

## NOTICE OF PROPOSED SETTLEMENT

### “JACK RIVER” CLASS ACTION

You are registered as a group member of the Jack River bushfire class action in the Supreme Court of Victoria (**class action**).

The Supreme Court has ordered that this notice be provided to you to inform you about a proposed settlement of the class action.

You should read this notice carefully as the matters set out below may affect your legal rights.

#### **The Class Action**

Irwin Ramsay (**plaintiff**) commenced the class action on his own behalf and on behalf of group members who suffered loss as a result of a bushfire that started near Jack River on 9 February 2014 (**Jack River bushfire**).

#### Group Members

The group members in the class action are all those who suffered personal injury and/or damage to or loss of property in the Jack River bushfire.

The Court ordered group members, wishing to participate in any settlement of the class action, to register their claims with the plaintiff's solicitors, Maddens Lawyers, by 13 May 2015. The Court also ordered that any insurer who had made payments to group members for losses suffered in the Jack River bushfire who wished to participate in any settlement to register their claims with Maddens Lawyers by 20 May 2015.

As a result:

- (a) 34 group members (**Registered Group Members**); and
- (b) 7 insurers (**Registered Insurers**)

registered claims with Maddens Lawyers.

Only Registered Group Members and Registered Insurers are entitled to participate in and receive compensation as a result of any settlement of the class action.

You are a Registered Group Member.

#### The Defendants

The defendants to the class action are:

- (a) AusNet Electricity Services Pty Ltd (**'AusNet'**); and
- (b) Gippsland Contracting Pty Ltd, trading as BJ & BJ Murphy (**'Murphy'**).

## The Allegations

The plaintiff makes a number of allegations in the class action to which the defendants raise a number of responses. In summary, the plaintiff alleges and the defendants dispute that:

- (a) the Jack River bushfire started because two pine trees came into contact with a powerline that was owned and operated by AusNet;
- (b) in the year prior to the fire, employees of each of the defendants had inspected the powerline for the purpose of identifying vegetation that was too close to the powerline;
- (c) the inspectors negligently failed to notice that the trees were too close to the powerline;
- (d) the defendant's negligence caused the bushfire because had the inspectors not been negligent, the trees would have been cut back or removed to make sure that they could not contact the powerline.

The full allegations and responses of the parties are set out in the statement of claim and defences which may be accessed at the website <http://maddenslawyers.com.au/class-actions/2014-jack-river-bushfire/legal-documents/>

## **Proposed Settlement**

The parties have agreed to a settlement of the class action, under which the defendants have agreed to pay \$10,500,000 (\$10.5 million) without admission of liability. AusNet and Murphy has each agreed to pay \$5,250,000 (\$5.25 million) towards the settlement.

The settlement cannot take effect without Court approval. The plaintiff has asked the Court to approve the settlement and to approve:

- (a) the payment of the plaintiff's legal costs from the settlement sum; and
- (b) a scheme for the distribution of the balance of the settlement sum (**Settlement Distribution Scheme**).

The Court will consider whether or not to approve the settlement, the plaintiff's legal costs and the Settlement Distribution Scheme on 21 November 2016.

If the settlement is approved, you will be bound by it and you will not be able to bring any case against either of the defendants for any loss suffered as a result of the Jack River bushfire.

To support the settlement approval, the plaintiff will give the Court a privileged and confidential written opinion from the barristers who have represented him in the class action. As a client of Maddens Lawyers in the class action, you are entitled to request a copy of the opinion. It may assist you in considering your response to the proposed settlement.

## Legal Costs

If the settlement is approved, the plaintiff's legal costs payable to Maddens Lawyers, including the costs of administering the Settlement Distribution Scheme, will be paid from the settlement sum of \$10.5 million.

The plaintiff's costs will be assessed by an independent costs assessor and the assessment will be provided to the Court for approval. Only costs approved by the Court will be payable.

### How Much are the Legal Costs?

Until the costs are assessed and approved by the court, it is not possible to tell you precisely how much the plaintiff's costs will be. As a preliminary indication only, Maddens Lawyers estimates that the total costs will not exceed \$2,500,000 (\$2.5 million). A breakdown of this estimate is provided in the table below:

Item	Amount
Court fees (including filing & transcription fees)	\$2,827.61
Experts' fees	\$28,414.50
Counsel's fees	\$190,602.50
Discovery costs (Law In Order)	\$26,815.25
Loss assessment fees	\$86,450.95
Mediation expenses	\$3,066.34
Solicitor expenses	\$7,228.12
Advertising costs	\$29,024.60
Miscellaneous	\$5,798.08
Professional fees	\$1,590,062.31
Anticipated costs of settlement approval	\$300,000.00
Anticipated administration costs of distribution of	\$100,000.00

the settlement pool	
TOTAL:	\$2,370,290.26

Maddens Lawyers will notify you once the independent costs assessors report is received and you will be given an opportunity to read the report should you wish to do so.

**What Costs will You be Liable for?**

If the settlement is approved, the plaintiff's costs incurred in running the class action for the benefit of all of the registered group members will be paid out of the overall settlement sum received from the defendants. There will not be any additional liability for those costs for group members.

An estimate of your contribution to the total legal costs (based on the indicative preliminary estimate for costs of \$2.5 million) is set out in the covering letter to this notice.

If you wish, you may separately engage lawyers to represent you in the settlement approval and assessment process. Should you chose to do so, you will need to make separate arrangements with those lawyers for the payment of their fees. They will not be deductible from the settlement sum.

**Plaintiff's Reimbursement Payment**

If the settlement is approved, the plaintiff will receive \$10,000 from the settlement sum. This payment is intended to compensate him for the personal burden of being the lead plaintiff, a role which has benefitted the group members as a whole. It is in addition to any amount he may be entitled to by way of compensation for loss suffered in the Jack River bushfire.

**Distribution of the Balance of the Settlement Sum**

If the settlement is approved, the balance of the settlement sum will be distributed to Registered Group Members and to Registered Insurers.

All Registered Group Members will receive an equal proportion of their assessed loss and all Registered Insurers will receive a refund of the same proportion of the insurance payments which they made to Registered Group Members in respect of the assessed loss. Maddens Lawyers estimates that that proportion will be at least 75%. The precise proportion will only be known once the amount of the legal costs to be deducted from the settlement sum is known.

For example (assuming legal costs are \$2.5 million):

- (a) if a Registered Group Member suffered assessed losses of \$20,000, none of which was insured by a Registered Insurer, the Registered Group Member will receive no less than \$15,000;
- (b) if a Registered Group Member suffered assessed losses of \$20,000 and received a \$10,000 insurance payment from a Registered Insurer:
  - (i) the Registered Group Member will receive no less than \$7,500 (being 75% of uninsured loss); and

- (ii) the Registered Insurer will receive no less than \$7,500 (being 75% of the insurance payment).

An estimate of your assessed loss and an estimate of the compensation that you will receive if the settlement is approved (based on the indicative estimate for legal costs of \$2.5 million) is set out in the covering letter to this notice.

The assessed loss of the plaintiff and each Registered Group Member will be determined by the Administrator of the Settlement Distribution Scheme. The determination will be based on the information which Maddens Lawyers has received and obtained in relation to each Registered Group Member's loss and damage. That information includes information provided by Registered Group Members and their insurers and assessments conducted by an independent loss assessing firm, RMCg, which was engaged to assess property loss and damage.

### **What You Must Do**

There are only two (2) options which you must consider.

**Option A**     **If you support the settlement** then you do not need to do anything. If the settlement is approved, you will be entitled to receive your share of the settlement sum in accordance with the Settlement Distribution Scheme.

**Option B**     **If you oppose the settlement and wish to object** then you must complete the "Notice of Objection to Proposed Settlement" which is Annexure A to this Notice. You must return the Notice to Maddens Lawyers before **4pm on 14 October 2016**, and be ready to come to Court to argue your objection. You may need to advise the Court whether you are willing to replace Mr Ramsay as the lead plaintiff to continue the class action.

**Please note:** even if you take this Option B and object to the proposed settlement and the Court nonetheless approves the settlement, you will still be entitled to receive your share of the settlement sum in accordance with the Scheme.

If you are not sure what to do, you should contact Maddens Lawyers or seek independent legal advice. You must act quickly because the deadline for or objections is **4pm on 14 October 2016**.

### **When will your Objection be Considered**

The Court has ordered that any objections to the proposed settlement (from group members who take Option B above) will be heard by the Court at the Supreme Court, La Trobe Valley 134 Commercial Road, Morwell, Victoria on **21 November 2016**.

If there are no objections, or the objections are overruled, then the proposed settlement will be given final approval by the Court. It will then take effect. When it takes effect, Registered Group Members will have their claims assessed in accordance with the Settlement Distribution Scheme to determine their compensation entitlements.

## **Addresses for questions**

If you have any questions about the settlement or this notice, you can contact Maddens Lawyers at any time, or seek your own independent legal advice.

## **Contact details for Maddens Lawyers**

Att: Sophie Maraldo  
Jack River Bushfire Class Action  
Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Telephone: (03) 5560 2000  
Email: [smm@maddenslawyers.com.au](mailto:smm@maddenslawyers.com.au)

## **Contact details for the Supreme Court of Victoria**

Note: Questions you have concerning the matters contained in this notice should not be directed to the Court.

Att: Kate Clark  
Deputy Registrar – Common Law  
Supreme Court  
Ground Floor, 436 Lonsdale Street, Melbourne 3000  
Telephone: 03 9603 9300  
Email: [kate.clark@supremecourt.vic.gov.au](mailto:kate.clark@supremecourt.vic.gov.au)

**Annexure A**

**Ramsay v AusNet Electricity Services & Anor SCI 2014 / 05162**

Jack River Class Action

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

The person identified below:

1. Was affected by the Jack River bushfire;
2. Is a group member in this class action;
3. Wishes to object to the proposed settlement of the class action.

The group member's contact details are as follows:

Name:

Telephone number:

Postal address:

Email address:

Medicare No:

Signed:

(If not the named group member, please state the relationship to group member:

The group member is a registered group member: Yes / No (circle one)

The group member has read the "Notes for Objectors" below: Yes / No (circle one)

Notes for Objectors: Order 8 of the Court's Orders made on **4 August 2016** require that Objectors deliver to Maddens Lawyers, by **4.00 pm** on **14 October 2016**, any written submissions (not exceeding 2 pages in length) and any affidavit evidence the Objector wishes to rely on in support of the their objection to the proposed settlement.