

ORDERS**COURT DETAILS**

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

TITLE OF PROCEEDINGS

Plaintiffs **Innes Creighton**
Defendants **Australian Executor Trustees Limited**
ACN 007 869 794

TITLE OF THIS CROSS-CLAIM

First Cross-claimant **Australian Executor Trustees Limited**
Second Cross-claimant **IOOF Holdings Limited**
First cross-defendant **AXIS Specialty Europe SE**
Second cross-defendant **Willis Australia Limited**

COURT DETAILS

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

TITLE OF PROCEEDINGS

Plaintiffs **John Smith and Rosemary Smith**

Defendants **Australian Executor Trustees Limited**
ACN 007 869 794

TITLE OF THIS CROSS-CLAIM

First Cross-claimant **Australian Executor Trustees Limited**

Second Cross-claimant **IOOF Holdings Limited**

First cross-defendant **AXIS Specialty Europe SE**

Second cross-defendant **Willis Australia Limited**

FILING DETAILS

Filed for **Australia Executor Trustees Limited and IOOF Holdings Limited, Cross-Claimants**

Filed in relation to **Cross-claim**

Legal representative **Mark Wilks, Corrs Chambers Westgarth**

Legal representative reference **9116109**

Contact name and telephone **Mark Wilks, (02) 9210 6159**

Contact email **mark.wilks@corrs.com.au**

The Court orders that:

- 1 The first cross-defendant provide discovery of the documents identified in Annexure "B", in accordance with Part 21, Division 1 of the Uniform Civil Procedure Rules, on or before 7 October 2016.
- 2 The second cross-defendant provide discovery of the documents identified in Annexure "C", in accordance with Part 21, Division 1 of the Uniform Civil Procedure Rules, on or before 7 October 2016.
- 3 On or before 1 September 2016, the second cross-defendant provide to the cross-claimant a list of the 1,912 clients with finance-related businesses between the period of 2010 to 2015 referred to in paragraph 9(f) of the affidavit of Simone Maree Smith sworn 25 August 2016.
- 4 The costs of the cross-claimants' notices of motion filed 11 August 2016 be costs in the cause.
- 5 On or before 9 September 2016, the cross-claimants provide the first cross-defendant with particulars of the facts of which it is alleged the first cross-claimant gave notice in writing to the first cross-defendant in paragraphs 27, 28 and 29 of the amended statement of cross-claim in the Creighton proceeding and paragraphs 26, 27 and 28 of the amended statement of claim in the Smith proceeding.
- 6 On or before 23 September 2016, the first cross-defendant notify the cross-claimants of each of the said facts of which it contends the first cross-claimant did not give it notice in writing either at all or as soon as was reasonably practicable after the first cross-claimant became aware of the said fact.
- 7 Liberty to apply on three days' notice.

Annexure B**Categories of documents for discovery from AXIS Specialty Europe SE**

- 1 All documents recording or referring to the provision or potential provision of professional indemnity insurance by AXIS Speciality Europe SE (**AXIS**) and/or any related body corporate for IOOF Holdings Limited (**IOOF**) and/or Australian Executor Trustees Limited (**AET**), on terms which did not include an exclusion of claims arising, or which did not include an exclusion of claims arising indirectly, from the insolvency or external administration of any issuer of unlisted and/or unrated debentures, in the periods:
 - (a) from 1 August 2010 to 31 December 2011; and
 - (b) from 1 June 2013 to 31 December 2014.
- 2 [Not used]
- 3 All documents comprising the guidelines of AXIS and/or any related body corporate recording or referring to the basis upon which AXIS and/or any related corporate body could or should provide professional indemnity insurance cover to financial institutions in the Australian market of the same or similar nature to IOOF and/or AET in the period from 1 January 2010 to 30 June 2015.
- 4 All versions of the standard Financial Institutions Professional Indemnity Insurance Policy wording for the Australian market issued by AXIS and/or any related body corporate in the period 1 January 2010 to 30 June 2015.
- 5 All documents recording or referring to any claim or potential claim against AET in connection with Provident Capital Limited dated in the period 1 January 2015 to 3 September 2015.
- 6 All documents recording, referring to, or created in connection with:
 - (a) the letter from AXIS to Willis Australia Limited (Willis) dated 16 March 2015;
 - (b) the letter from AXIS to Willis dated 3 September 2015;with respect the proceeding brought by Innes Creighton against AET.
- 7 All correspondence between AXIS and the excess insurers in relation to the following policies of professional indemnity insurance underwritten by AXIS for IOOF and its subsidiaries:
 - (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; and
- (c) policy number 311731 for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015,

in relation to the claim or potential claim identified against AET at paragraph 5 above in the period 16 March 2015 to 3 September 2015.

Annexure C**Categories of documents for discovery from Willis Australia Limited**

- 1 [Not used]
- 2 All documents recording or referring to any identification, review, evaluation and/or analysis of AET's insured and/or insurable risks undertaken by or on behalf of Willis in the period 1 January 2010 to 30 June 2015:
 - (a) contained in the inboxes of any of John Grant, Alberto Piccenna, Sean Cray, Adam Berryman, Candace Lewis, Pegah Vaghaye, Allison Little, Kelly Butler and Andrew Dawson; or
 - (b) created by or retained in the hardcopy or electronic files of those employees.
- 3 All policy and/or procedure manuals (excluding insurance policies) maintained by or on behalf of Willis applicable to the provision of financial lines insurance broking services by Willis for clients in the period 1 January 2010 to 30 June 2015.
- 4 All correspondence between Willis and any insurer recording or referring to: (a) 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 (b) the exclusion of any claim directly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures, in connection with the provision or potential provision of professional indemnity insurance for IOOF and/or AET in the period 1 January 2010 to 30 June 2015.
- 4A All offers or proposals for the provision of professional indemnity insurance for IOOF and/or AET on terms which did not include either: (a) a clause excluding any claim directly or indirectly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures; or (b) a clause excluding any claim directly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures, in the period from 1 January 2010 to 30 June 2015.
- 5 All documents comprising the marketing of IOOF's professional indemnity risks in the periods prior to the entry into:
 - (a) policy number 311731 issued by AXIS Speciality Europe SE (AXIS) for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;

- (b) policy number 311731 issued by AXIS for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012; and
- (c) policy number 311731 issued by AXIS for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015.

6 [Not used].

7 All documents recording or referring to the negotiation of, and procurement by, Willis of the following policies of professional indemnity insurance for IOOF and its subsidiaries:

- (a) policy number 311731 issued by AXIS Speciality Europe SE (**AXIS**) for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;
- (b) policy number 311731 issued by AXIS for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012;
- (c) policy number 311731 issued by AXIS for the period of insurance from 4pm on 30 November 2014 to 4pm on 30 November 2015,

insofar as those documents include any reference to: (a) 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 (b) the exclusion of any claim directly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures.

8 [Not used]

9 In respect of 20 clients selected by the cross-claimants from a list of 1912 clients of Willis with finance related businesses between the period 2010 to 2015, all documents recording policies of professional indemnity insurance, or proposals or offers of such insurance, for a trustee or trustees with respect to debenture issuers under Chapter 2L of the *Corporations Act 2001* (Cth) (other than AET) on terms which did not contain either: (a) a clause excluding any claim directly or indirectly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures; or (b) a clause excluding any claim directly arising from the insolvency or external administration of any issuer of unlisted and / or unrated debentures, in the period between 1 January 2010 and 30 June 2015.

10 [Not used]

- 11 All documents recording or referring to any manuscript policy of professional indemnity insurance for IOOF and/or AET prepared by or on behalf of Willis in the period from 1 January 2013 to 30 June 2015.