

**SHORT MINUTES OF ORDER****COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/306222

**TITLE OF PROCEEDINGS**

Plaintiffs	<b>Innes Creighton</b>
Defendants	<b>Australian Executor Trustees Limited ACN 007 869 573</b>

**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/171592

**TITLE OF PROCEEDINGS**

Plaintiffs	<b>John Smith and Rosemary Smith</b>
Defendants	<b>Australian Executor Trustees Limited ACN 007 869 573</b>

**PREPARATION DETAILS**

Filed for	<b>Willis Australia Limited, Second Cross-Defendant</b>
Filed in relation to	<b>First Cross-Claimant and Second Cross-Claimant, First Cross-Claim Statement</b>
Legal representative	Chern Tan, Minter Ellison
Legal representative reference	SCXT:SKZR 1136331
Contact name and telephone	Daniel Bunoza, (02) 9921 8715
Contact email	<a href="mailto:daniel.bunoza@minterellison.com">daniel.bunoza@minterellison.com</a>

The Court orders that:

**Evidence**

- 1 The time for compliance with order 5 made on 8 November 2017 (service of the Cross-Defendants' lay evidence) be extended to 24 November 2017.
- 2 The time for compliance with order 14 made on 15 December 2016 (service of Cross-Claimants' expert evidence and lay evidence in reply) be extended to 12 January 2018.
- 3 The time for compliance with order 15 of the orders made by the Court on 3 October 2017 (cross-defendants' expert evidence) be extended to 28 February 2018.
- 4 Order 1 of the orders made by the Court on 9 November 2017 is vacated insofar as it relates to order 16 (expert's conclave) of the orders made by the Court on 3 October 2017.

**Discovery**

- 5 The First Cross-Defendant is to provide discovery of the documents identified in Annexure A to these orders in two tranches, with the first tranche to be provided by 6 December 2017 and the second tranche to be provided by 24 January 2018.
- 6 The Cross-Claimant is to provide discovery of the documents identified in Annexure B to these orders by 29 January <sup>2018</sup> ~~2017~~, with such discovery to be given in tranches as documents become available for discovery.
- 7 The Second Cross-Defendant is to provide discovery of documents within the following category by 6 December 2017:

*All documents recording or referring to any recommendations by or on behalf of the second cross-defendant in relation to the following policies of insurance:*

- (a) *policy number 311731 for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;*
- (b) *policy number 311731 for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012;*
- (c) *policy number 311731 for the period of insurance from 4pm on 31 October 2012 to 4pm on 31 October 2013;*
- (d) *policy number 311731 for the period of insurance from 4pm on 31 October 2013 to 4pm on 31 October 2014; and*

(e) *policy number 311731 for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015.*

8 The Second Cross-Defendant to provide supplementary discovery of the documents referred to in order 2 of the orders made by Ball J on 21 September 2016 by 24 November 2017.

**General**

9 Liberty to apply on two days' notice.

**SIGNATURES**

**First Cross-Claimant**

Australian Executor Trustees Limited, the First Cross-Claimant, consents.



Signature of legal representative

Capacity Corrs Chambers Westgarth, Solicitors for the Cross- Claimants

Date of signature

**Second Cross-Claimant**

IOOF Holdings Limited, the Second Cross-Claimant, consents.



Signature of legal representative

Capacity Corrs Chambers Westgarth, Solicitors for the Cross- Claimants

Date of signature

**First Cross-Defendant**

Swiss Re International SE, the First Cross-Defendant, consents.

Signature of legal representative

Capacity Wotton Kearney, Solicitors for the First Cross- Defendant

Date of signature

**Second Cross-Defendant**

Willis Australia Limited, the Second Cross-Defendant, consents.

Signature of legal representative

Capacity Minter Ellison, Solicitors for the Second Cross- Defendant

Date of signature 21 / 11 / 17

**Third Cross-Defendant**

Liberty Mutual Insurance Company, the Third Cross-Defendant, consents.

Signature of legal representative

Capacity Clyde & Co, Solicitors for the Third and Fourth Cross- Defendants

Date of signature

**Fourth Cross-Defendant**

Chubb Insurance Australia Limited, the Fourth Cross-Defendant, consents.

Signature of legal representative

Capacity Clyde & Co, Solicitors for the Third and Fourth Cross- Defendants

Date of signature

**SEAL AND SIGNATURE**

Court seal

Signature

Capacity

Date made or given

Date entered

**NOTICE**

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

**Annexure A****Categories of documents for discovery from Swiss Re International SE**

1. The files maintained by the underwriters at AXIS Speciality Europe SE (now SwissRe International SE (Australian Branch)) (**AXIS**) in respect of the placement and/or renewal of each of the following policies:
  - (a) policy number 311731 for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011; and
  - (b) policy number 311731 for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012,to the extent not previously produced in response to Order 1A of the orders made by Ball J on 16 June 2017.
- 1A. All correspondence between employees of AXIS and between AXIS and Willis Australia Limited in respect of the placement and/or renewal of the following policies:
  - (a) policy number 311731 for the period of insurance from 4pm on 31 October 2012 to 4pm on 31 October 2013;
  - (b) policy number 311731 for the period of insurance from 4pm on 31 October 2013 to 4pm on 31 October 2014; and
  - (c) policy number 311731 for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015 (together, the Relevant Policies),to the extent not previously produced in response to Order 1A of the orders made by Ball J on 16 June 2017
2. All correspondence between AXIS and Liberty Mutual Insurance Company or Chubb Insurance Company of Australia Limited referring to the notification of circumstances by Australian Executor Trustees Limited (**AET**) (through Willis) to AXIS in 2012 as referred to in:
  - (a) paragraph 27 of the First Cross-Claim Second Further Amended Statement of Cross-Claim in Supreme Court of NSW Proceedings 2015/306222 (the Creighton proceeding); and
  - (b) paragraph 26 of the First Second Amended Statement of Cross-Claim in Supreme Court of NSW Proceedings 2015/171592 (the Smith proceeding).

3. All internal documents with AXIS recording to the consideration by AXIS of whether or not to grant indemnity to AET in or about October 2014 in relation to the order for examination issued to Stuart Howard to AET as referred to in the email from Fraser Robyn of AXIS to Kelly Butler of Willis sent on 8 October 2014.
4. All documents recording any underwriting authority given by AXIS to the following persons to underwrite risks which applied during the period between 2010 and 2015 (inclusive):
  - (a) Robin Singh of AXIS; and
  - (b) Anthony Hynes of AXIS.
5. All internal documents recording discussions involving Anthony Hynes (including emails into which he was copied), in relation to AET's notification of circumstances that may give rise to a claim referred to in paragraph 2 above or AET's potential exposure to liability arising from the debentures issued by Provident Capital Limited.
6. All communications between Anthony Hynes, Graham Evans and/or Dax Guilmohamed in relation to the IOOF account in the period 1 July 2012 to 30 November 2015.
7. The updated claims report provided by the AXIS claims team to Anthony Hynes and/or Leia de Closey in November 2014 to assist them in determining renewal terms for IOOF's professional indemnity policy for the 2014/2015 policy period.
8. The updated "burning loss analysis" carried out by AXIS staff to assist in determining renewal terms for IOOF's professional indemnity policy for the 2014/2015 policy period referred to in paragraph 65 of the affidavit of Anthony Hynes dated 8 August 2017.
9. Not pressed.
10. All correspondence recording or referring to the request and provision of an endorsement similar to the "AET Endorsement" referred to in paragraphs 81 and 88 of the affidavit of Anthony William Hynes dated 8 August 2017 for Australian Unity (as the insured) for the period Mr Hynes was involved in underwriting that account.

**Notes:**

The word "*document*" in the above categories has the same meaning as in the *Interpretation Act 1987* (NSW).

**Annexure B****Categories of documents for discovery from the Cross-Claimants**

1. All documents recording any review of the following policies of professional indemnity insurance or any of their terms, underwritten by AXIS Speciality Europe SE (now SwissRe International SE (Australian Branch)) (AXIS) for IOOF Holdings Limited (IOOF) and its subsidiaries including Australian Executor Trustees Limited (AET), including by any external legal advisers, prior to the placement of the following policies:
  - (a) policy number 311731 for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;
  - (b) policy number 311731 for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012;
  - (c) policy number 311731 for the period of insurance from 4pm on 31 October 2012 to 4pm on 31 October 2013;
  - (d) policy number 311731 for the period of insurance from 4pm on 31 October 2013 to 4pm on 31 October 2014; and
  - (e) policy number 311731 for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015 (together, the Relevant Policies).
2. All internal documents recording :
  - (a) meetings or telephone calls with Willis Australia Limited (Willis) regarding the "Insurable Risk Review" item of the scope of services offered by Willis in its tender response in July and August 2010;
  - (b) the "Insurable Risk Review" item of the scope of services offered by Willis in its tender response in July and August 2010; and
  - (c) Willis's recommendations in relation to the Relevant Policies, including but not limited to those contained in Willis's renewal reports.
3. Any document recording the conversation referred to in paragraph 22 of Michael Stanelos's affidavit sworn 29 June 2017.
4. Any internal documents recording :
  - (a) the conversation between Philip Joseph of AET to Michael Stanelos in about August or September 2007 regarding AET's corporate trust business as part

of completing proposal forms as described in paragraphs 23 and 24 of Mr Stanelos's affidavit sworn 29 June 2017; and

- (b) the attachment to the email sent by Philip Joseph of AET to Michael Stanelos on 10 June 2010 at 1.58pm.
5. Any internal documents in the period 1 December 2009 to 31 May 2010 relating to AET's business of acting as trustee in respect of debentures that was received by Rob Urwin of IOOF and those who he supervised in respect of the risk assessment and review referred to in paragraph 25 of Gary Riordan's affidavit of 4 July 2017.
  6. Any documents recording the discussions with the IOOF Leadership Group and individual executives about Rob Urwin's assessment and review referred to in paragraph 26 of Gary Riordan's affidavit of 4 July 2017, so far as they relate to AET's business of acting as trustee in respect of debentures.
  7. All board papers and minutes relating to:
    - (a) the "Insurable Risk Review" item of the scope of services offered by Willis in its tender response in July and August 2010;
    - (b) the risk assessment and review referred to in paragraph 25 of Gary Riordan's affidavit of 4 July 2017;
    - (c) Not used;
    - (d) the entry or proposed entry into and/or the terms or proposed terms (including but not limited to premiums payable) of the Relevant Policies; and
    - (e) any budget set for the cost of the Relevant Policies.
  8. All documents recording correspondence between Gary Riordan or Michael Stanelos and Willis regarding the "Insurable Risk Review" item of the scope of services offered by Willis in its tender response in July and August 2010.
  9. All correspondence (including emails) between IOOF and Willis attaching Willis's financial services guide and/or terms of business in the period 1 July 2010 to 30 November 2015.
  10. All documents referring to the exclusions referred to in (i) and (ii) below, as contained in:
    - (a) policy number 35927p15 for the period of insurance from 4pm on 30 November 2015 to 4pm on 30 November 2016; and/or



(b) any financial institutions professional indemnity policy for AET for the period of insurance from 4pm on 30 November 2016 to 4pm on 30 November 2017, including but not limited to documents created after AXIS, Liberty Mutual Insurance Company and Chubb Insurance Company of Australia Limited declined indemnity in respect of the claims the subject of Supreme Court of NSW Proceedings 2015/306222 and 2015/171592.

- (i) The exclusion of any claim directly or indirectly arising from the insolvency or external administration of any issuer of unlisted and/ or unrated debentures, and/ or
- (ii) The exclusion of any claim directly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures.

**Notes:**

The word "*document*" in the above categories has the same meaning as in the *Interpretation Act 1987* (NSW).

The word "internal" in the above categories means within IOOF, within any IOOF subsidiary and within the IOOF group of companies.

