

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 5 April 2019**

**2017/00234966-001 / Statement of Claim: Edgar George Tredrea v KPMG FINANCIAL
ADVISORY SERVICES (AUSTRALIA) PTY LTD**

This matter is listed for Hearing on 27 May 2019 10:00 AM before the Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 15 Minutes

His Honour Parker J makes the following orders:

1. I make the orders in the Short Minutes of Order which I initial and date with today's date.

SHORT MINUTES OF ORDER

The Court orders that:

Settlement Notice

1. Pursuant to section 176 of the Civil Procedure Act 2005 (NSW) (Act), the form and content of the Settlement Notice (Settlement Notice), appearing at Annexure A to these Orders be approved.

2. Pursuant to section 175(4) of the Act, the Settlement Notice be provided to those group members who have not opted out of this Proceeding and who either:

2.1 registered to participate in a settlement in accordance with the orders made by this Court on 23 August 2018; or

2.2 as at 22 March 2019, had requested to participate in this or any settlement of this proceeding by notifying LCM Operations Pty Limited (Funder) or Piper Alderman

(collectively, Settlement Group Members)

according to the following procedure:

2.3 from 9 April 2019 until 7 May 2019, Piper Alderman is to display a copy of the Settlement Notice on its website;

2.4 on or before 9 April 2019, Piper Alderman is to cause a copy of the Settlement Notice to be sent by email to Settlement Group Members for whom it has email addresses;

2.5 on or before 9 April 2019, Piper Alderman is to cause a copy of the Settlement Notice to be sent by ordinary pre-paid post to the last known postal address for all Settlement Group Members for whom it does not have an email address, or for which Piper Alderman receives a notification, after sending the Settlement Notice by email, that the email has not been delivered.

3. The Settlement Notice may be amended by Piper Alderman before complying with orders 2.3 to 2.5 above so as to correct any postal, website address, email address, telephone number, typesetting or typographical error, or any formatting issue.

4. The costs of sending, displaying, publishing, and amending the Settlement Notice as described in orders 2 and 3 above be paid by the Plaintiff, on the basis that all of those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceedings.

Proposed Settlement

5. Pursuant to sections 173 and 183 of the Act, the Plaintiff be authorised nunc pro tunc on behalf of Group Members to enter into and give effect to the Settlement Deed being pages 1 to 25 of Confidential Exhibit AEF2 to the Freeman Affidavit, subject to the Court's approval of the Settlement Deed.

Confidentiality

6. Until further order, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, pursuant to section 7 of the Court Suppression and Non-Publication Orders Act 2010 (NSW), section 23 of the Supreme Court Act 1970 (NSW) and section 183 of the Civil Procedure Act 2005 (NSW), Confidential Exhibit AEF2:

6.1 be sealed in an envelope marked "Confidential Exhibit AEF2 - Not to be opened without leave of a Judge of the Court" and placed on the Court file; and

6.2 not otherwise be disclosed to any person save for the parties (who, for the avoidance of doubt, do not include the Group Members for this purpose), the Funder and their legal representatives.

7. Upon expiry of three months from the making of any orders following the Settlement Approval Hearing, Confidential Exhibit AEF2 is to be returned to Piper Alderman as solicitors for the Plaintiff.

8. Piper Alderman is to make available for inspection by any Group Member, upon request by that Group Member and subject to that Group Member first signing a confidentiality undertaking in a form agreed between the parties:

8.1 a copy of the Settlement Deed being pages 1 to 25 of Confidential Exhibit AEF2, subject to the redaction of the definition of "Settlement Sum" on page 5 of the Settlement Deed;

8.2 a copy of the proposed Settlement Distribution Scheme being page 26 to 47 of Confidential Exhibit AEF2.

9. Piper Alderman is to make available for inspection by any legal practitioner nominated by a Group Member, upon request by that Group Member and subject to that legal practitioner first signing a confidentiality undertaking in a form agreed between the parties by which, among other things, the legal practitioner undertakes not to tell their client (or any other person) the Settlement Sum without leave of the Court or consent of the parties, a copy of the Settlement Deed without redaction of the definition of "Settlement Sum".

Settlement Approval Hearing

10. The application for approval pursuant to section 173 of the Act be relisted for hearing on 27 May 2019 at 10am (Settlement Approval Application).

11. The Funder have leave to appear at the hearing of the Settlement Approval Application.

12. The Plaintiff and the Funder file any non-confidential evidence, and serve any non-confidential exhibits, in support of the Settlement Approval Application by 13 May 2019.

13. The Plaintiff and the Funder file and serve any outline of submissions (subject to any necessary redactions for confidentiality) in support of the Settlement Approval Application by 13 May 2019.

14. The Plaintiff and the Funder have leave to file any confidential submissions, affidavit and exhibit in support of the Settlement Approval Application by delivering it to the Court in a sealed package marked "Confidential - Not to be opened without leave of a Judge of the Court".

15. Any sealed package filed pursuant to Order 14 above may be opened by the judge hearing the Settlement Approval Application and his or her staff, but may not otherwise be shown to any other person except the Plaintiff, the Funder and their legal representatives.

16. Subject to any further order of the Court, any group member who wishes to oppose the proposed settlement of the proceeding must serve on the solicitors for the Plaintiff any affidavit evidence relied on in opposition together with a written outline of the grounds for opposing the proposed settlement by no later than 7 May 2019.

17. The Plaintiff must provide to the Defendant any document served in accordance with order 16 within 24 hours of receipt of the document.

18. The Defendant file any evidence and any outline of submissions (subject to any necessary redactions for confidentiality) in relation to the Settlement Approval Application by 16 May 2019.

Late Registrants

19. Pursuant to order 16.2 of the orders made by this Court on 23 August 2018, the persons and entities referred to in paragraphs 46 to 107 of the Freeman Affidavit be permitted to benefit from the proposed settlement by way of a distribution from the Settlement Sum in accordance with these orders and the Settlement Distribution Scheme if approved.

Further or other orders

20. There be liberty to apply on 24 hours' notice.

NOTICE OF PROPOSED SETTLEMENT

DISCOVERY METALS LIMITED SHAREHOLDER CLASS ACTION

Tredrea v KPMG Financial Advisory Services (Australia) Pty Ltd

Supreme Court of New South Wales Proceeding No. 2017/234966

This notice contains important information about the proposed settlement of the Discovery Metals Limited Shareholder Class Action. You should read this notice carefully. If approved, the settlement will affect your legal rights. If there is anything in it that you do not understand then you should contact Piper Alderman by email at discoverymetals@piperalderman.com.au, or alternatively seek your own legal advice.

1. The Discovery Metals Limited Shareholder Class Action (DML Class Action) against KPMG Financial Advisory Services (Australia) Pty Ltd (KPMG Advisory) has been settled subject to final approval by the Supreme Court of New South Wales (the Court).

2. The Court has ordered that this Notice be provided to Group Members (as defined in paragraph 7 of this Notice below) who either:

2.1 registered to participate in a settlement in accordance with the orders made by the Court on 23 August 2018; or

2.2 as at 22 March 2019, had requested to participate in any settlement of the DML Class Action by notifying Piper Alderman or LCM Operations Pty Limited (LCM),

(Settlement Group Members)

3. If you have any questions about this Notice, then please contact Piper Alderman by email at discoverymetals@piperalderman.com.au. Questions about this Notice should not be directed to the Court.

Background to this Notice

4. The DML Class Action is brought by Edgar Tredrea (on his own behalf and as a representative plaintiff for all Group Members, as defined below in paragraph 7). The DML Class Action was initially commenced by Alan Smith, but due to Mr Smith's ill health, the Court made an order on 9 February 2018 substituting Mr Tredrea in his place.

5. Mr Tredrea is represented by solicitors, Piper Alderman. Piper Alderman's contact details are set out in paragraph 38 below.

6. The DML Class Action is funded by LCM.

7. Group Members to the DML Class Action are those who:

7.1 held shares in DML listed on the ASX in the period between 23 November 2012 and 15 February 2013 and continued to hold those shares after 15 February 2013 for a period of time;

7.2 suffered loss or damage as a result of the conduct of KPMG Advisory, as alleged in the Third Further Amended Statement of Claim;

7.3 are not any of the following:

(a) a person listed in s 159(2) of the Civil Procedure Act 2005 (NSW); or

(b) Cathay Fortune Corporation, China-Africa Development Fund or CFIL, or

(c) related entities of those companies, within the meaning of section 9 of the Corporations Act 2001 (Cth); or

(d) directors of DML in the period 23 November 2012 to 15 February 2013 (Relevant Period), or companies related to any director of DML during the Relevant Period; and

7.4 have not opted out of the DML Class Action.

8. On 23 August 2018, the Court made orders requiring Group Members to register their interest to participate in a settlement of the DML Class Action by 12 October 2018. Group Members who did not register their interest by this deadline remained Group Members, but cannot seek any benefit pursuant to a settlement without leave from the Court unless they requested by 22 March 2019 to participate in a settlement by notifying Piper Alderman or LCM.

What claims are made against KPMG Advisory?

9. The DML Class Action is brought against KPMG Advisory, and relates to an expert valuation report of Discovery Metals Limited (DML) that it prepared in November 2012 (the Report). The Report was commissioned by DML's Board of Directors in respect of an off-market takeover offer made in October 2012 by Cathay Fortune Investment Limited for all of the ordinary shares in DML. The Report stated, among other things, that the offer was not fair and reasonable.

10. Mr Tredrea alleges (in the Third Further Amended Statement of Claim filed in the Supreme Court) that he and other Group Members suffered loss and damage as a result of KPMG Advisory:

10.1 making misleading or deceptive statements within the meaning of section 670A(1)(h) of the Corporations Act 2001 (Cth) in the Report; and

10.2 breaching its duty of care to Mr Tredrea and Group Members in forming and expressing the opinion that the takeover offer was not fair and reasonable.

11. KPMG Advisory denies the allegations.

What are the terms of the Proposed Settlement?

12. Mr Tredrea (on his own behalf, and on behalf of Group Members), KPMG Advisory, Piper Alderman, and LCM have entered into a Settlement and Release Deed which contains a proposed settlement of the DML Class Action (the Proposed Settlement). The Proposed Settlement will only become a final settlement once it has been approved by the Court.

13. The Proposed Settlement is to be binding on all Group Members.

14. The terms of the Proposed Settlement are strictly confidential. You must not disclose them to anyone who is not a Group Member, Mr Tredrea, KPMG Advisory, Piper Alderman, or LCM.

15. The key terms of the Proposed Settlement are as follows:

15.1 KPMG Advisory has agreed, without any admission of liability, to pay the Plaintiff and Settlement Group Members a sum of money (the amount of which is confidential) in settlement of the claims of all Group Members (Settlement Sum).

15.2 Mr Tredrea and all Group Members have agreed to release KPMG Advisory from all claims in respect of the subject matter of the DML Class Action, and all matters of and incidental to that subject matter.

16. The Settlement Sum is confidential and cannot be disclosed to Group Members (including Settlement Group Members). Group Members may nominate a legal practitioner to inspect an unredacted copy of the Settlement Deed, which discloses the Settlement Sum, on their behalf as explained in paragraph 37 below. However, the legal practitioner will not be allowed to disclose the Settlement Sum afterwards to their client without permission from the Court or agreement of both Mr Tredrea and KPMG Advisory.
Who will receive the Settlement Sum?

17. Only Settlement Group Members will share in the Settlement Sum.

18. Group Members who are not Settlement Group Members will be bound by the Proposed Settlement but excluded from sharing in the Settlement Sum.

19. Piper Alderman has prepared a proposed scheme for the distribution of the Settlement Sum (the Proposed Scheme). The Proposed Scheme sets out a formula for the distribution of the Settlement Sum, as well as other terms governing the administration of the Proposed Settlement. The Proposed Scheme is confidential and also requires Court approval.

20. The Proposed Scheme provides for a deduction from the Settlement Sum of the costs (including legal costs) incurred by Mr Tredrea and Mr Smith in preparing for and running the DML Class Action, including the costs of having the Proposed Settlement approved. As at the date of this Notice, approximately \$3 million in costs relating to the Proceedings have been incurred by LCM, who will be reimbursed under the Proposed Scheme. This includes both the legal costs and disbursements charged by Piper Alderman and also further costs paid directly by LCM to third parties relating to the Proceedings. A sum of approximately \$700,000 is also payable from the Settlement Sum, being an insurance premium to protect against a potential adverse costs order. Further costs will be incurred in having the Proposed Settlement approved, which will be paid to Piper Alderman by LCM, and then reimbursed to LCM under the Proposed Scheme. Piper Alderman anticipates these further costs will be in the order of \$300,000, though this is only an estimate and the costs could be substantially more depending upon how approval of the Proposed Settlement proceeds.

21. The Proposed Scheme also provides for payment to Mr Tredrea and Mr Smith of \$10,000 and \$2,000 respectively for their time spent prosecuting the DML Class Action.

22. The Proposed Scheme also provides for a funding commission to be paid to LCM as litigation funder (see below at paragraphs 25 to 29).

23. The proportionate share to be paid to each Settlement Group Member after the deduction of the above sums will depend on the number of DML shares held by that Settlement Group Member and when those shares were purchased. The administrator of the Proposed Scheme will contact each Settlement Group Member about this.

24. The costs of the administration of the Proposed Scheme (approximately \$132,000) will also be deducted from the Settlement Sum.

What are the legal and funding costs?

25. Mr Tredrea and Mr Smith's legal costs in the DML Class Action have been met by LCM. LCM has also provided an indemnity against the award of costs in the event the case is unsuccessful. The DML Class Action would not have proceeded without this support from LCM.

26. Some group members have executed a funding agreement with LCM (Funded Group Members). Under the funding agreement, LCM is entitled to be reimbursed for the costs that it has funded to date and future costs in having the Proposed Settlement approved, plus a commission from the amount recovered by each Funded Group Member (which shall be paid from the Settlement Sum). The purpose of this commission is to compensate LCM for the investment it has made, and the risk it has taken.

27. The Plaintiff intends to apply to the Court for orders which would have the effect that the above funding arrangements will apply to all Settlement Group Members. This kind of order is known as a "Common Fund Order".

28. If the Court makes the Common Fund Order, LCM will be entitled to a commission of 30% of the Settlement Sum. This will mean that if the proposed settlement is approved, the total amount available for distribution to Settlement Group Members will be in excess of 50% of the Settlement Sum.

29. Whatever orders the Court makes (if any), Settlement Group Members will not be required to pay any money to LCM or Piper Alderman, otherwise than as a deduction from their entitlements under the Proposed Settlement (and under no circumstances will such payment exceed those entitlements).

What is the Court approval process?

30. The application for approval of the Proposed Settlement will take place at a hearing in the Supreme Court of New South Wales on 27 May 2019 at 10am. The hearing will take place at the following address:

Supreme Court of New South Wales
Law Courts Building
Queens Square
184 Phillip Street
Sydney NSW 2000

31. The Court will only approve the Proposed Settlement if it considers that it:

31.1 is fair and reasonable having regard to the claims made on behalf of the Group Members who will be bound by the settlement; and

31.2 has been undertaken in the interests of Group Members, as well as those of the Plaintiff, and not just in the interests of the Plaintiff and the Defendant.

32. The Proposed Settlement will only become final and unconditional if and when it is approved by the Court.

What do you have to do in relation to the Proposed Settlement?

33. If you are in favour of the Proposed Settlement, then you do not need to do anything at this time. If the Proposed Settlement is approved, you will be bound by it and you will forego

any further claims against KPMG Advisory in relation to the subject matter of the DML Class Action and all matters of and incidental to that subject matter. You will not be liable for any legal fees merely as a result of being in favour of the Proposed Settlement.

34. If you object to the Proposed Settlement, then you must send to Piper Alderman by post or email to the address set out in paragraph 38 below, any affidavit evidence relied on in opposition together with a written outline of the grounds for opposing the Proposed Settlement. Your objection must reach Piper Alderman by no later than 7 May 2019. You may also appear in person or through a legal representative at the hearing on 27 May 2019 at 10am. If you wish to appear, then you should provide Piper Alderman with notice of your intention to do so by no later than 7 May 2019.

Where can you obtain copies of relevant documents?

35. Copies of relevant documents, including the application for approval of the Proposed Settlement, the Third Further Amended Statement of Claim, KPMG Advisory's Amended Defence, and the Reply may be obtained by:

35.1 Inspecting them by appointment between 9am and 5pm at one of the offices of Piper Alderman (contact details for which are set out in paragraph 38 below);

35.2 Visiting the Piper Alderman website at <https://www.piperalderman.com.au/class-actions/current-class-actions/discovery-metals-class/documents> or

35.3 Visiting the Supreme Court of New South Wales registry: the addresses for these registries are available at <http://www.supremecourt.justice.nsw.gov.au/> or by calling the Registry on 1300 679 272

36. Copies of the Settlement Deed (which details the Proposed Settlement) and the Proposed Scheme (redacted for confidentiality where necessary, including in respect of the Settlement Sum) can be inspected by prior appointment with Piper Alderman, subject first to signing a confidentiality undertaking.

37. A Group Member may also nominate a legal practitioner to inspect an unredacted copy of the Settlement Deed by prior appointment with Piper Alderman. The legal practitioner will need to sign a confidentiality undertaking before inspecting the Settlement Deed, which will prohibit them from disclosing the Settlement Sum afterwards to their client without permission from the Court or agreement of both Mr Tredrea and KPMG Advisory.

Contact details for Piper Alderman

38. The contact details for Piper Alderman are as follows:

Piper Alderman
Level 23, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000
(02) 9253 9999
E: discoverymetals@piperalderman.com.au

If you have any questions about the contents of this Notice please contact Piper Alderman, or alternatively seek your own legal advice.

Justice G Parker

Signed

Date