

## **Beechworth Class Action - procedure for interim distributions**

The Settlement Agreement in the Beechworth Class Action includes a procedure for group members' claims to be assessed by independent assessors. Following each assessment, the representatives of that group member, and the solicitors for the defendants, meet and try to agree a final valuation for the particular claim. If the group member agrees to the final valuation, the claim is settled for that value. If a final valuation cannot be agreed, the Settlement Agreement includes provisions for a disputes-resolution procedure.

The original Settlement Agreement also provided that once a certain value of claims had been resolved, or 10 months had passed from the time the settlement was agreed, the claims which had been resolved by that time could be the subject of an "interim distribution". This provision recognised that it would take time to resolve all claims, and it was desirable to allow some payment to resolved claims as early as possible, provided that doing so did not disadvantage other claims which were yet to be resolved. The interim distributions can only be for a limited portion of the amount payable for the resolved claims, since the final amount actually payable for any given claim will depend on the amounts payable for all claims, and on the final total legal costs of the class action.

The claims assessment procedure has been rolling out for the last few months. Early experience identified and resolved some administrative issues, and a number of issues regarding the principles to be applied by the parties in assessing various types of loss. It also demonstrated that the number of "approved" loss assessors needed to be increased, in light of the workload involved in completing the assessments. Additional assessors have now been agreed and have commenced their assessment work.

The early issues meant that the process for resolving claims was initially slower than expected. It is hoped that the process will move more quickly now, especially as the additional assessors deliver their reports.

### **Court permits additional interim distributions**

On 29 July 2013 the plaintiffs and the defendants asked the Supreme Court to approve a modification of the procedure for interim distributions. The purpose of the modification is to allow up to three interim "batches" of resolved claims to receive interim distributions, rather than just one batch. The change will mean that group members whose claims are resolved in time to be included in one of the three batches will be able to receive a portion of their assessed entitlements at an earlier date than if they had to wait for all claims to be finalised.

The Court has a continuing role in supervising the settlement of the Class Action. At the hearing on 29 July the judge questioned the parties to make sure that additional interim distributions would not involve any disadvantage to those group members whose claims took longer to resolve. The plaintiffs' representatives explained to the Court why they expected that the additional interim distributions would not change the final compensation payments to any group member, even if the group member was in the last group of claims to be finalised.

The transcript of the hearing in Court on 29 July 2013 is available by clicking [here](#).

At the end of the hearing the Court approved the use of more than one interim distribution.

### **What will happen next**

By early August 2013 two (2) batches of resolved claims will have been subject to interim distributions. The total value of those claims is about \$17,687,350.75, so the compensation at 45% means a settlement payment for those claims of \$7,959,307.82. Only 50% of that compensation will be paid in the interim distributions. The balance will be held in reserve until all group members' claims have been finalised.

The solicitors for the group members (the law firms Nevin Lenne & Gross, and Maddens Lawyers), are continuing to help clients with the preparation of their claim books. The books are sent to the approved assessors. When the assessors' reports are delivered, the solicitors for the group member meet with the defendants' solicitors and try to negotiate a resolution agreeable to the group member. There is no resolution if the group member does not agree to it.

This process will continue over the coming months. Claims are processed as quickly as practicable but inevitably some claims will be reached sooner or be easier and quicker to resolve than other claims. Nevin Lenne & Gross and Maddens Lawyers are aiming to be in a position to make a further interim distribution in October 2013, and a distribution to the remaining claims in early 2014. At that time it is hoped that the legal costs will be largely finalised, so that all claims can be paid the balance of their individual entitlements after their share of the legal costs has been deducted.

If you have any questions regarding the claims assessment procedure you should contact Nevin Lenne & Gross on (03) 5752 1255 or Maddens Lawyers on (03) 5560 2000.