

SUPREME COURT OF NEW SOUTH WALES

SEAN JOHNSTON v ENDEAVOUR ENERGY
(ABN59 253 180 878)
PROCEEDINGS NO: 2014/148790

IMPORTANT NOTICE

**CLASS ACTION REGARDING THE FIRE ON 17 October 2013
AT SPRINGWOOD/WINMALEE**

1. What is this Notice About?

On 16 May 2014, Sean Johnston ("the **Plaintiff**") commenced this representative proceeding in the Supreme Court of New South Wales against Endeavour Energy (ABN 59 253 130 878).

This representative proceeding is brought by the Plaintiff on his behalf, and on behalf of all persons who suffered personal injury, loss of or damage to property, and/or economic loss as a result of a fire in Springwood and Winmalee on or around 17 October 2013 ("the **Springwood/Winmalee fire**"). Persons fitting that description are defined in this proceeding as "**group members**".

The Plaintiff alleges that Endeavour Energy owed to the Plaintiff and the group members statutory and/or general duties of care and that it breached those duties causing the fire, and causing the Plaintiff to suffer damage. These allegations arise from Endeavour Energy's obligations as an electricity distributor and network operator, and as the owner of a powerline at Linksvie Road, Springwood.

The allegations are detailed in the Amended Statement of Claim filed on 4 July 2014 ("the **Amended Statement of Claim**"). Endeavour Energy rejects the allegations and defends the representative proceeding on various grounds.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this representative proceeding is brought and who may be affected by it. If you think you may be a group member you should read this notice carefully as it may affect your rights. **Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

2. What is a Representative Proceeding?

A representative proceeding is commonly known as a class action. It is an action that is brought by the Plaintiff on his own behalf and on behalf of group members against the Defendant, where the Plaintiff and the group members have similar claims against the Defendant.

Group members are bound by any judgment or settlement entered into in the representative proceeding unless they have opted out of the proceeding. This means that:

- (a) If the representative proceeding is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) If the representative proceeding is unsuccessful, group members are bound by that result; and
- (c) Regardless of the outcome of the representative proceeding, group members will not be able to pursue their claims against the Defendant in separate legal proceedings unless they have opted out.

3. Are You a Group Member?

You are a group member in the representative proceeding if:

- (a) You suffered personal injury (whether physical injury or psychiatric harm), as a result of:
 - (i) The SpringwoodAA/inmalee fire, and/or
 - (ii) The death of or injury to another person as a result of the SpringwoodAA/inmalee fire;
- (b) You suffered loss of or damage to property as a result of the SpringwoodAA/inmalee fire;
- (c) You resided in, or had real or personal property in the SpringwoodAA/inmalee area and suffered economic loss, which was not consequent upon personal injury or loss or damage to property.

4. What is this Representative Proceeding?

The Plaintiff alleges in his Amended Statement of Claim in Supreme Court Proceedings No: 2014/14879 that Endeavour Energy owed a duty of care to the Plaintiff and group members and that it breached that alleged duty. The Plaintiff alleges that appropriate clearance distances were not maintained between Endeavour Energy's power line at Linksvie Road, Springwood and vegetation. Briefly, the Plaintiff alleges that the SpringwoodAA/inmalee fire started because of Endeavour Energy's failure to prune or remove a tree adjacent to pole JU267 at Linksvie Road, Springwood, which tree fell onto Endeavour Energy's power line. The Plaintiff alleges that the tree falling onto the power lines ignited the SpringwoodAA/inmalee fire. By reason of the alleged breaches of duty and the SpringwoodAA/inmalee fire, the plaintiff claims damages for loss of and damage to his property.

The Plaintiff's claims are made on his own behalf and on behalf of group members. The Defendant to the representative proceeding is Endeavour Energy. Endeavour

Energy rejects the allegations and is defending the representative proceeding on various grounds.

5. What is Opt Out?

The Plaintiff in a representative proceeding does not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be group members by opting out of the representative proceeding. An explanation of how group members are able to opt out is found below.

6. What Group Members Should Do

If you fit the definition of a "group member" in the representative proceeding you must choose one of the following:

Choice A: Doing Something

Option (1): If you wish to remain a group member and make a claim for damage that you say you have suffered as a result of the events described in the Amended Statement of Claim, you should contact Maddens Lawyers as follows:

Postal:	Mr Brendan Pendergast Maddens Lawyers PO BOX 320 Warrnambool VIC 3280	Maddens Lawyers 219 Koroit Street Warrnambool VIC 3280
Website:	www.maddenslawyers.com.au	
Telephone:	1800 139 290	

Group members who register with the Plaintiff's solicitors will be bound by the outcome of the representative proceeding. If the representative proceeding is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Plaintiff and Group Members. (You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you, before your entitlement arises)

If the representative proceeding is unsuccessful, or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

If you wish to remain a group member, even if you do not wish to retain Maddens Lawyers to act for you as a client, you may wish to contact Maddens to "**register**" as a group member to ensure that future notices about the representative proceeding can be sent to you directly.

Option (2): If you do not wish to be a group member you should opt out of the proceeding by completing the "Opt Out Notice" below. If you opt out then you will not be affected by any orders made in the representative proceeding.

You will not be bound by or entitled to share in the burden or benefit of any order, judgment or settlement in the representative proceeding, and you will be at liberty to bring your own claim against the Defendant, provided that you issue Court proceedings within the time limit applicable to your claim.

If you wish to bring your own claim against the Defendant, you should seek your own legal advice about your claim and the applicable time limit **before** opting out.

A Ms Word version and PDF version of an opt out notice is available at:

<http://www.ucprforms.lawlink.nsw.gov.au/ucprforms/index.html>

Choice B: Doing Nothing

If you do nothing, (i.e. you do not complete an opt out notice and do not contact Maddens Lawyers), you will remain a group member and remain bound by any order, judgment or settlement in the representative proceeding. Unless you identify yourself as a "group member", no-one may be aware of that fact such that you may not be able to share in any possible benefit flowing from the proceeding.

You must decide what to do BEFORE 4:00pm on 10 October 2014. If you want to opt out you must send your "Opt Out Notice" to the Registry of the Supreme Court so that it arrives **before** that deadline. You must also provide a copy of your "Opt Out Notice" to the Plaintiff's solicitor.

Postal:	Mr Brendan Pendergast Maddens Lawyers PO BOX 320 Warrambool VIC 3280
Email:	kae@maddenslawyers.com.au

7. Will You be Liable for Costs?

Please note, you will **not become liable** for any legal costs simply by contacting Maddens Lawyers under Choice A, or by doing nothing under Choice B. However:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maddens Lawyers or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim;
- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the representative proceeding, the Court may make an order that some of that compensation be used to help pay a share of the

costs which are incurred by the Plaintiff in running the representative proceeding but which are not able to be recovered from the Defendant. Mr Johnston will ask the Court to make such an Order if the occasion arises; and

- (c) Representative proceedings are often settled out of Court. If this occurs in this representative proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

8. Where Can You Obtain Copies of Relevant Documents?

Copies of relevant documents, including the Amended Statement of Claim and Defence, may be obtained by:

- (a) Downloading them from <http://www.maddenslawyers.com.au>;
- (b) Telephoning Maddens Lawyers on 1800 815 228 and requesting a copy to be posted;
- (c) Inspecting them by visiting the Registry of the Supreme Court in Sydney at Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW.

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact Mr Johnston's solicitors Maddens Lawyers on 1800 815 228, or seek your own legal advice. You should not delay in making your decision, as the deadline for opting out is **10 October 2014**.

This Notice is published pursuant to Orders made by the Supreme Court on 30 July 2014.