



Case: S ECI 2020 03281

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## **ARRIUM CLASS ACTION**

### **BOGAN & WALTON v SMEDLEY & OTHERS**

(Supreme Court of Victoria case number No. S ECI 2020 03281)

#### **AMENDED GROUP PROCEEDING CLASS ACTION SUMMARY STATEMENT**

##### **1. What is a class action?**

A class action (also known as a group proceeding) is a type of court proceeding, where seven or more people have claims that arise out of similar circumstances. A class action is brought by one or more plaintiffs on their own behalf and as a representative of others (who are called “group members”). A class action allows the court to consider common issues that are relevant to claims involving large numbers of people in a way which allows those common issues to be considered and resolved once rather than being determined individually for each group member.

##### **2. What is the Arrium class action and who are the Defendants?**

This class action concerns statements made to the market of investors in Arrium Limited (**Arrium**), which was an Australian company which mined iron ore and produced steel and which was listed on the Australian Securities Exchange (ASX:ARI) in the period between 19 August 2014 and 4~~6~~ April 2016, when Arrium shares ceased trading prior to it entering insolvency administration.

The Defendants are four former directors of Arrium (its CEO, its successive Chairmen and the Chairman of its Audit Committee) and Arrium’s auditors (KPMG). The Plaintiffs allege that the Defendants made misleading or deceptive statements in Arrium’s published financial results, as to the compliance of Arrium’s financial statements with Australian Accounting Standards and failed to disclose material impairments of Arrium’s assets.

The Plaintiffs allege that the wrongful conduct of the director defendants and KPMG resulted in Arrium’s shares trading at an inflated price on the Australian Securities Exchange at all times after 19 August 2014, and also that it resulted in Arrium conducting a \$750 million capital raising in September 2014 at an inflated price (or that this capital raising would not have otherwise been able to proceed at all).

##### **3. Who are the group members?**

The Plaintiffs allege that all shareholders who acquired Arrium shares between 19 August 2014 and 4~~6~~ April 2016 (whether in the capital raising, or on market) have suffered loss and damage. You are a group member if you purchased Arrium shares (or any interest in Arrium shares) from 19 August 2014 and 4 April 2016. A detailed definition of “Group Members” is contained in the statement of claim filed in the proceedings.

##### **4. Which law firm is acting for the Plaintiffs?**

Banton Group is the law firm acting for the two Plaintiffs in these proceedings. Banton Group also acts for a number of the group members.

##### **5. What is the role and responsibilities of the Plaintiffs?**

The Plaintiffs, Anthony Bogan and Michael Thomas Walton, are the representatives of the group members in the class action. They will provide instructions to Banton Group in relation to the conduct of the proceedings and may be required to give evidence in the proceedings.

## 6. How is the class action funded?

The Plaintiffs in the Arrium Class Action have litigation funding agreements with Equite Capital No 1 Pte Ltd (**Funder**), which is a litigation funding company registered in Singapore. The Funder has entered into litigation funding agreements with the Plaintiffs and a number of group members, and the contract sets out the terms on which the Funder provides funding, including the terms on which that funding may cease to be provided.

Under the funding agreements, the reasonably incurred legal costs of the class action will be paid by the Funder on behalf of the Plaintiffs. If there is a successful outcome to the class action (whether by settlement or judgment), the funding agreements provide for the Funder to be reimbursed the legal costs it has paid, and paid a funding commission. The Court may order all group members to share in the legal costs to be reimbursed to, and funding commission paid to, the Funder. No litigation funding costs will be charged to the Plaintiffs or group members prior to a successful resolution of the proceeding, either by settlement (if approved by the Court), or judgment. The amount paid to the Funder will never exceed the total amount of the recovery to group members.

In May 2022, the Plaintiffs applied for and were granted a Group Costs Order (GCO) under s 33ZDA(1) of the Supreme Court Act 1986 (Vic) (Act). The GCO is conditional on the Plaintiffs satisfying the Court that (a) the litigation funding agreements have been terminated and (b) that the Funder has provided a written undertaking to the Court that it will not seek to enforce its rights pursuant to the litigation funding agreements entered into with the Plaintiffs and group members. The Plaintiffs must comply with this order within 14 days after the determination by the High Court of Australia (**High Court**) of the Fifth Defendant's application to transfer the proceedings to the Supreme Court of New South Wales (**KPMG Application**). The KPMG Application was heard by the High Court in November 2024 but the High Court has not yet published its judgment. Further information will be provided when that judgment is published.

For more information regarding the GCO, please see the Amended Funding Information Summary Statement.

In order to obtain further information about the litigation funder and the terms of the funding, group members can contact the Funder by email at [qxsong12@gmail.com](mailto:qxsong12@gmail.com).

## 7. How will legal fees be charged?

Banton Group's legal fees and disbursements will be charged to the Plaintiffs, although those legal costs will be paid on the Plaintiffs' behalf by the Funder as long as the funding agreements continue. If there is a successful outcome, the Plaintiffs are likely to apply to the Court for an order that the legal costs charged to them (including those paid on their behalf by the Funder) be shared by all Group Members who obtain a benefit from the proceedings. The Court will scrutinise the reasonableness of the legal costs incurred as part of that process.

~~The Supreme Court of Victoria has recently been given power to make a "group costs order", which (if applied for and made) would fix a percentage of the amount of any award or settlement in the class action to be paid to the law practice representing the Plaintiffs, with the Plaintiffs and group members sharing the cost. If a group costs order is made, it would be inclusive of all legal fees and disbursements incurred in conducting a class action. If the Plaintiffs' apply for a group costs order, funding arrangements change by reason of the GCO becoming~~

unconditional, then this Group Proceedings that will be done at the earliest practicable time, and this Class Actions Summary Statement will be amended at the earliest practicable time.

**8. Are there other class actions that relate to Arrium's shares in the Relevant Period?**

The Plaintiffs are not aware of any other group proceedings that have been, or are likely to be, filed that relate to the same subject matter these proceedings.

**9. How can I obtain more information?**

For further information about the proceedings, group members may contact Banton Group on +61 (2) 8076 8024 or by email at [arrium@bantongroup.com](mailto:arrium@bantongroup.com). Group members will not be charged for these enquiries.