

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 13 December 2022**

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

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

TERMS OF ORDER MADE BY THE COURT

1. Pursuant to sections 64, 173(2) and/or 183 of the Civil Procedure Act 2005 (NSW), the Plaintiff's Settlement Distribution Scheme referred to in Order 3(b) of the orders dated 27 October 2022 be amended, in the form set out in Schedule A to these orders.

2. Order 7(b) of the orders made on 27 October 2022 be amended by deleting the words "(as that term is defined in the Settlement Deed)" and in place thereof inserting "(as that term is defined in the Settlement Distribution Scheme)."

Justice J Stevenson

Signed

Date

Schedule A
2019/193556

No.

Supreme Court of New South Wales
List: Commercial List
Registry: Sydney

KERRY MICHAEL QUIRK
Plaintiff

**SUNCORP PORTFOLIO SERVICES LIMITED IN ITS CAPACITY AS TRUSTEE FOR THE
SUNCORP MASTER TRUST**
First Defendant

GEOFFREY EDWARD SUMMERHAYES
Second Defendant

SEAN CARROLL
Third Defendant

~~UPDATED FINAL SETTLEMENT DISTRIBUTION SCHEME~~

Updated pursuant to the Orders of the Court dated INSERT

IMPORTANT NOTE: This document is confidential. It must not be disclosed to any other person without the consent of the Settlement Administrator.

DATE: ~~22 September 2022~~ INSERT

BACKGROUND

- A. This Settlement Distribution Scheme establishes a procedure for distributing the Resolution Sum to be paid by or on behalf of the First Defendant, pursuant to a settlement of the Proceeding which has been approved by the Court. It is to be read in conjunction with the Deed of Settlement between the parties to the Proceeding.
- B. This Settlement Distribution Scheme does not become operative until Settlement Approval occurs.

OPERATIVE CLAUSES:

1. Interpretation

1.1 In this Settlement Distribution Scheme, the following terms have the meanings defined (clause references are references to the clauses of this document unless otherwise specified):

Act means the *Civil Procedure Act 2005* (NSW).

Action Costs means \$6,182,661.39, being an amount of the Funder's out of pocket costs and expenses paid or incurred in relation to the conduct of the Proceeding and includes:

- (a) insurance premiums paid by the Funder in relation to ATE Insurance;
- (b) a portion of William Roberts Lawyers' fees, and fees and disbursements charged by barristers and experts;
- (c) Court filing fees and other incidental Court fees;
- (d) witness fees and expenses;
- (e) costs and expenses incurred by the Funder with respect to the claims in the proceedings;
- (f) fees, costs and expenses payable to a mediator; and
- (g) fees and costs incurred prior to the commencement of the Suncorp Super Class Action in the identification of the Plaintiff, preparation of the pleadings, and other work and investigations.

Administration Costs means \$504,512.47, being the sum of the Plaintiff's costs and disbursements incurred and to be incurred in connection with administering the Settlement Distribution Scheme, which includes \$170,095.75 to be paid to William Roberts for their fees and disbursements and \$334,416.72 to be paid to the Settlement Administrator for his work.

Adverse Costs means the costs incurred by the Defendants in the Proceeding, and which are the subject of an after-the-event insurance policy which contemplates that the Court orders the Plaintiff or Funder pay.

Appeal Date has the same meaning as that defined in clause 2.5 of the Deed.

Assessment means the value of a Registered Group Member's expected distribution under this Settlement Distribution Scheme calculated by applying the Loss Calculation Formula contained in Schedule A.

Assessment Notice is defined in clause 5.2.

ATE Insurance means an after-the-event insurance policy in relation to the Proceeding, the Action Costs and/or Adverse Costs.

Business Day means a day other than a Saturday, a Sunday, or a day that is a public holiday in the City of Sydney.

Commission means up-front, trailing and all other forms of commission, but does not include commissions paid in relation to a Risk-Only Product (as defined in paragraph 20(b) of the Plaintiff's Further Amended Commercial List Statement filed in the Proceeding) or fees agreed to by members for the provision of advice services.

Commission Total is defined in Clause 3.2(b).

Contingent ATE Insurance Premium means \$1,334,160, being the premiums for ATE Insurance (and applicable tax payable) which have not been paid by the Funder.

Court means the Supreme Court of New South Wales.

Deed means the Deed of Settlement executed by and as between the Plaintiff, the Defendants, William Roberts and the Funder, and binding on Group Members, as approved by the Court.

Defendants means the First Defendant, the Second Defendant and the Third Defendant.

Deferred Costs means the sum of:

- (a) \$1,080,132.06 in unpaid legal costs for work already done to 22 May 2022 by William Roberts in relation to the Proceeding that are not Action Costs, inclusive of an uplift of 25% on the aggregate fees (but not disbursements); and
- (b) \$1,306,355.63 in the Plaintiff's unpaid legal costs and disbursements incurred and to be incurred between 22 May 2022 and 22 September 2022 and includes \$963,818.47 to be paid to William Roberts for their fees and disbursements, \$315,037.16 to be paid to the Settlement Administrator for his work, as well as \$27,500 to be paid to the Referee for his work.

Final Assessment means:

- (a) an Assessment contained in an Assessment Notice which has been deemed to be accepted by a Registered Group Member under clause 5.3;
- (b) an Assessment contained in a Review Determination under clause 6.5.

First Defendant means Suncorp Portfolio Services Limited in its capacity as Trustee for The Suncorp Master Trust or SPSL Limited ACN 063 427 958.

Further Amended Commercial List Statement means the Further Amended Commercial List Statement filed in the Proceeding.

Fixed Costs means the aggregate of the respective amounts payable in respect of the items referred to in sub-clauses 7.2(a) to 7.2(h), as approved by the Court.

Funder means LCM Operations Pty Ltd ACN 616 451 033.

Funder's Commission means \$8,250,000 being 25% of the Resolution Sum.

Group Member means those persons referred to in paragraph 3 of the Further Amended Commercial List Statement, other than those persons who have opted out of the proceeding pursuant to section 162 of the Act.

Holding Account ~~has the same meaning as defined in the Deed, being the~~ is an interest-bearing holding account held with an Australian authorised deposit-taking institution into which the First

Defendant is to make payment of the Resolution Sum five business days after Settlement Approval and in relation to which and:

- (a) until the expiry of the Appeal Date, the Holding Account is the account into which the First Defendant made payment of the Resolution Sum and in relation to which the account-holder is William Roberts as trustee, who holds the monies in the Holding Account on trust for SPSL up until the expiry of the Appeal Date in accordance with the Deed; and
- (b) on and after expiry of the Appeal Date, the Holding Account shall, for the purposes of this Settlement Distribution Scheme, be a separate account held by the account-holder is KordaMentha as trustee, being an account into which William Roberts shall transfer the entire balance in the account referred to in (a) above. KordaMentha as trustee who holds the monies in the Holding Account referred to in this clause (b) on trust on behalf of the Plaintiff, Registered Group Members, William Roberts (in respect of William Roberts' entitlements as approved by the Court, if any) and the Funder (in respect of the Funder's entitlements as approved by the Court, if any).

Individual Gross Entitlement means an amount calculated by applying the Loss Calculation Formula contained in clause 4 of Schedule A to a Registered Group Member's Commission Total.

KordaMentha means KordaMentha Pty Ltd ACN 100 169 391.

Loss Calculation Formula means the formula by which distributions to Registered Group Members are calculated as contained in Schedule A to this Settlement Distribution Scheme.

Online Registration has the same meaning defined in the Settlement Notice.

Plaintiff means Kerry Michael Quirk.

Plaintiff's Reimbursement Payment means \$12,000, being the amount approved by the Court to be paid to the Plaintiff in recognition of the time and inconvenience in acting as the Plaintiff in the Proceeding.

Proceeding means the proceeding which is the Suncorp Super Class Action.

Registered Group Member has the same meaning as defined in clause 4.2.

Registration Form has the same meaning defined in the Settlement Notice.

Related Parties means the related bodies corporate of a party as defined in the *Corporations Act 2001* (Cth) and the present and former directors, officers, partners, servants, contractors, insurers and agents of a party.

Relevant Period means 1 July 2013 to 21 June 2019 (inclusive).

Review means the procedure provided in clause 6 for the review of an Assessment Notice.

Residual Resolution Sum means the principal amount of the Resolution Sum, plus the interest on the Resolution Sum earned through the Holding Account and/or Settlement Distribution Fund after deducting the Fixed Costs.

Resolution Sum means the sum of \$33 million AUD inclusive of costs.

Sample Group Members means Dean Ashley Mibus and Angela Marlene Thompson.

Sample Group Members' Reimbursement Payment means \$10,000, being the amount approved by the Court to be paid to the Sample Group Members in recognition of the time and inconvenience in acting as the Sample Group Members in the Proceeding, comprising of \$5,000 to be paid to Dean Ashley Mibus and \$5,000 to be paid to Angela Marlene Thompson.

Schedule of Registered Group Members means a schedule of Registered Group Members compiled by the Settlement Administrator pursuant to clause 4.7.

Second Defendant means Geoffrey Edward Summerhayes.

Settlement Administrator means Andrew Knight acting as the Court-appointed administrator of the Settlement Distribution Scheme.

Settlement Approval means orders approving the settlement of the Proceeding on the terms set out in the Deed and the Settlement Distribution Scheme pursuant to section 173 of the Act.

Settlement Approval Date means the next Business Day after the date on which Settlement Approval occurs.

Settlement Distribution Scheme means the terms of this document as approved by the Court (incorporating any amendments ordered by the Court), including any Schedules.

Settlement Distribution Fund has the meaning as defined in clause 0.

Settlement Notice means the form of notice to Group Members in respect of this Settlement Distribution Scheme as approved by the Court in the orders dated 13 July 2022.

Settlement Registration Form means the Online Registration or the Registration Form.

SPSL Group Member Data means the information in respect of Group Members (including the Commission Total) provided by the First Defendant on 5 July 2022 and 11 July 2022 pursuant to Order 5 of the orders made by the Court on 1 June 2022 (described in those orders as "Group Member Information") as extended, and which the First Defendant has provided after undertaking reasonable searches of its records.

SPSL Master Trust means the superannuation fund of which SPSL is the trustee (referred to by its previous name, Suncorp Master Trust, in the Proceeding).

Suncorp Super Class Action means the Supreme Court of New South Wales proceeding titled 'Kerry Michael Quirk v Suncorp Portfolio Services Limited in its capacity as trustee for the Suncorp Master Trust & Ors' (case number 2019/193556).

Third Defendant means Sean Carroll.

Trustee means KordaMentha.

Trustee Deposit Account has the same meaning as defined in clause 0.

Trustee Transaction Account has the same meaning as defined in clause 0.

William Roberts means William Roberts Pty Ltd (ACN 115 089 864) trading as William Roberts Lawyers.

1.2 The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural, and the converse also applies;
- (c) a gender includes all genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to dollars and \$ is to Australian currency;
- (g) the word "include" (and its other grammatical forms) does not limit the meaning of the words preceding it;
- (h) no rule of construction applies to the disadvantage of any person because that person was responsible for the preparation of this Settlement Distribution Scheme or any part of it; and
- (i) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Deed or this Settlement Distribution Scheme.

2. Settlement Distribution Scheme, Settlement Administrator and Trustee

- 2.1 This Settlement Distribution Scheme becomes operative when Settlement Approval occurs but will not be operative if the Deed is terminated pursuant to any of clauses 4.1, 4.2 or 4.3 of the Deed.
- 2.2 The Settlement Administrator is appointed as the settlement administrator of this Settlement Distribution Scheme.
- 2.3 Upon expiry of the Appeal Date:
- (a) William Roberts will cease to be the trustee of the Holding Account; and
 - (b) the Trustee is appointed as the trustee of the Holding Account, who shall hold the monies in the Holding Account on trust on behalf of the Plaintiff, Registered Group Members, William Roberts (in respect of William Roberts' entitlements as approved by the Court, if any) and the Funder (in respect of the Funder's entitlements as approved by the Court, if any).
- 2.4 If the Settlement Approval is set aside prior to William Roberts ceasing to be the trustee of the Holding Account pursuant to clause 2.3(a), William Roberts shall remain trustee of the Holding Account and all monies in the Holding Account shall be dealt with by William Roberts in accordance with the Deed.
- 2.5 The Settlement Administrator and Trustee shall do all things necessary to give effect to the terms of the Settlement Distribution Scheme.
- 2.6 Subject to the terms of this Settlement Distribution Scheme, the Holding Account shall be administered and applied by the Settlement Administrator, and the Trustee of the Holding

Account will make payments from the Holding Account in accordance with the direction of the Settlement Administrator.

- 2.7 The Settlement Administrator and the Trustee shall, in good faith, reasonably cooperate to ensure that the terms of the Settlement Distribution Scheme are given effect. The Settlement Administrator, the Trustee and William Roberts agree that:
- (a) The Settlement Administrator or the Trustee shall consult William Roberts in relation to any issue that arises in respect of the Settlement Distribution Scheme; and
 - (b) William Roberts may request and obtain information and/or documents from the Settlement Administrator and/or the Trustee in relation to the administration of the Settlement Distribution Scheme and the Settlement Administrator and/or the Trustee shall reasonably respond to such requests.
- 2.8 The Settlement Administrator, at his discretion, may utilise the services of any persons employed by William Roberts, barristers, accountants, IT personnel, experts, or any other service provider in administering this Settlement Distribution Scheme.
- 2.9 The Settlement Administrator is obligated to act in the interest of the body of Registered Group Members as a whole (for example, by reducing or avoiding Administration Costs, or by avoiding delay in the administration of the Settlement Distribution Scheme) and to make decisions and exercise any discretion or function so as to ultimately benefit Registered Group Members as a whole, to the extent consistent with this Settlement Distribution Scheme.
- 2.10 If the Settlement Administrator has any query concerning how it will discharge the duties referred to in clause 2.9 above and the administration of the Settlement Distribution Scheme, the Settlement Administrator may consult William Roberts who will, in turn, provide assistance to the Settlement Administrator in respect of the administration of the Settlement Distribution Scheme.
- 2.11 Subject to clause 2.4 above, after the First Defendant pays the Resolution Sum into the Holding Account in accordance with clause 2.5(a) of the Deed and following the expiry of the Appeal Date, William Roberts shall do all that is necessary to ensure that the Trustee and the Settlement Administrator has the required access to the Holding Account so that both the Trustee and the Settlement Administrator are able to give effect to the terms of the Settlement Distribution Scheme and the Deed (including the making of payments set out in clause 8.2).
- 2.12 Notwithstanding anything contained elsewhere in this Settlement Distribution Scheme, the Settlement Administrator may, in his absolute discretion and at any time, correct any error, slip or omission occurring in the course of the administration of the Settlement Distribution Scheme.
- 2.13 On and after expiry of the Appeal Date, the Settlement Administrator may, in its discretion and acting in the interest of the Plaintiff and Group Members:
- (a) invest the monies in the Holding Account (including any interest accrued on the Settlement Sum) via term deposit. For the purpose of so investing, the Settlement Administrator may cause to be opened a new account opened and held by the Trustee for that sole purpose (**Trustee Deposit Account**), and the Trustee shall hold the monies in any Trustee Deposit Account on trust on behalf of the Plaintiff, Registered Group Members, William Roberts (in respect of William Roberts' unpaid entitlements as approved by the Court, if any) and the Funder (in respect of the Funder's unpaid entitlements as approved by the Court, if any); or
 - (b) utilise any separate transactional account opened and held by the Trustee (**Trustee Transaction Account**) for the sole purpose of effecting payment transactions to the

Plaintiff and Registered Group Members. The Trustee shall hold monies in any Trustee Transaction Account on trust on behalf of the Plaintiff, Registered Group Members, William Roberts (in respect of William Roberts' unpaid entitlements as approved by the Court, if any) and the Funder (in respect of the Funder's unpaid entitlements as approved by the Court, if any).

2.14 On and after expiry of the Appeal Date, the monies in the Holding Account, Trustee Deposit Account and Trustee Transaction Account, which include the Resolution Sum and include any interest derived from the Resolution Sum, shall comprise the **Settlement Distribution Fund**. The Settlement Administrator is to operate and administer the Settlement Distribution Fund in accordance with the terms of this Settlement Distribution Scheme.

3. **Provision of SPSL Group Member Data**

3.1 The First Defendant has undertaken reasonable searches of its records in order to create and provide to the Settlement Administrator the SPSL Group Member Data.

3.2 For the purposes of this Settlement Distribution Scheme, it is deemed that:

- (a) The SPSL Group Member Data includes a complete list of members (present and former) of the SPSL Master Trust in respect of whose accounts the Commissions the subject of the Suncorp Super Class Action were paid. As such, if a Group Member's name is not contained in the SPSL Group Member Data, it will be deemed that that Group Member (or their beneficiary or their spouse) is not a Group Member who is entitled to participate in the Settlement Distribution Scheme.
- (b) The amount of fees charged to each Group Member that is a present or former member of the SPSL Master Trust (or for Group Members who are a beneficiary or a spouse of such a member, charged to the relevant member) to fund the payment of Commissions in the Relevant Period is equal to the amount of Commissions paid in respect of that Group Member (or for Group Members who are a beneficiary or a spouse of a member, paid in respect of the relevant member) in the period of 1 July 2013 to 30 June 2019, less any rebate or refund of Commission (or associated fees). The latter is included in the SPSL Group Member Data as the "**Commission Total**" for each Group Member.
- (c) Group Members whose cumulative Commission Total balance in respect of all their accounts as recorded in the SPSL Group Member Data is zero dollars (\$0) or less than zero dollars (being a negative cumulative Commission Total balance), are not eligible to a distribution under the Settlement Distribution Scheme.
- (d) The Commission Total in respect of each Group Member as contained in the SPSL Group Member Data is deemed to be complete and accurate in respect of each Registered Group Member, and the Settlement Administrator shall adopt the Commission Total for the purposes of:
 - (i) applying the Loss Calculation Formula set out in the Settlement Distribution Scheme to determine the Individual Gross Entitlement of each Registered Group Member; and
 - (ii) otherwise giving effect to this Settlement Distribution Scheme.

3.3 For the avoidance of doubt, the Settlement Administrator will not be required to consider any queries or documents submitted by any Group Members in respect of the correctness of the Commission Total contained in the SPSL Group Member Data or any Review requested by

any Registered Group Member on the basis that the Commission Total is incomplete or incorrect.

4. Registration of Group Members

4.1 Only Registered Group Members can participate in and receive a payment of monies pursuant to clause 8.2 below under this Settlement Distribution Scheme.

4.2 With the exception of those Group Members:

- (a) who have opted out of the proceeding in accordance with the orders made on 4 September 2020 (with the consequence that they are no longer Group Members in the proceeding); or
- (b) who fall into the description in 3.2(c) above,

a Group Member becomes a **Registered Group Member** when:

- (c) the Group Member:
 - (i) validly lodges a Settlement Registration Form in accordance with the orders of the Court made on 13 July 2022 (**13 July 2022 Orders**) prior to the deadline set out in the Settlement Notice and the 13 July 2022 Orders; and
 - (ii) the Settlement Administrator determines that, based on the information provided in the Settlement Registration Form and the SPSL Group Member Data, the Group Member is a Registered Group Member; or
- (d) the Group Member:
 - (i) validly lodges a Settlement Registration Form after the deadline set out in the Settlement Notice and the Court has determined in favour of that Group Member as set out in clause 4.5 below; and
 - (ii) the Settlement Administrator determines that, based on the information provided in the Settlement Registration Form and the SPSL Group Member Data, the Group Member is a Registered Group Member; or
- (e) the Group Member is deemed to be a Registered Group Member by virtue of the fact that BPAY details for the Group Member is included in the SPSL Group Member Data, whether or not that Group Member has lodged a valid Settlement Registration Form.

4.3 In accordance with the orders of the Court, the Group Member must provide the following information when completing and lodging a Settlement Registration Form pursuant to clauses 4.1 and 4.2 above:

- (a) The Group Member's:
 - (i) SPSL member account number(s) including Account Number, Member Number or Online Login Client ID (if available)
 - (ii) full name;
 - (iii) date of birth;
 - (iv) postal and/or residential address;

- (v) email address (if available); and
 - (vi) mobile phone or telephone number;
 - (vii) a confirmation as to the Group Member's capacity, including whether the Group Member is registering:
 - (A) on their own behalf; or
 - (B) as a beneficiary of a deceased member who satisfies the criteria set out in paragraphs 15(c) of the Settlement Notice; or
 - (C) as a spouse of a member who satisfies the criterions set out in paragraph 15(d) of the Settlement Notice.
- (b) If the Group Member has a current superannuation account (other than a Self-Managed Super Fund) which is capable of accepting contributions:
- (i) the name of the current superannuation provider;
 - (ii) the Unique Superannuation Identifier of the current superannuation account (if available); and
 - (iii) the member account number, account name, and BPAY details of the current superannuation account.
- (c) If the Group Member has a current Self-Managed Super Fund:
- (i) the name and Australian Business Number of the current Self-Managed Super Fund;
 - (ii) the Electronic Service Address of the current Self-Managed Super Fund; and
 - (iii) the fund address, phone number, and bank account details, of the current Self-Managed Super Fund.
- (d) If a Group Member:
- (i) is not required by law to have a current Australian superannuation account; or
 - (ii) has satisfied a condition of release for the purposes of superannuation law, the BSB and bank account number of the Group Member's current bank account (or the relevant international bank account details if the Group Member lives overseas).

4.4 Group Members must ensure that the information they provide as referred to in clause 4.3 (and any other information provided to the Settlement Administrator) is true and accurate. The Settlement Administrator shall not be responsible for:

- (a) checking the truthfulness and accuracy of information provided by Group Members; and
- (b) any consequence that arises from the failure of a Group Member to provide true and accurate information to the Settlement Administrator, including but not limited to a de facto release of preserved benefits inconsistent with the scheme established by the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.

- 4.5 If a Group Member's Settlement Registration Form is received by the Settlement Administrator after the deadline set out in the Settlement Notice, being 4.00pm AEST on 31 August 2022, then the Settlement Administrator shall not accept that Settlement Registration Form. If that Group Member nevertheless seeks to be accepted as a Registered Group Member, that Group Member may by 4pm, 21 September 2022, apply to the Court for determination of whether that Group Member is eligible to participate in the Settlement Distribution Scheme. If the Court determines in favour of that Group Member, then that Group Member is deemed to be eligible to participate in the Settlement Distribution Scheme as a Registered Group Member.
- 4.5A The persons identified at pages 106 to 110 of Exhibit DP-9 are deemed to have registered by the deadline set out in the Settlement Notice of 4.00pm AEST on 31 August 2022.
- 4.6 Where a Group Member is a Registered Group Member by virtue of acts done on their behalf, by a trustee, investment manager, responsible entity or agent, the Settlement Administrator may rely on any information, instruction or declarations provided by that trustee, investment manager, responsible entity, or agent as if it has been provided by that Group Member.
- 4.7 After the total number of Registered Group Members has been ascertained by the Settlement Administrator (including after the process described in clause 4.5 has been exhausted), the Settlement Administrator shall create a Schedule of Registered Group Members.

Settlement Administrator's discretion to consider options for payment distribution in respect of certain Registered Group Members

- 4.8 If the Settlement Administrator ascertains that there are multiple Registered Group Members who have lodged a Settlement Registration Form on the basis that they satisfied the criterion:
- (a) in paragraph 3(c) of the Further Amended Commercial List Statement in relation to the same deceased member; or
- (Group Members described by clause 4.8(a) are referred to as **Multiple Purported Beneficiaries**);
- (b) in paragraph 3(d) of the Further Amended Commercial List Statement in relation to the same member; or
- (Group Members described by clause 4.8(b) are referred to as **Multiple Purported Spouses**)

then:

- (c) the Settlement Administrator may in its absolute discretion choose from the following option(s) to resolve the multiple claims in respect of the Multiple Purported Beneficiaries and Multiple Purported Spouses:
- (i) referring any issues that arise in relation to the above situation to the Court for determination pursuant to clause 10; or
- (ii) contacting any Group Members who are Multiple Purported Beneficiaries or Multiple Purported Spouses to determine the most suitable way to distribute payment to the Multiple Purported Beneficiaries or the Multiple Purported Spouses respectively; or

- (iii) making any distribution intended for the Multiple Purported Beneficiaries or the Multiple Purported Spouses to the Statutory Bodies referred to in clause 8.6(b) below (if possible and if appropriate); or
- (iv) splitting any distribution between Multiple Purported Beneficiaries or Multiple Purported Spouses on a pari passu basis and on the basis that the Multiple Purported Beneficiaries or Multiple Purported Spouses are responsible for resolving any claim(s) between Multiple Purported Beneficiaries or Multiple Purported Spouses in respect of the distribution.

5. **Assessment of Individual Claims of Registered Group Members - Assessment Notice**

- 5.1 As soon as practicable after the Settlement Approval Date, and after the Schedule of Registered Group Members has been created, and otherwise as soon as practicable, the Settlement Administrator will cause the calculation of the Assessment for each Registered Group Member using the SPSL Group Member Data and by applying the Loss Calculation Formula to each respective Registered Group Member's Commission Total.
- 5.2 As soon as practicable after calculating the Assessment for each Registered Group Member, the Settlement Administrator will cause an **Assessment Notice** to be given to each Registered Group Member containing the expected amount of the distribution that the Registered Group Member is entitled to receive under this Settlement Distribution Scheme.
- 5.3 The accuracy of an Assessment Notice shall be deemed to be accepted by a Registered Group Member and shall be the Final Assessment under this Settlement Distribution Scheme, unless the Registered Group Member makes a written request for Review of the Assessment Notice in accordance with clauses 6.1 to 6.6 below.

6. **Requests for Review of an Assessment Notice**

- 6.1 No later than 14 days from the date of the Assessment Notice, a Registered Group Member may request a **Review** of the expected amount of distribution in the Assessment Notice limited to the following grounds:
 - (a) the Loss Calculation Formula has been incorrectly applied, and such incorrect application has resulted in an error in the expected amount of distribution in the Assessment Notice; and/or
 - (b) the Assessment Notice contains an apparent typographical error or omission in the expected amount of distribution,

by submitting a statement of reasons to the Settlement Administrator addressing the grounds upon which the review is sought in accordance with clause 6.3 below.
- 6.2 The Settlement Administrator is not obliged to consider any request for a review of the expected amount of distribution in the Assessment Notice which is not based on the grounds set out in clause 6.1 above.
- 6.3 A request for Review of the Assessment Notice must be submitted by a Registered Group Member by completing the request for Review form that accompanies the Assessment Notice in writing and either posting the completed form to the address specified on the form or emailing the completed form to the address to SSFClassAction@enterclaim.com.
- 6.4 If a Registered Group Member submits a request for Review of an Assessment Notice in accordance with clauses 6.1 to 6.3, the Settlement Administrator in his absolute discretion may

give a notice in writing, directing the Registered Group Member to submit such further information or documentation in support of the Review as the Settlement Administrator considers appropriate, and:

- (a) such information or documentation must be submitted within 7 days of the date of this written notice being given, failing which the request for Review shall be deemed never to have been made and the accuracy of the Assessment Notice shall be deemed to be accepted by the Registered Group Member; and
- (b) the notice given by the Settlement Administrator in accordance with this clause 6.4 must explain the effect of subclause (a).

6.5 The Settlement Administrator shall, within 14 days of the later of the receipt of the request for a Review of an Assessment Notice under clause 6.1 or the date that further information or documentation was received under clause 6.4 above:

- (a) notify the Registered Group Member of his determination (**Review Determination**); and/or
- (b) make any necessary, incidental or consequential amendments to the Assessment Notice and any other notice to any and all affected Registered Group Members.

6.6 A Review Determination under clause 6.5 is final and binding and shall be the Final Assessment under this Settlement Distribution Scheme.

7. Application of Interest and Order of Payments

7.1 ~~Interest earned on the Holding Account is to be distributed to Registered Group Members in the same way as other monies in the Holding Account. A payment from the Settlement Distribution Fund in respect of Administration Costs shall be made first from the interest income earned in the Settlement Distribution Fund, except to the extent that the Settlement Administrator in his absolute discretion determines that it is to be made from the capital of the Settlement Distribution Fund.~~

7.2 Subject to clause 2.4 ~~and 7.1~~ above, as soon as practicable after the Appeal Date, the Settlement Administrator shall make the following payments from the ~~Resolution Sum~~ Settlement Distribution Fund (as approved by the Court):

- (a) firstly, pay the Contingent ATE Insurance Premium to the Funder; and
- (b) secondly, pay the Action Costs to the Funder; and
- (c) thirdly, pay the Funder's Commission to the Funder; and
- (d) fourthly, pay the Deferred Costs to William Roberts, the Settlement Administrator and the costs referee Ian Ramsey-Stewart as applicable; and
- (e) fifthly, pay the Administration Costs to the Settlement Administrator and William Roberts as applicable; and
- (f) sixthly, make the Plaintiff's Reimbursement Payment to the Plaintiff; and
- (g) seventhly, make the Sample Group Members' Reimbursement Payments to the respective Sample Group Members; and

- (h) eighthly (or in the order approved by the Court, if applicable), any other payments that have been approved by the Court; and
- (i) ninthly, once all Registered Group Members have a Final Assessment and all Review Determinations pursuant to clause 6.5 have been completed, the Settlement Administrator shall thereafter commence distribution of payments to Registered Group Members in accordance with clause 8.2.
- 7.3 For the avoidance of doubt, the Settlement Administrator or Trustee, after the Appeal Date, may deduct monies from the ~~Holding Account~~Settlement Distribution Fund, and in such manner as the Settlement Administrator or Trustee reasonably determines, for the purpose of providing for or discharging, any tax obligations that may or will arise, or have arisen, in respect of the ~~Holding Account~~Settlement Distribution Fund and this Settlement Distribution Scheme, including prior to any distribution of any monies from the ~~Holding Account~~Settlement Distribution Fund to any Registered Group Members.
- 7.4 The Settlement Administrator (and for the avoidance of doubt, its servants or agents) and William Roberts are immune from any demand, claim, suit or liability at law, in equity or under statute, made or incurred by any Registered Group Member in respect of any loss or damage arising as a result of any payment made in accordance with any obligation arising under this clause 7.
- 7.5 The funds standing from time to time in the Settlement Distribution Fund will be held by the Settlement Administrator upon trust for the persons entitled to payments from the Resolution Sum (including for the Settlement Administrator, to the extent of the Administrator's entitlement to Administration Costs), but all taxes, duties, levies, charges and other imposts payable in respect of the Settlement Distribution Fund will be paid in priority to any distribution to the persons beneficially entitled to the funds.
- 7.6 Taxes, duties, levies, charges and other imposts payable in respect of the Settlement Distribution Fund may be paid from the capital of the Settlement Distribution Fund or from the income earned in the Settlement Distribution Fund, as the Settlement Administrator determines in his absolute discretion.

8. **Distribution to Registered Group Members**

- 8.1 No distribution to Registered Group Members shall be made from the ~~Holding Account~~Settlement Distribution Fund until all Registered Group Members have a Final Assessment, all Review Determinations pursuant to clause 6.5 have been completed, the Appeal Date has expired and the payments in sub-clauses 7.2(a) to 7.2(h) have been made.
- 8.2 Once the payments in sub-clauses 7.2(a) to 7.2(h) have been made, the Residual Resolution Sum (net of any relevant deductions pursuant to clauses 7.3 and 9.2) shall be distributed to Registered Group Members in accordance with their Final Assessment and this clause as soon as is practicable.
- 8.3 The Settlement Administrator may, at his discretion, deduct from the amount of a Registered Group Member's distribution any transaction charge or postage paid or payable by the Settlement Administrator in respect of a distribution amount paid or payable to that Registered Group Member, where that Registered Group Member has requested payment by way of cheques or that payment be made to an account outside of Australia or that documents be sent to an address outside of Australia.

Procedure in respect of distribution payments that cannot be processed or paid to Registered Group Members and other miscellaneous situations

8.4 Where a distribution (including a cheque payment) to a given Registered Group Member cannot be made pursuant to clause 8.2 by the Settlement Administrator due to:

- (a) a payment bouncing or a transaction error outside the reasonable control of the Settlement Administrator; and/or
- (b) the Registered Group Member not taking any action that is necessary to enable the Settlement Administrator to distribute a payment (including, without limitation, the Registered Group Member failing to present a cheque or not supplying the relevant details in clause 4.3),

the Settlement Administrator must:

- (c) make at least one attempt to contact the Registered Group Member to ascertain any information reasonably required by the Settlement Administrator to correct any issues with processing the payment to the Registered Group Member; and
- (d) make at least one further attempt to process the payment to the Registered Group Member if the Registered Group Member provides updated information within 14 days of contact by the Settlement Administrator.

8.5 If a payment cannot be processed or otherwise fails after exhausting the procedure in clause 8.4 above, the Settlement Administrator in his absolute discretion may follow the procedures set out in clause 8.6 below.

8.6 If after three (3) months of the distribution of the ~~Holding Account~~ Settlement Distribution Fund to Registered Group Members:

- (a) any amount remains or is held in the ~~Holding Account~~ Settlement Distribution Fund, such as any amounts:
 - (i) which have not been the subject of payment in cleared funds to a Registered Group Member; or
 - (ii) that cannot be processed after exhausting the procedure in clause 8.4 above; or
 - (iii) in respect of any un-presented cheques;

then:

- (b) the amounts in 8.6(a) shall be distributed to one or more statutory body the Settlement Administrator deems to be appropriate, including but not limited to the respective unclaimed monies departments of the Australian Securities and Investments Commission or the Revenue NSW, or the unclaimed super department of the Australian Tax Office (**Statutory Bodies**); or
- (c) if not accepted by Statutory Bodies, donated to a charity within the meaning of the *Charities Act 2013*.

9. Immunity from Claims and Indemnities

9.1 To the extent that the Settlement Administrator engages the services of the Funder or William Roberts for the purpose of administering the Holding Account, any Trustee Deposit Account, any Trustee Transaction Account, and the Settlement Distribution Fund in accordance with this Settlement Distribution Scheme, the Funder or William Roberts shall have no liability to the

Settlement Administrator or any Registered Group Member who does not receive a Distribution or receives a Distribution in an incorrect amount arising from any:

- (a) failure of a Registered Group Member to submit a Review in accordance with this Settlement Distribution Scheme;
- (b) incorrect or otherwise incomplete information provided by or on behalf of a Registered Group Member;
- (c) failure of a Registered Group Member to notify of an update to its contact details listed on the SPSL Group Member Data;
- (d) failure by a Registered Group Member to request a correction/recalculation of the estimation of compensation entitlements in accordance with the Settlement Distribution Scheme; and/or
- (e) error or omission made by the Settlement Administrator, the Trustee, the Funder and/or William Roberts.

9.2 The Settlement Administrator, the Trustee (and for the avoidance of doubt, any persons employed or engaged in accordance with the Settlement Distribution Scheme by him or it) and William Roberts (as the trustee of the Holding Account before the expiry of the Appeal Date) shall be indemnified from the ~~Holding Account~~ Settlement Distribution Fund in respect of taxation or any other liability attaching to the sums standing from time to time in any account or otherwise arising from or attaching to the exercise of the function of Settlement Administrator or Trustee, including without limitation and for the avoidance of doubt:

- (a) costs associated with obtaining a tax file number;
- (b) costs associated with obtaining any taxation or accounting advice;
- (c) costs associated with preparing tax returns or associated documents; and
- (d) any taxation liability relating to or resulting from its role as Settlement Administrator or the Trustee.

9.3 The Settlement Administrator, the Trustee (and for the avoidance of doubt, any persons employed or engaged in accordance with the Settlement Distribution Scheme by him or it) and William Roberts in discharging any function or exercising any power or discretion conferred by this Settlement Distribution Scheme (or purporting to do so), shall not be liable to the Plaintiff or any Registered Group Member for any loss to the Plaintiff or any Registered Group Member, unless such loss has been caused by fraud on the part of the Settlement Administrator, the Trustee or any persons employed by him or it.

9.4 The Settlement Administrator, the Trustee and William Roberts will not, and is not required to, provide or obtain any taxation advice or taxation rulings (class, public or private) concerning any tax obligations or taxation potentially payable by Registered Group Members in respect of settlement distributions. Each Registered Group Member is responsible for obtaining their own taxation or financial advice if required.

10. Supervision by the Court

10.1 The Settlement Administrator, the Trustee or William Roberts may refer any issues arising in relation to the Settlement Distribution Scheme or the administration of the Settlement Distribution Scheme to the Court for determination.

- 10.2 Any costs incurred in any such referral to the Court made by the Settlement Administrator shall be deemed to be a part of the Administration Costs.
- 10.3 The Settlement Administrator, the Trustee or William Roberts may refer any issue as set out in clause 10.1 by correspondence addressed to the Associate to Justice Stevenson or the Associate to another Judge supervising the administration of this Settlement Distribution Scheme, and save where the Court following such correspondence requires otherwise, the Settlement Administrator, the Trustee or William Roberts need not give notice of such reference to the Defendants, the Plaintiff, or any Registered Group Members.

11. **Notice**

- 11.1 Any notice or document to be given (or delivered) pursuant to the Settlement Distribution Scheme shall be deemed to be given (or delivered) and received for all purposes associated with this Settlement Distribution Scheme if it is:
- (a) addressed to the person to whom it is to be given; and
 - (b) either:
 - (i) sent by email to that person's email address being, in respect of any Group Member, the last known email address which unless, updated by that person, is deemed to be the email address (if any) recorded in the SPSL Group Member Data;
 - (ii) sent by SMS text message to that person's mobile number being, in respect of any Group Member, the last known mobile telephone number which unless, updated by that person, is deemed to be the mobile telephone number (if any) recorded in the SPSL Group Member Data;
 - (iii) delivered, or sent by mail, to that person's postal address being, in respect of any Group Member, the last known postal address, or the last known residential address which unless, updated by that person, is deemed to be the relevant addresses (if any) recorded in the SPSL Group Member Data).
- 11.2 A notice or document that complies with clause 11.1 will be deemed to have been given (or delivered) and received:
- (a) if it was sent by mail to an addressee in Australia, two (2) clear Business Days after being sent;
 - (b) if it was sent by mail to an addressee overseas, five (5) clear Business Days after being sent; or
 - (c) if it was sent by email or SMS text message, at the time it is sent.
- 11.3 Where a Registered Group Member is not a natural person and where a person has been nominated as the contact in respect of several Registered Group Members, it is sufficient for the purpose of giving notice that any of the provisions of clause 11.1 are complied with in relation to that Registered Group Member or that nominated person, as the case may be.
- 11.4 The Settlement Administrator's address and email address shall be as set out below unless and until the Settlement Administrator notifies the sender otherwise, and the giving of notice or any document to the Settlement Administrator may be done by email:

Attention: **Andrew Knight**

Address: KordaMentha, Rialto South Tower, Level 31, 525 Collins Street, Melbourne VIC
3000

Email: SSFCAadmin@kordamentha.com

12. Time

12.1 The time for doing any act or thing under the Settlement Distribution Scheme may be extended by the Settlement Administrator in his absolute discretion or by an order of the Court.

13. Income of the trust

13.1 The income of the trust estate referred to in clause 0 for each year shall be such amount as the Settlement Administrator determines in writing for that year.

13.2 If the Settlement Administrator makes no determination under clause 0 for a year, the income of the trust estate for that year shall be equal to the net income of the trust estate, within the meaning of that expression in Division 6 of Part III of the *Income Tax Assessment Act 1936 (Cth)*.

END OF SETTLEMENT DISTRIBUTION SCHEME

Supreme Court of New South Wales

List: Commercial List

Registry: Sydney

KERRY MICHAEL QUIRK

Plaintiff

**SUNCORP PORTFOLIO SERVICES LIMITED IN ITS CAPACITY AS TRUSTEE FOR THE
SUNCORP MASTER TRUST**

First Defendant

GEOFFREY EDWARD SUMMERHAYES

Second Defendant

SEAN CARROLL

Third Defendant

SETTLEMENT DISTRIBUTION SCHEME

SCHEDULE A

LOSS CALCULATION FORMULA

IMPORTANT NOTE: This document is confidential. It must not be disclosed to any other person without the consent of the Settlement Administrator.

1. Definitions

- 1.1 All terms defined in the Settlement Distribution Scheme also apply to this Schedule.

2. Introduction

- 2.1 This document sets out the manner in which each Registered Group Member's distribution from the Residual Resolution Sum (net of any relevant deductions pursuant to clause 7.3 and 9.2 of the Settlement Distribution Scheme) is calculated.

3. Assumptions

- 3.1 The calculation of each Registered Group Member's Assessment and Final Assessment will proceed on the following general assumptions:
- (a) Clauses 3.1 to 3.3 of the Settlement Distribution Scheme are repeated.
 - (b) Had fees equal to the Commission Total not been deducted from Registered Group Members' accounts, they would have been able to earn a return on those additional funds (**Members' Lost Return**).
 - (c) The proportion of the Members' Lost Return of an individual Registered Group Member over the total Members' Lost Return of all Registered Group Members is the same as the proportion of the Commission Total of the individual Registered Group Member over the total Commission Total of all Registered Group Members.

Formula for Registered Group Member pro rata gross entitlement to the Resolution Sum:

4. Loss Assessment Formula

- 4.1 A given Registered Group Member's pro rata gross entitlement to the Resolution Sum (**Individual Gross Entitlement**) can be determined by the following formula (**Gross Entitlement Formula**):

$$\frac{\text{Commission Total of the Registered Group Member in question}}{\text{Aggregate Sum of Commission Total of all Registered Group Members}} \times \text{Residual Resolution Sum}$$

where:

- (a) **Commission Total of the Registered Group Member in question** means the sum of the Commission Total of a given Registered Group Member in respect of all accounts held by the Registered Group Member as identified in the SPSL Group Member Data.
- (b) **Aggregate Sum of Commission Total of Registered Group Members** means the sum of the Commission Total for persons who are Registered Group Members in respect of all accounts held by all Registered Group Members in the SPSL Group Member Data.
- (c) **Residual Resolution Sum** has the same meaning as that used in the Settlement Distribution Scheme.

END OF ANNEXURE A