

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	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	Australian Executor Trustees Limited, Defendant
Filed in relation to	Plaintiffs' Claims, First, Second and Third Cross Claims
Legal representative	Brad Woodhouse, Corrs Chambers Westgarth
Contact name and telephone	Brad Woodhouse, (02) 9210 6500
Contact email	brad.woodhouse@corrs.com.au

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;
 - (c) Orders 20-21 made on 16 August 2016, in relation to the Plaintiffs' claims; and
 - (d) 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 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 seachable format, unless the native format of any document does not lend itself to conversion to PDF (such as spreadsheets).
- 3 By 23 June 2017, the Defendant is to serve on 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 seachable format, unless the native format of any document does not lend itself to conversion to PDF (such as spreadsheets).
- 4 By ^{30 March}~~29 February~~ 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 Plaintiffs and the Defendant 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 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

- 8 By 26 May 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.

- 9 By 9 June 2017, the Plaintiffs in the proceeding shall inform the Defendant of the outcome of order 8 and serve on the Defendant 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. *and cross-defendants*
- 10 By 23 June 2017, the Defendant 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). *and cross-defendants*

First Cross-Claims

- 11 Not used.

Pleadings

- 12 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.
- 13 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.
- 14 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.
- 15 The Cross-Defendants to the First Cross Claim to file and serve Defences to the Further Amended First Cross-Claims by 13 March 2017.
- 16 The Cross-Claimants to the First Cross Claim to file and serve any Replies by 27 March 2017.

Evidence

- 17 The Cross-Claimants to the First Cross Claim to serve their lay evidence on or before 15 March 2017.
- 18 The Cross-Defendants to the First Cross Claim to serve their lay evidence on or before 4 May 2017.

Discovery

- 19 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.
- 19A Defendant shall provide discovery to the plaintiffs in such preceding documents disclosed by the defendant to the cross-defendants on the first cross-claims.
- 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 and evidence 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 9 June 2017.

26 Subject to order 25, AET, PwC and HLB are to give discovery of documents within agreed categories on or before 29 June 2017.

26A The discovery given by AET (to the extent that the discovery given by AET results in discovery of any documents not previously discovered to a Plaintiff), PwC and HLB is also to be made to the Plaintiffs.

Evidence

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 23 June 2017.

28 PwC and HLB are to serve any lay evidence on which they intend to rely on or before 21 July 2017.

29 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 1 September 2017.

30 PwC and HLB are to serve any expert evidence on which they intend to rely on or before 20 October 2017.

31 AET is to serve any expert evidence in reply to PwC's and HLB's expert evidence on or before 1 December 2017.

32 The pleadings, evidence and discovery required to be served pursuant to Orders 21 to 31 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

33 The Creighton proceedings and the Smith proceedings (including all Cross-Claims filed in either of those proceedings) be referred to mediation by a private mediator, to be agreed by the parties.

34 The private mediation shall occur by 15 December 2017.

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

36 The proceedings be listed for further directions on [7 July 2017]. [Note: AET proposes the next listing be after 29 June 2017, so the Court can address any outstanding issues in relation to the opt out procedures and discovery in the audit claims.]

37 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.

