

**Annexure A**

**SUPREME COURT OF NEW SOUTH WALES**

**MARGARET RITCHIE**

**v**

**ADVANCED PLUMBING AND DRAINS PTY LTD (in Liq.)**

**&**

**INSURANCE AUSTRALIA LIMITED T/AS CGU INSURANCE**

**(2017/00126664)**

**IMPORTANT NOTICE**

**REPRESENTATIVE ACTION REGARDING THE FIRE ON  
17 FEBRUARY 2017 AT CARWOOLA**

On 28 April 2017, Ms Ritchie (**the plaintiff**) commenced this representative proceeding or "class action" in the Supreme Court of New South Wales against Advanced Plumbing and Drains Pty Ltd (**the first defendant**). Insurance Australia Limited trading as CGU Insurance (**the second defendant**) was joined by the plaintiff as the second defendant to the proceeding on 23 August 2019.

This class action is brought by the plaintiff on her own behalf and on behalf of persons who suffered personal injury (whether physical or psychiatric) and/or loss or damage to property as a result of the fire that commenced in Carwoola, NSW, on 17 February 2017 (**Carwoola Fire Representative Action**). Persons fitting that description are defined in this proceeding as "**group members**". The group members also include any "legal personal representatives" of the estates of any deceased person who would otherwise have qualified as a group member.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this representative action is brought and who may be affected by it.

**If you think you may be a group member you should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you may wish to seek legal advice.

## **1. What is a representative proceeding?**

A representative proceeding is commonly known as a class action. It is an action that is brought by the plaintiff on her own behalf, and on behalf of group members against the defendants, where the plaintiff and the group members have similar claims against the defendants.

Group members are bound by any judgment or settlement entered into in the representative proceeding unless they choose to not participate by "opting out" of the proceeding. This means that:

(a) if the representative action is successful or settles, group members may be eligible for a share of any damages awarded by the court or settlement monies;

(b) if the representative action is unsuccessful, group members are bound by that result; and

(c) regardless of the outcome of the representative action, group members will not be able to pursue their claims against the defendants in separate legal proceedings unless they have opted out.

## **2. What is the Carwoola Fire Representative Action?**

On 17 February 2017, a bush fire commenced in the Carwoola region of NSW which affected a number of properties (**Carwoola fire**).

The plaintiff in the Carwoola Fire Representative Action alleges that the first defendant, Advanced Plumbing and Drains Pty Ltd, owed a duty of care to herself and the group members to take reasonable precautions against harm to their person and property arising from the first defendant's operation of a power cutting tool on a day of total fire ban.

The plaintiff alleges that the first defendant failed to take reasonable precautions in this regard and, as a result, the Carwoola fire commenced and caused the plaintiff and group members to suffer damage.

The first defendant held a policy of insurance with the second defendant, Insurance Australia Limited t/as CGU Insurance, at the time of the Carwoola fire. The second defendant has declined to indemnify the first defendant under that policy of insurance. The plaintiff alleges that the second defendant is obliged to indemnify the first defendant under the policy. The Court ordered that Insurance Australia Limited t/as CGU Insurance could be joined as a defendant to the proceeding on 23 August 2019 pursuant to s.5 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017*.

The plaintiff's claim is made on her own behalf and on behalf of group members. The allegations are detailed in the Amended Statement of Claim filed on 9 September 2019. The defendants deny liability in respect of the allegations and are defending the action on various grounds.

### **3. Are you a group member?**

Group members include persons who:

- (a) suffered personal injury (whether physical injury or psychiatric injury) as a result of the Carwoola fire; and/or
- (b) suffered loss of or damage to property as a result of the Carwoola fire; or
- (c) The legal personal representatives of the estates of any deceased person who came within paragraphs (a) or (b) at the time of the Carwoola fire.

### **4. What is opt out?**

The plaintiff in a representative proceeding does not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be group members by "opting out" of the representative proceedings. If you have been included as a group member in the Carwoola Fire Representative Action but you do not want to continue to be a group member, you can opt out now.

### **5. What should group members do?**

If you fit the definition of a "group member" in the representative proceeding there are three options available to you. If you wish to remain a group member, you can choose Option 1 or Option 2.

**Option 1:** If you wish to remain a group member and would like to make a claim for loss or damage you have suffered as a result of the Carwoola fire in this representative proceeding, you should contact Maddens Lawyers to tell them what your loss and damage is, as follows:

Postal:       Brendan Pendergast  
              Maddens Lawyers  
              PO BOX 320  
              Warrnambool VIC 3280

Email:       bae@maddenslawyers.com.au

Group members who register with the plaintiff's solicitors will be bound by the outcome of the representative proceeding. If the representative proceeding is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members. You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you, before your entitlement arises. You can choose to retain Maddens Lawyers, or other solicitors, to help you do this.

If the representative proceeding is unsuccessful, or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

If you wish to remain a group member, even if you do not wish to retain Maddens Lawyers to act for you as a client, you may wish to contact Maddens to “register” as a group member to ensure that future notices about the representative proceeding can be sent to you, or your legal representative, directly.

### **Option 2: Do Nothing**

**If you do nothing**, you will remain a group member and remain bound by any order, judgment or settlement in the representative proceeding. The plaintiff will continue to bring the proceeding on your behalf up to the point where the court determines the questions that are common to the claims of the plaintiff and the group members.

However, unless you identify yourself as a “group member” no one may be aware that you are a group member and you may not be able to share in any possible benefit flowing from the proceeding. You may also have to satisfy certain conditions before your entitlement to a share in any possible benefit arises.

It is likely that the Court will order notice be given to group members of any judgment in favour of the plaintiff and group members, or of any proposed settlement.

If the representative proceeding is unsuccessful, or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceeding.

### **Option 3: Opt Out**

**If you do not wish to be a group member** you should opt out of the proceeding by completing the “Opt Out Notice” below. If you opt out then you will cease to be a group member and will not be affected by any orders made in the representative proceeding.

If you wish to bring your own claim against the defendants, you should seek your own legal advice about your claim and the applicable time limit before opting out.

**You must decide what to do BEFORE 4:00pm on 17 January 2020.** If you want to opt out you must send your “Opt Out Notice” to the Supreme Court so that it arrives **before** that deadline.

### **6. Will you be liable for legal costs?**

Group members will not become liable for any legal costs simply by remaining or registering as group members. Group members in a representative action **are not** legally liable for the legal costs associated with bringing the proceedings, but may in some circumstances be called upon to contribute a sum by way of security for legal costs of the defendants.

However, if the proceedings are successful and there is a judgment or settlement that results in compensation becoming payable to group members, then:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maddens Lawyers or

other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim;

- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the representative proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiff in running the representative proceeding but which are not able to be recovered from the defendants. The plaintiff will ask the Court to make such an order if the occasion arises; and
- (c) Representative proceedings are often settled out of Court. If this occurs in this proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

#### **7. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Amended Statement of Claim and Defences, may be obtained by:

- telephoning Maddens Lawyers on 1800 815 228 and requesting a copy to be posted;
- inspecting them by visiting the Registry of the Supreme Court in Sydney at Level 5, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney NSW 2000 or on the Supreme Court website ([http://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_classaction/Carwoola-Bushfire-Class-Action.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Carwoola-Bushfire-Class-Action.aspx))

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact the plaintiffs' solicitors Maddens Lawyers on 1800 815 228, or seek your own legal advice. You should not delay in making your decision, as the deadline for opting out is **4:00pm on 17 January 2020**.

This notice is published pursuant to Orders made by the Supreme Court on **6 December 2019**.

## OPT OUT NOTICE

### COURT DETAILS

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Common Law                       |
| List        | General                          |
| Registry    | Sydney Registry                  |
| Case number | 2017/00126664                    |

### TITLE OF PROCEEDINGS

|                   |   |
|-------------------|---|
| Plaintiff         | <b>Margaret Ritchie</b>                               |
| First Defendants  | <b>Advanced Plumbing and Drains Pty Ltd</b>           |
| Second Defendants | <b>Insurance Australia Limited T/AS CGU Insurance</b> |

### FILING DETAILS

Filed for

[person opting out of representative proceedings]

Legal representative

Legal representative reference

Contact name and telephone

Contact email

### OPT OUT NOTICE

Name of person opting out

Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and

- 3 To the extent that I have a claim against the defendants(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

**SIGNATURE**

Signature of legal representative

OR

Signature of or on behalf of  
person opting out if not legally  
represented

Capacity

[eg solicitor, authorised officer of person opting out,  
person opting out]

Date of signature

**NOTICE TO PERSON OPTING OUT**

You must, within the time specified in the notice to group members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

**REGISTRY ADDRESS**

Street address Supreme Court of NSW  
Law Courts Building, Queen's Square  
184 Phillip Street  
Sydney NSW 2000

Postal address Supreme Court of NSW  
GPO Box 3  
Sydney NSW 2001

Telephone 1300 679 272