

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 27 October 2022**

2019/00193556-001 / Summons: Kerry Michael Quirk v Suncorp Portfolio Services Limited in its capacity as trustee for the Suncorp Master Trust

ORDERS/DIRECTIONS:

Orders made in Chambers in accordance with the Short Minutes of Order, initialled by Stevenson J, dated today and placed with the papers.

Confidentiality

1 Pursuant to s 7 and s 8(1)(a) of the Court Suppression and Non-Publication Orders Act 2010 (NSW), and in order to prevent prejudice to the proper administration of justice, the Settlement Deed being the document at confidential Annexure A to the confidential affidavit of Ding Pan affirmed 1 June 2022 (Settlement Deed) is not to be published or disclosed without the prior express consent of the Plaintiff or prior leave of the Court to any person or entity other than the Court, the Plaintiff, the Defendants, LCM Operations Pty Ltd (Funder) and their legal advisors.

2 Pursuant to s 7 and s 8(1)(a) of the Court Suppression and Non-Publication Orders Act 2010 (NSW), and in order to prevent prejudice to the proper administration of justice, the Court orders that the materials referred to in Schedule A to these orders are not to be disclosed (by publication or otherwise) to any person or entity, except to:

- a. the Court and/or any Court hearing any appeal from the Settlement Approval Application;
- b. the Plaintiff and his legal representatives; and
- c. the Funder.

Approval of Settlement

3 Pursuant to s 173(1) of the Civil Procedure Act 2005 (NSW) (Act), the settlement of this proceeding on the terms set out in:

- a. the Settlement Deed; and
- b. the Plaintiff's Settlement Distribution Scheme being the document at pages 1 to 19 of Exhibit DP-13 to the affidavit of Ding Pan affirmed on 24 September 2022, be approved.

4 Pursuant to s 179 of the Act, the persons affected and bound by the settlement of these proceedings are:

- a. each of those persons who meet the definition of a group member as set out in paragraph 3 of the Further Amended Commercial List Statement and who have not opted out of these proceedings, irrespective of whether they are entitled to receive or do receive any benefit under the Settlement Distribution Scheme (Group Members);
- b. William Roberts Pty Ltd (William Roberts);
- c. the Funder;
- d. the Plaintiff; and
- e. the First, Second and Third Defendants.

5 Judgment for the Defendants in respect of all of the claims of the Plaintiff and of each Group Member with no order as to costs and all previous costs orders vacated, on the basis that the judgment is a defence and absolute bar to any claim or proceeding by the Plaintiff or any Group Member with respect to these proceedings or its subject matter, with effect from the date on which the final distribution of the Resolution Sum (as defined in the Settlement Deed) occurs under the Settlement Distribution Scheme.

6 The solicitors for the Plaintiff are to notify the Court by email to the Associate to Justice Stevenson (or another Justice of the Supreme Court of New South Wales presiding over the proceedings) of the date of the final distribution of the Resolution Sum (as defined in the Settlement Deed) made under the Settlement Distribution Scheme, on or as soon as reasonably practicable after the date that the final distribution is made.

Appointment of Administrator and Trustee

7 Pursuant to s 183 of the Act:

- a. Andrew Knight be appointed as Settlement Administrator of the Settlement Distribution Scheme; and
 - b. KordaMentha Pty Ltd be appointed as Trustee of the Holding Account (as that term is defined in the Settlement Deed),
- and each is to act in accordance with the Settlement Distribution Scheme and to have the powers and immunities conferred by the Settlement Distribution Scheme, subject to any direction of the Court.

Deductions from the Resolution Sum

8 Pursuant to section 173 of the Act, for the purposes of the Settlement Distribution Scheme, the Court approves the following to be deducted from the Resolution Sum in accordance with the terms of the Settlement Distribution Scheme:

- a. \$1,334,160 in After-the-event insurance (ATE) premium and applicable tax to be paid to the Funder.
- b. \$6,182,661.39 in Action Costs incurred by the Funder to the date of these orders, to be paid to the Funder.
- c. \$8,250,000 as Funder's Commission to be paid to the Funder, pursuant to s 173(2) of the Act.
- d. \$2,386,487.69 in Deferred Costs, comprising:
 - i. \$1,080,132.06 to be paid to William Roberts for unpaid legal costs for work already done to 22 May 2022 by William Roberts in relation to these proceedings that are not Action Costs, inclusive of an uplift of 25% on the aggregate fees (but not disbursements); and
 - ii. \$1,306,355.63 for the Plaintiff's unpaid legal costs and disbursements incurred between 22 May 2022 and 22 September 2022, which includes:
 - A. \$963,818.47 to be paid to William Roberts;
 - B. \$315,037.16 to be paid to the Settlement Administrator; and
 - C. \$27,500 to be paid to the Referee for his work.
- e. \$504,512.47 in Administration Costs, comprising:
 - i. \$170,095.75 to be paid to William Roberts; and
 - ii. \$334,416.72 to be paid to the Settlement Administrator.
- f. \$12,000 to be paid to the Plaintiff to reimburse him for his time and/or inconvenience in acting as the representative party in this class action.
- g. \$5,000 to be paid to Sample Group Member Dean Ashley Mibus to reimburse him for the time and inconvenience he incurred in playing a more active role than was required of the other Group Members.
- h. \$5,000 to be paid to Sample Group Member Angela Marlene Thompson to reimburse her for the time and inconvenience she incurred in playing a more active role than was required of the other Group Members.

Late Registrants

9 The persons identified at pages 106 to 110 of Exhibit DP-9 to the affidavit of Ding Pan affirmed on 22 September 2022 are deemed to have registered by the registration deadline of 4.00pm AEST on 31 August 2022.

Other Orders

10 The Settlement Administrator have liberty to apply in relation to any matter arising under the Settlement Distribution Scheme including for the purpose of seeking orders consequential to or in connection with the Settlement Deed or the Settlement Distribution Scheme. Pursuant to rule 6.24 of the Uniform Civil Procedure Rules 2005 (NSW), the Settlement Administrator be joined as a party to these proceedings for the limited purpose of exercising such liberty.

11 The Plaintiff and the First, Second and Third Defendants have liberty to apply to relist the matter for the purpose of seeking orders consequential to or in connection with the Settlement Deed and/or the Settlement Distribution Scheme.

Justice J Stevenson

Signed

Date

Schedule A – Materials over which Order 2 applies

Item	Description of material
Materials in Exhibit DP-5 to the Affidavit of Ding Pan affirmed 9 September 2022	
1.	At Exhibit DP-5 page 18: the entirety of clauses 2.2.6 and 2.2.7 inclusive
2.	At Exhibit DP-5 page 19: the entirety of clauses 2.2.8(c) and 2.5 inclusive
3.	At Exhibit DP-5 page 20: the entirety of clauses 2.12 and 2.18 inclusive
4.	At Exhibit DP-5 page 21: the entirety of clause 2.24.3
5.	At Exhibit DP-5 page 24: clause 22.2 commencing from the words that immediately follow the words “ <i>for Adverse Costs and</i> ” to the end of the clause
6.	At Exhibit DP-5 page 26: the entirety of clauses 28.1 (including subclauses 28.1.1 to 28.1.4) to 28.4 and clauses 29.1.1 to 29.1.2 inclusive
7.	At Exhibit DP-5 pages 26 to 27: the entirety of clauses 29.2.1 to 29.2.3 inclusive (including subclauses 29.2.1(a), 29.2.1(b), 29.2.3(a), and 29.2.3(b))
8.	At Exhibit DP-5 page 29: the entirety of clauses 35.1 to 35.9 inclusive and the final paragraph of the page
9.	At Exhibit DP-5 page 30: the entirety of clauses 36.1 to 36.2 and 37 to 38 inclusive, and clause 39.3 commencing from the words that immediately follow the words “ <i>Adverse Costs</i> ” to the end of the clause
10.	At Exhibit DP-5 pages 30 to 31: the entirety of Part 13 (comprising the entirety of clauses 44 to 47)
11.	At Exhibit DP-5 page 32: the entirety of clauses 51.1 to 51.2 and 52.1 to 52.2 inclusive
12.	At Exhibit DP-5 page 40: clause 2.1(a) commencing from the words that immediately follow the words “ <i>Action Budget’ means the</i> ” to the end of the clause
13.	At Exhibit DP-5 page 41: the entirety of clause 2.1(g)

Item	Description of material
14.	At Exhibit DP-5 page 43: the entirety of the words immediately following the end of clause 4.8 up to clause 4.13 inclusive (including the heading that immediately precedes clause 4.9)
15.	At Exhibit DP-5 page 45: the entirety of the words immediately following the end of clause 4.19(h) up to clause 4.22 inclusive (including the heading that immediately precedes clause 4.20)
16.	At Exhibit DP-5 pages 50 to 51: the entirety of clauses 12.3 to 12.5 inclusive
17.	At Exhibit DP-5: the entirety of pages 229 to 241
18.	At Exhibit DP-5 pages 283 to 290: the entirety of the content of the column titled " <i>Description</i> ", being the third column in the table titled " <i>Time Sheet for Kerry Quirk</i> "
19.	At Exhibit DP-5 pages 291 to 295: the entirety of the content of the column titled " <i>Description</i> ", being the third column in the table titled " <i>Time Sheet for Dean Mibus</i> "
20.	At Exhibit DP-5 pages 296 to 300: the entirety of the content of the column titled " <i>Description</i> ", being the third column in the table titled " <i>Time Sheet for Angela Thompson</i> "
Materials in Exhibit DP-6 to the Affidavit of Ding Pan affirmed 9 September 2022	
21.	The entirety of Exhibit DP-6
Materials in Exhibits DP-7 and DP-8 to the affidavit of Ding Pan affirmed on 9 September 2022 (Exhibit DP-7), being the Referee's Report made pursuant to the orders of the Court on 8 June 2022 dated 6 September 2022 (the Referee's Report), and the corresponding parts of the Referee's Report	
22.	At Exhibit DP-7 page 12, being paragraph [53] of the Referee's Report: the figure immediately following the words " <i>inclusive of GST and uplift were estimated at</i> " and the figure immediately following the words " <i>by way of email notification to the amount of</i> " in that paragraph

Item	Description of material
23.	At Exhibit DP-7 page 44, being the Letter from William Roberts Lawyers dated 22 August 2022 in Appendix 4 to the Referee's Report: the entirety of paragraph [13] of that letter
24.	At Exhibit DP-7: the entirety of pages 53 to 76, being the entirety of Confidential Annexure B to the Referee's Report
25.	At Exhibit DP-7 page 106, being part of the Representative Proceeding Retainer Agreement with WRL and LCM in Appendix 6 to the Referee's Report: the words in clause 2.1 immediately following the words " <i>Action Budget</i> " means
26.	At Exhibit DP-7 page 107, being part of the Representative Proceeding Retainer Agreement with WRL and LCM in Appendix 6 to the Referee's Report: the entirety of clause 2.9
27.	At Exhibit DP-7 pages 113 to 114, being part of the Representative Proceeding Retainer Agreement with WRL and LCM in Appendix 6 to the Referee's Report: the entirety of the words immediately following the end of clause 41 up to clause 46 inclusive (including the heading immediately above clause 42)
28.	At Exhibit DP-7 Pages 114 to 115, being part of the Representative Proceeding Retainer Agreement with WRL and LCM in Appendix 6 to the Referee's Report: the entirety of clauses 53 to 55 inclusive
29.	At Exhibit DP-7 page 122, being part of the Representative Proceeding Retainer Agreement with WRL and LCM in Appendix 6 to the Referee's Report: the figure immediately following the words " <i>Retainer Agreement, is</i> "
30.	At Exhibit DP-7 page 123, being part of the Representative Proceeding Retainer Agreement with WRL and LCM in Appendix 6 to the Referee's Report: all of the page except the words " <i>Schedule 2 Action Budget</i> "
31.	At Exhibit DP-7 page 129, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee's Report: the contact number immediately following the words " <i>Daytime Ph:</i> " and the email address immediately following the word " <i>Email:</i> "

Item	Description of material
32.	At Exhibit DP-7 page 134, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clauses 2.2.6 and 2.2.7 inclusive, and subclause 2.2.8(c)
33.	At Exhibit DP-7 page 135, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clause 2.5
34.	At Exhibit DP-7 page 136, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clauses 2.12 and 2.18
35.	At Exhibit DP-7 Page 137, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clause 2.24.3
36.	At Exhibit DP-7 page 140, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: clause 22.2 commencing from the words that immediately follow the words “ <i>security for Adverse Costs</i> ” to the end of the clause
37.	At Exhibit DP-7 pages 141 to 142, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clauses 27.1 to 27.4 (including subclauses 27.1.1 to 27.1.4), 28.1.1 to 28.1.2, and 28.2.1 to 28.2.3 inclusive (including subclauses 28.2.1(a), 28.2.1(b), 28.2.3(a), and 28.2.3(b))
38.	At Exhibit DP-7 page 144, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clauses 34.1 to 34.9 inclusive, the text following clause 34.9 but preceding the words “ <i>PART 11: APPEALS</i> ”, the entirety of the text of clauses 35.1 to 35.2 inclusive, and the entirety of the text of clause 36
39.	At Exhibit DP-7 page 145, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clauses 37, 43 to 46 (including subclauses 44.1 to 44.2)
40.	At Exhibit DP-7 page 145, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the text in clause 38.3

Item	Description of material
	immediately following the words " <i>security for Adverse Costs</i> " to the end of clause 38.3 and the words immediately following the words " <i>PART 13</i> " but preceding clause 43
41.	At Exhibit DP-7 page 147, being part of the Representative Proceeding Funding Agreement – Member in Appendix 6 to the Referee’s Report: the entirety of clauses 50.1 to 50.2 and 51.1 to 51.2 inclusive
42.	At Exhibit DP-7 pages 156 to 157, being part of the Representative Proceeding Funding Agreement – Representative in Appendix 6 to the Referee’s Report: the entirety of clauses 3.12 and 3.14.1 to 3.14.2 inclusive (including subclauses 3.14.2(a), 3.14.2(b), and 3.14.2(c))
43.	At Exhibit DP-7 page 158, being part of the Representative Proceeding Funding Agreement – Representative in Appendix 6 to the Referee’s Report: the entirety of clause 6
44.	At Exhibit DP-7 page 161, being part of the Representative Proceeding Funding Agreement – Representative in Appendix 6 to the Referee’s Report: the contact number immediately following the words " <i>Daytime Ph.:</i> " and the email address immediately following the word " <i>Email.:</i> " in Item No.1 of the schedule
45.	At Exhibit DP-7 page 174, being part of the WRL Reviewed Total Costs Estimates dated 19 May 2022 and 20 May 2022 in Appendix 6 to the Referee’s Report: the respective figures following the words " <i>new estimate is</i> ", " <i>an increase of</i> ", " <i>original estimate of</i> ", and " <i>is approximately</i> "
46.	At Exhibit DP-7 pages 175 to 176, being part of the WRL Reviewed Total Costs Estimates dated 19 May 2022 and 20 May 2022 in Appendix 6 to the Referee’s Report: the respective figures following the words " <i>new estimate is</i> ", " <i>an increase of</i> ", " <i>original estimate of</i> ", and " <i>is approximately</i> "
47.	At Exhibit DP-7: the entirety of pages 177 to 182, being the Piper Alderman Privileged and Confidential Advice in Appendix 6 to the Referee’s Report
48.	At Exhibit DP-8, being Appendix 5 to the Referee’s Report: in the sheet titled " <i>S4 Billed Fees</i> ", the entirety of the contents of the column titled " <i>Description</i> "

Item	Description of material
49.	At Exhibit DP-8, being Appendix 5 to the Referee's Report: in the sheet titled "S5 IRS reviewed Billed Fees", the entirety of the contents of the column titled "Description"
50.	At Exhibit DP-8, being Appendix 5 to the Referee's Report: in the sheet titled "S6 IRS reviewed WIP", the entirety of the contents of the column titled "Description"
51.	At Exhibit DP-8, being Appendix 5 to the Referee's Report: in the sheet titled "S14 AMT", the entirety of the contents of the column titled "Description"
52.	At Exhibit DP-8, being Appendix 5 to the Referee's Report: in the sheet titled "S15 LOYU", the entirety of the contents of the column titled "Description"
53.	At Exhibit DP-8, being Appendix 5 to the Referee's Report: in the sheet titled "S16 NZH", the entirety of the contents of the column titled "Description"
Referee's Report Submitted to the Court on 6 September 2022 (in addition to the copies at Exhibit DP-7 and DP-8)	
54.	The orders for confidentiality over the materials set out in items 22 to 53 above apply to the Referee's Report submitted to the Court on 6 September 2022 (that document being identical in form to Exhibit DP-7 and DP-8 to the Affidavit of Ding Pan affirmed 9 September 2022)
Materials in the Affidavit of Susanna Ruth Lindsay Taylor Sworn 12 September 2022	
55.	The amounts in paragraphs 29, 47, 133, 139, 142 and 143
56.	Paragraph 30
57.	Paragraph 31
58.	Paragraph 32
59.	Paragraph 36
60.	Paragraph 37
61.	Paragraph 39

Item	Description of material
62.	Paragraph 41(a) and (b)
63.	Paragraph 43(a)-(e) inclusive
64.	Paragraph 45(a)-(f) inclusive
65.	Paragraph 49, second sentence
66.	Paragraph 53, second sentence
67.	Paragraph 67
68.	Paragraph 76
69.	Paragraph 77
70.	Paragraph 84
71.	Paragraph 86
72.	Paragraph 92
73.	Paragraph 95
74.	Paragraph 96
75.	Paragraph 98
76.	Paragraph 101
77.	Paragraph 112
78.	Paragraph 113
79.	Paragraph 118
80.	Paragraph 119
81.	Paragraph 123
82.	Paragraph 126

Item	Description of material
83.	Paragraph 127
84.	Paragraph 128
85.	Paragraph 129
86.	Paragraph 141
87.	Paragraph 151
88.	Paragraph 164
89.	Paragraph 165, first clause
90.	Exhibit SRLT2:1 referred to in paragraph [29]
91.	Exhibit SRLT2:17 referred to in paragraph [35]
92.	Exhibit SRLT2:18 referred to in paragraph [36]
93.	Exhibit SRLT2:22 referred to in paragraph [40]
94.	Exhibit SRLT2:22 referred to in paragraph [47]
95.	Exhibit SRLT2:30 referred to in paragraph [49]
96.	Exhibit SRLT2:46 referred to in paragraph [52](a)
97.	Exhibit SRLT2:59 referred to in paragraph [52](b)
98.	Exhibit SRLT2:108 referred to in paragraph [52](c)
99.	Exhibit SRLT2:111 referred to in paragraph [75]
100.	Exhibit SRLT2:112 referred to in paragraph [77]
101.	Exhibit SRLT2:116 referred to in paragraph [78]
102.	Exhibit SRLT2:130 referred to in paragraph [104]
103.	Exhibit SRLT2:136 referred to in paragraph [118]

Item	Description of material
104.	Exhibit SRLT2:251 referred to in paragraph [143]
Materials in the Affidavit of Ding Pan affirmed 22 September 2022	
105.	At Exhibit DP-10, being Appendix 8 to the Referee's Supplementary Report: in the sheet titled " <i>S3 Billed Fees Risk Share</i> " the entirety of the contents of the column titled " <i>Description</i> "
106.	At Exhibit DP-10, being Appendix 8 to the Referee's Supplementary Report: in the sheet titled " <i>S4 Billed Fees</i> " the entirety of the contents of the column titled " <i>Description</i> "
107.	At Exhibit DP-10, being Appendix 8 to the Referee's Supplementary Report: in the sheet titled " <i>S5 IRS reviewed Billed Fees</i> " the entirety of the contents of the column titled " <i>Description</i> "
108.	At Exhibit DP-10, being Appendix 8 to the Referee's Supplementary Report: in the sheet titled " <i>S6 IRS reviewed WIP</i> " the entirety of the contents of the column titled " <i>Description</i> "
109.	At Exhibit DP-10, being Appendix 8 to the Referee's Supplementary Report: in the sheet titled " <i>S14 AMT</i> " the entirety of the contents of the column titled " <i>Description</i> "
110.	At Exhibit DP-10, being Appendix 8 to the Referee's Supplementary Report: in the sheet titled " <i>S15 LOYU</i> " the entirety of the contents of the column titled " <i>Description</i> "
111.	At Exhibit DP-10, being Appendix 8 to the Referee's Supplementary Report: in the sheet titled " <i>S16 NZH</i> " the entirety of the contents of the column titled " <i>Description</i> "
Materials in Referee's Supplementary Report Submitted to the Court	
112.	The orders for confidentiality over the materials set out in 105 to 111 above apply to the Referee's Supplementary Report submitted to the Court on 19 September 2022 (that document being identical in form to Exhibit DP-10 to the Affidavit of Ding Pan affirmed 22 September 2022)