

*mmB*

15.12.16

**FIRST CROSS CLAIMS  
DEFENDANT'S / CROSS-CLAIMANTS' 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<br/>ACN 007 869 573</b> |

**TITLE OF CROSS-CLAIM**

|                  |                                                        |
|------------------|--------------------------------------------------------|
| Cross-Claimants  | <b>Australian Executor Trustees Limited &amp; Anor</b> |
| Cross-Defendants | <b>AXIS Speciality Europe SE &amp; Ors</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<br/>ACN 007 869 573</b> |

**TITLE OF CROSS-CLAIM**

|                  |                                                        |
|------------------|--------------------------------------------------------|
| Cross-Claimants  | <b>Australian Executor Trustees Limited &amp; Anor</b> |
| Cross-Defendants | <b>AXIS Speciality Europe SE &amp; Ors</b>             |

**FILING DETAILS**

|                            |                                                        |
|----------------------------|--------------------------------------------------------|
| Filed for                  | <b>Australian Executor Trustees Limited, Defendant</b> |
| Legal representative       | Mark Wilks, Corrs Chambers Westgarth                   |
| Contact name and telephone | Mark Wilks, (02) 9210 6500                             |
| Contact email              | mark.wilks@corrs.com.au                                |

The Court orders that:

- 1 Orders 7 – 10 of the orders made by the Court on 16 August 2016 (as amended on 5 October 2016) be vacated.

**Pleadings**

- 2 The first cross-defendant to the first cross-claim (**AXIS**) has leave to file and serve in Case No. 2015/171592 (**Smith**) a defence to the amended first cross-claim in the form of Annexure "A" to AXIS' Notice of Motion dated 25 November 2016.
- 3 AXIS has leave to file and serve in Case No. 2015/306222 (**Creighton**) a defence to the amended first cross-claim in the form of Annexure "A" to AXIS' Notice of Motion dated 25 November 2016.
- 4 By <sup>20</sup>~~21~~ December 2016 the fourth-cross defendant respond to the letter dated 12 December 2016 from Minter Ellison to Clyde & Co indicating whether it accepts the matters there raised and will amend its defence accordingly.
- 5 By <sup>22</sup>~~23~~ December 2016 the second cross-defendant inform the cross-claimant as to whether it consents to the filing of the proposed further amended statement of cross-claim, and if not, the basis of the opposition.
- 6 In the event consent is given, the cross-claimant is to file and serve its further amended statement of cross-claim by <sup>23</sup>~~24~~ December 2016 and the timetable for the future conduct of the proceeding shall be as per the balance of the orders made.
- 7 In the event consent is not given, the cross-claimant is to file and serve any application for leave to file its proposed further amended statement of cross-claim by <sup>23</sup>~~24~~ December 2016.
- 8 The cross-defendants file and serve defences to the further amended first cross-claims by 3 February 2017.
- 9 The cross-claimants file and serve any replies by 17 February 2017.

**Discovery**

- 10 On or before 17 February 2017, the first and second cross-claimants to the first cross-claim provide discovery of the documents within the categories that are described in annexure A to these orders.
- 11 The third and fourth cross-defendants provide discovery of documents in accordance with annexures B and C respectively on or before 27 January 2017.

**Evidence**

- 12 The cross-claimants serve their lay evidence on or before <sup>22</sup>~~17~~ February 2017.
- 13 The cross-defendants serve their lay evidence on or before <sup>13</sup>~~14~~ April 2017.
- 14 The cross-claimants serve their expert evidence and lay evidence in reply on or before <sup>8 June</sup>~~5 May~~ 2017.

14A *The cross-claimants serve their expert evidence on or before 17 August 2017*

15 The cross-claims be stood over for further directions before Ball J on <sup>June</sup>~~May~~ 2017.

16 Liberty to apply on three days' notice.

*at 9.15 on 3 February*

17 The parties shall bear their own cost of the Notices of Motion filed by AXIS on 25 November 2016.

14B [Insert order 13 from Defendants smc]

- 11 The cross-claimants serve their expert evidence and lay evidence in reply on or before ~~5 April~~ 8 June 2017.
- 12 The cross-defendants serve their expert evidence on or before ~~3 May~~ 17 August 2017.
- 13 On or before ~~16 June~~ 28 September 2017, the experts for the cross-claimants and cross-defendants:
- (a) meet and confer with any other expert witness within the same area of expertise, such meeting to be conducted in the absence of the parties, their employees or agents and the parties' legal representatives;
  - (b) cooperate in the prompt delivery to the parties' legal representatives of a joint report identifying:
    - (i) the areas of agreement and disagreement between them; and
    - (ii) where there is a disagreement, a short statement explaining the basis of the disagreement; and
  - (c) the parties and their legal or other representatives shall not direct or instruct an expert witness as to whether to agree or disagree with any other expert witness in the meeting, or as to the basis or terms upon which the expert may agree or disagree with any other expert or have any communication with the expert during the course of the conclave or the preparation of the joint report.

#### **Hearing and further directions**

- 14 Vacate the provisional listing of the hearing of the cross-claims commencing on 8 May 2017.
- ~~15 Provisionally list the cross-claims for hearing with the balance of the proceedings commencing on [insert], with the intention that evidence and submissions on the cross-claims be heard following the conclusion of evidence and submissions on the plaintiffs' claims in the proceedings.~~
- ~~16~~ 15 The cross-claims be stood over for further directions before Ball J on [insert].
- ~~17~~ 16 Liberty to apply on three days' notice.

**Annexure A****Categories of documents for discovery from the cross-claimants**

1. All correspondence, minutes, memoranda, reports and other documents dated between 30 June 2010 and 27 June 2012 recording, constituting or referring to:
  - 1.1 the financial position of Provident Capital Limited (PCL) and/or the debenture fund operated by PCL;
  - 1.2 concerns raised by the first cross-claimant with PCL referring to the financial position of the debenture fund;
  - 1.3 the first cross-claimant's application to the Federal Court of Australia for directions with respect to PCL;
  - 1.4 the order of the Federal Court of Australia to freeze the debenture fund on an interim basis;
  - 1.5 any report, including draft reports, prepared by PPB Advisory and commissioned by the first cross-claimant in relation to the debenture fund;
  - 1.6 concerns raised by the Australian Securities and Investments Commission (ASIC) referring to the affairs of PCL and/or the financial position of the debenture fund;
  - 1.7 communications with ASIC referring to the financial position of the debenture fund;
  - 1.8 the possibility that debenture holders could take action against the first cross-claimant or its directors;
  - 1.9 loss or potential loss suffered by debenture holders as a result of the financial position of the debenture fund.

**Annexure B****Categories of documents for discovery from Liberty Mutual Insurance Company**

- 1 All documents recording or referring to the provision or potential provision of primary or excess professional indemnity insurance by Liberty Mutual Insurance Company (**Liberty**) and/or any related body corporate for IOOF Holdings Limited (**IOOF**) and/or Australian Executor Trustees Limited (**AET**) in the periods:
  - (a) from 1 August 2010 to 31 December 2011; and
  - (b) from 1 June 2013 to 31 December 2014.
- 2 All documents comprising the guidelines of Liberty and/or any related body corporate recording or referring to the basis upon which Liberty and/or any related corporate body could or should provide primary or excess 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.
- 3 All versions of standard financial institutions professional indemnity insurance policy wording for the Australian market issued by Liberty and/or any related body corporate in the period 1 January 2010 to 30 June 2015.
- 4 All financial institutions professional indemnity insurance policy wordings issued by Liberty and/or any related body corporate for any of the following trustees :
  - (c) Equity Trustees Limited;
  - (d) The Trust Company Limited;
  - (e) Perpetual Limited;
  - (f) Sandhurst Trustees Limited;
  - (g) State Trustees Limited; and
  - (h) One Investment Group Limited;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 between any of AXIS, Liberty, Chubb and Willis Australia Limited.

- 6 All documents recording, referring to, or created in connection with the letter from Liberty to Willis Australia Limited dated 14 August 2015 with respect the proceedings brought by Innes Creighton and John and Rosemary Smith against AET up to and including 3 September 2015.
- 7 All correspondence between AXIS Speciality Europe SE (**AXIS**), Liberty and other excess insurers in relation to the following policies of professional indemnity insurance underwritten by AXIS for IOOF and its subsidiaries:
- (i) policy number 311731 for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;
  - (j) policy number 311731 for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012; and
  - (k) 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 brought against AET by Innes Creighton and/or John and Rosemary Smith in the period 16 March 2015 to 3 September 2015.

**Annexure C****Categories of documents for discovery from Chubb Insurance Company of Australia Limited**

- 1 All documents recording or referring to the provision or potential provision of primary or excess professional indemnity insurance by Chubb Insurance Company of Australia Limited (**Chubb**) and/or any related body corporate for IOOF Holdings Limited (**IOOF**) and/or Australian Executor Trustees Limited (**AET**) in the periods:
  - (l) from 1 August 2010 to 31 December 2011; and
  - (m) from 1 June 2013 to 31 December 2014.
  
- 2 All documents comprising the guidelines of Chubb and/or any related body corporate recording or referring to the basis upon which Liberty and/or any related corporate body could or should provide primary or excess 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.
  
- 3 All versions of standard financial institutions professional indemnity insurance policy wording for the Australian market issued by Chubb and/or any related body corporate in the period 1 January 2010 to 30 June 2015.
  
- 4 All financial institutions professional indemnity insurance policy wordings issued by Chubb and/or any related body corporate for any of the following trustees :
  - (n) Equity Trustees Limited;
  - (o) The Trust Company Limited;
  - (p) Perpetual Limited;
  - (q) Sandurst Trustees Limited;
  - (r) State Trustees Limited; and
  - (s) One Investment Group Limited;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 between any of AXIS, Liberty, Chubb and Willis Australia Limited.
- 6 All documents recording, referring to, or created in connection with the letter from Chubb to Willis Australia Limited dated 14 August 2015 with respect the proceedings brought by Innes Creighton and John and Rosemary Smith against AET up to and including 3 September 2015.
- 7 All correspondence between AXIS Speciality Europe SE (**AXIS**), Chubb and other excess insurers in relation to the following policies of professional indemnity insurance underwritten by AXIS for IOOF and its subsidiaries:
- (t) policy number 311731 for the period of insurance from 4pm on 14 November 2010 to 4pm on 31 October 2011;
  - (u) policy number 311731 for the period of insurance from 4pm on 30 November 2011 to 4pm on 31 October 2012; and
  - (v) 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 brought against AET by Innes Creighton and/or John and Rosemary Smith in the period 16 March 2015 to 3 September 2015.