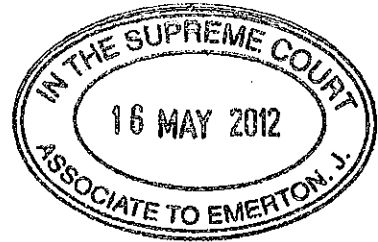


IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION



S CI 2010 01978

BETWEEN:

PAUL ANTHONY MERCIECA

First Plaintiff

AMELIA JANE COOMBES

Second Plaintiff

- and -

SPI ELECTRICITY PTY LTD (ACN 064 651 118) & Ors
(According to the schedule)

Defendants

ORDER

JUDGE: The Honourable Justice Emerton

DATE MADE: 16 May 2012

ORIGINATING PROCESS: Writ filed 15 April 2010

HOW OBTAINED: On return of the Order of the Honourable Justice Dixon made 7 March 2012

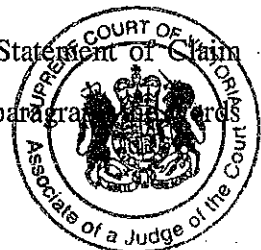
ATTENDANCE: Mr T Tobin, Senior Counsel with Mr L Armstrong of Counsel for the Plaintiffs.
Ms N Wearne, the Solicitor for the Third and Fourth Defendants.

OTHER MATTERS: None.

THE COURT ORDERS THAT:

Public authority exclusion orders

1. The group definition in paragraph 1 of the Further Amended Statement of Claim filed 14 February 2012 be amended by adding to the end of the paragraph



“, but excluding municipal councils and other Commonwealth, State or Territory authorities or instrumentalities.”

Approval of Settlement

2. Pursuant to sections 33V, 33ZF, 33ZG and 33ZJ of the *Supreme Court Act 1986* (Vic) (the ‘Act’), settlement of the proceeding upon the terms set out in the document titled “Settlement Deed” signed by the parties (‘Settlement Deed’) be approved.
3. Pursuant to section 33ZF of the Act, persons who filed Notices of Opting Out in the proceeding have leave to withdraw the said Notices and resume group membership by registering with the Plaintiffs’ solicitors in accordance with paragraph 4 below.

Class closure – “Claims Registration”

4. Pursuant to section 33ZG of the Act, any group member (including persons referred to in paragraph 3 above) who wishes to claim compensation in respect of the claims made on their behalf in the proceeding register their claims with either Nevin Lenne & Gross Solicitors or Maddens Lawyers (collectively ‘the Plaintiffs’ solicitors’) by 29 June 2012, in default of which the group member shall not, without further order of the Court or the consent of the Defendants, be entitled to participate in or obtain any payment pursuant to the claims assessment procedure set out in the Settlement Deed.

Costs contribution by participating group members

5. Pursuant to section 33ZF, alternatively section 33ZG, alternatively the inherent jurisdiction of the Court:
 - (a) each group member who becomes entitled to a payment of compensation in consequence of the Settlement Deed apply the compensation entitlement first in reimbursement of the Plaintiffs for the difference between those costs



incurred by the Plaintiffs in respect of the common questions in the proceeding and recovered from the Defendants ('recovered costs'), and the total costs incurred by the Plaintiffs in respect of the common questions in the proceeding (that difference being the Plaintiffs' 'unrecovered costs'); and

- (b) the reimbursement amount payable by each group member referred to in (a) be calculated by multiplying the total amount of the Plaintiffs' unrecovered costs by the proportion which the individual group member's compensation entitlement bears to the total value of all compensation entitlements assessed in favour of group members.

6. The reimbursements ordered pursuant to paragraph 5 above be payable and paid to the Plaintiffs' solicitors, and the said solicitors have leave to calculate and deduct the reimbursement payment of each group member prior to disbursing from their trust account the balance of the compensation entitlement of the group member.

Settlement Approval and Claims Registration – notice to group members

7. Pursuant to sections 33X and 33Y of the Act, the form and content of the notice to group members set out in Annexure A to these Orders ('Settlement Approval Notice'), informing them of the making of orders 1 to 6 inclusive above, be approved.
8. Pursuant to section 33X of the Act, by 4:00pm on 30 May 2012, the Settlement Approval Notice be given to group members by the Plaintiffs, by their solicitors, causing the notice to be:
 - (a) published in two weekday editions of the Border Mail newspaper;
 - (b) published in one weekday edition of each of:



- (i) The Myrtleford Times newspaper;
 - (ii) The Weekly Times newspaper;
 - (iii) The Herald-Sun; and
 - (iv) The Australian newspaper;
- (c) where the database of registered group members maintained by the Plaintiffs' solicitors contains:
- (i) an email address for a group member – emailed to that address;
 - (ii) a postal address for a group members – sent by ordinary pre-paid post to that postal address;
- (d) uploaded to the website of the Plaintiffs' solicitors; and
- (e) uploaded to the Court website.
9. By 4:00pm on 7 June 2012, the Plaintiffs by their solicitors file and serve an affidavit as to compliance with Order 8 above.

Other matters

10. Pursuant to section 33ZF of the Act, the Plaintiffs, their solicitors, and the Defendants each have leave to apply to the Court for orders in respect of any issue arising in relation to the administration of the Settlement Deed.
11. Pursuant to section 33ZF of the Act, the hearing of any application for orders pursuant to paragraph 10 above be conducted by the trial judge or otherwise as he may direct.
12. The Plaintiffs' summons filed 7 March 2012 is adjourned *sine die*.



DATE AUTHENTICATED: 16 May 2012



The Honourable Justice Emerita



Annexure A

BEECHWORTH BUSHFIRE CLASS ACTION

NOTICE OF COURT APPROVAL OF SETTLEMENT

Persons who suffered loss of or damage to property as a result of the Beechworth bushfire on Black Saturday, 7 February 2009 should **TAKE NOTICE** that a **SETTLEMENT** of the class action on behalf of victims of the fire has now been **APPROVED** by the Supreme Court of Victoria.

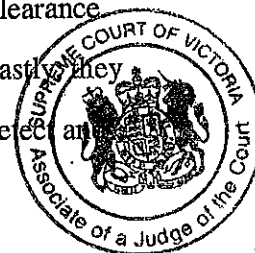
If you are, or think you might be, a person who suffered loss of or damage to property as a result of the Beechworth bushfire, you should **READ THIS NOTICE CAREFULLY AS IT WILL AFFECT YOUR RIGHTS.**

Beechworth Bushfire Class Action

The Beechworth Bushfire Class Action was commenced in the Supreme Court of Victoria by the Plaintiffs, Paul Mercieca and Amelia Coombes. The Plaintiffs bring the action on their own behalf and on behalf of all persons who suffered loss of or damage to property as a result of the fire which started on the eastern edge of the Buckland Gap Road, three kilometres south of Beechworth in the State of Victoria on 7 February 2009 (“the **Beechworth fire**”). Those other persons are called “**group members**” in the class action.

The Defendants to the class action are SPI Electricity Pty Ltd (“SP AusNet”), Eagle Travel Tower Services Pty Ltd (“Eagle”), the Secretary to the Department of Sustainability & Environment (“DSE”), and Parks Victoria.

Briefly, the Plaintiffs allege that the fire started when a tree fell across an SP AusNet powerline, pulling down the line and causing it to “arc” against a powerpole. They allege that SP AusNet was negligent in failing to keep the powerline clear of hazardous trees, and also in the operation of its “reclosing” circuit-breaker devices. They also allege that SP AusNet’s vegetation clearance contractor, Eagle, was negligent in conducting vegetation clearance assessments. Lastly, they allege (in the alternative) that DSE and Parks Victoria were negligent in failing to de-



remove the hazardous tree from its location in a national park. The Plaintiffs seek compensation and other remedies on their own behalf, and on behalf of all the group members as defined.

Some of the claims made by the Plaintiffs are also made as between Defendants. All of the Defendants deny any liability, both on the Plaintiffs' claims and on the various cross-claims between them.

The claims which the Plaintiffs make against the Defendants are set out in a "Further Amended Statement of Claim". A copy of that document can be viewed:

- (a) at the offices of the Plaintiffs' solicitors Nevin Lenne & Gross (who are acting for the Plaintiffs jointly with another firm, Maddens Lawyers). The Nevin Lenne & Gross office is at Crystal Court, 25 South Street in Wodonga; or
- (b) on the website of Nevin Lenne & Gross at http://www.nlgsolicitors.com.au/attachments/Further_Amended_SofC_12_02_06.pdf;
or
- (c) on the website of Maddens Lawyers at <http://www.maddenslawyers.com.au/Bushfire-Compensation/2009-Bushfires/Beechworth-Mudgegonga-Bushfire.aspx>; or
- (d) at the Supreme Court Registry in the Courts Complex at 5 Elgin Boulevard in Wodonga or on the Supreme Court website at www.supremecourt.vic.gov.au.

Similarly, the Defendants' defences and cross-claims may be inspected at the offices or websites listed above.

The trial of the class action was scheduled to commence at Wodonga on 5 March 2012, and was due to run for 8 weeks. Shortly prior to commencement of the trial, the Plaintiffs and the Defendants agreed upon terms for a settlement of the class action. As a result the trial was adjourned.



Settlement of the class action

The settlement agreement between the parties is set out in a "Deed of Settlement" ("Deed"). The agreement recorded in the Deed was conditional on the Supreme Court approving the settlement. That approval was granted by the Court on 16 May 2012.

The grant of Court approval for the Settlement Deed means that the settlement is binding on all persons who fit the definition of "group members". This means that the arrangements set up by the Deed are now the only way for group members to claim compensation for their losses. If you are a group member but do not follow the claims procedures set out in the Deed, you will lose your rights to compensation for losses suffered as a result of the Beechworth Bushfire. The claims procedure is explained below.

Group members MUST REGISTER to claim compensation

Under the Settlement Deed, and orders made by the Court, all persons who wish to claim compensation for the losses and damage they suffered as a result of the Beechworth Bushfire must register as "participating group members".

To register, group members **MUST** complete the "Group Member Registration Form" shown at the bottom of this notice and send it to either Nevin Lenne & Gross Solicitors, or Maddens Lawyers, **BEFORE 30 JUNE 2012**.

If you are a group member but you do **not** register, you will **lose** your right to claim compensation from the Defendants for any property loss or damage you suffered as a result of the Beechworth bushfire. If you suffered personal injury as well as property loss, you will lose your rights to claim compensation for the personal injury as well.

What if you "opted out" of the class action?

Some people who were group members "opted out" of the class action by filing a "Notice of Opting Out" during 2011. Such persons are **not** currently group members.



Under the Settlement Deed, however, persons who opted out will be permitted to withdraw their Notices of Opting Out, resume group membership and claim compensation using the “claims assessment procedure” in the Settlement Agreement.

If you opted out, but now wish to resume group membership and participate in the settlement, you may do so by **registering** as a group member with Nevin Lenne & Gross Solicitors or Maddens Lawyers using the Group Member Registration Form below. Again, the form must be returned to one of the solicitors firms **BEFORE 30 June 2012**.

After registration – “claims assessment procedure”

Persons who register as group members with Nevin Lenne & Gross or Maddens by 30 June 2012 will be required to prepare “Claim Books” identifying the loss and damage they suffered as a result of the Beechworth Bushfire. The Claim Books will need to include all available supporting documentation.

Each claim will then be assessed by independent assessors. Once each claim has been assessed, the Defendants will pay compensation equal to forty-five percent (45%) of the assessed value, being 40% of the value of the claim plus 5% on account of interest. The compensation will be plaid 60% by SP AusNet, 25% jointly by DSE and Parks Victoria and 15% by Eagle.

Further details of the Settlement Agreement, including an explanation of the “claims assessment procedure”, may be viewed at the websites of

Nevin Lenne & Gross – www.nlgsolicitors.com.au or

Maddens Lawyers – www.maddenslawyers.com.au

Legal assistance and legal costs

You can obtain more information about preparing the “Claim Book” from the websites of Nevin Lenne & Gross or Maddens Lawyers, identified above.



There is no requirement that you engage lawyers to help you prepare a Claim Book, or participate in the "claims assessment procedure". If you do wish to engage a lawyer, you may use Nevin Lenne & Gross Solicitors, Maddens Lawyers, or other lawyers as you choose. The lawyers will charge fees for doing that work. The Defendants have agreed they will pay a portion of any legal costs incurred by a group member in the claims assessment procedure (as set out in the Settlement Deed), but the remainder of any fees will be payable by each group member.

You should also note that the Defendants will be required to pay some but not all of the legal costs the Plaintiffs have incurred in running the main or "common" issues in the class action. The Court has ordered that the "common issue" costs not payable by the Defendants be shared between all the group members who recover compensation as a result of the settlement. Each group member will be required to contribute to those "unrecovered" costs in proportion to the amounts which each of them becomes entitled to receive as a result of the settlement. These amounts will be fixed at the end of the claims assessment procedure, and will be deducted from any compensation you become entitled to receive.

What group members must do

The Settlement Deed is binding on every group member, and the "claims assessment procedure" is the only way for group members to recover compensation for the losses caused by the Beechworth Bushfire.

If you are a group member and do **not** register your claim with either Nevin Lenne & Gross or Maddens Lawyers by 30 June 2012 you will **not** be entitled to participate in or obtain any payment under the Settlement Deed, and you will **lose** the right to make any claim against SP AusNet or the other Defendants for loss of or damage to property as a result of the Beechworth bushfire.

Please consider the above matters carefully, and if you wish to claim compensation then make sure you return your "Group Member Registration Form" to Nevin Lenne & Gross or Maddens Lawyers as soon as possible. **PLEASE ACT PROMPTLY.**



BEECHWORTH BUSHFIRE CLASS ACTION

GROUP MEMBER REGISTRATION FORM

To: Beechworth Bushfire Class Action – Settlement Administrator

Maddens Lawyers

PO Box 320

WARRNAMBOOL VIC 3280

Nevin Lenne & Gross Solicitors

57 Clyde Street

MYRTLEFORD VIC 3737

or Crystal Court

25 South Street

WODONGA VIC 3690

Fax: (03) 5560 2099

(03) 5752 1463

Email: info@maddenslawyers.com.au

vhaccou@nlgolicitors.com.au

Name of Group Member:

Is the Group Member already a **client** of Maddens Lawyers? Yes / No (circle one)

Is the Group Member already a **client** of Nevin Lenne & Gross? Yes / No

Did the Group Member previously file a "*Notice of Opting Out*"? Yes / No

Dated:

Signed:

Name of person

signing (print)

Telephone

Email

Postal address

.....

.....



SCHEDULE OF PARTIES

S CI 2010 01978

BETWEEN:

PAUL ANTHONY MERCIECA

First Plaintiff

AMELIA JANE COOMBES

Second Plaintiff

- and -

SPI ELECTRICITY PTY LTD (ACN 064 651 118)

First Defendant

**EAGLE TRAVEL TOWER SERVICES PTY LTD
(ACN 070 093 766)**

Second Defendant

**SECRETARY TO THE DEPARTMENT OF
SUSTAINABILITY & ENVIRONMENT**

Third Defendant

PARKS VICTORIA

Fourth Defendant

AND BETWEEN:

SPI ELECTRICITY PTY LTD (ACN 064 651 118)

Plaintiff by Counterclaim

- and -

**EAGLE TRAVEL TOWER SERVICES PTY LTD
(ACN 070 093 766)**

First Defendant by Counterclaim

**SECRETARY TO THE DEPARTMENT OF
SUSTAINABILITY & ENVIRONMENT**

Second Defendant by Counterclaim

PARKS VICTORIA

Third Defendant by Counterclaim

PAUL ANTHONY MERCIECA

Fourth Defendant by Counterclaim

AMELIA JANE COOMBES

Fifth Defendant by Counterclaim

16 May 2012

