eg solicitor, agent, or authorised officer of person opting out. Leave blank if you are the person opting out]

Date of signature

___ / ___ / 2018

NOTICE

You must provide this notice to the Registry of the Supreme Court of New South Wales by one of the below means so that it arrives by **16 February 2018**.

REGISTRY DETAILS

In person	Level 5 Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
By post	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
By DX	Supreme Court of NSW, DX 829 Sydney
Telephone	1300 679 272