



No: QUD591/2015

Federal Court of Australia
District Registry: Queensland
Division: General

**GRAEME CLARKE AND MARION CLARKE IN THEIR CAPACITY AS
TRUSTEES OF THE G&M CLARKE SUPERANNUATION FUND**
Plaintiff

SANDHURST TRUSTEES LIMITED ACN 004 030 737
Defendant

ORDER

JUDGE: JUSTICE GREENWOOD

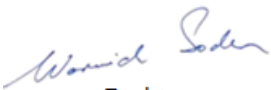
DATE OF ORDER: 07 December 2015

WHERE MADE: Brisbane

THE COURT ORDERS BY CONSENT THAT:

1. Pursuant to s 33Y(2) of the *Federal Court of Australia Act 1976* (Cth) (the Act) the form and content of the notice set out in Annexure A to these Orders are approved as a notice to advise group members of the option to opt out of the proceeding (Opt Out Notice).
2. Pursuant to s 33Y(3) of the Act, the plaintiff shall cause the Opt Out Notice to be sent by pre-paid ordinary post and/or email to the last mailing or e-mail addresses held by the plaintiff's solicitors in respect of each group member by no later than 11 December 2015.

Date that entry is stamped: 7 December 2015


Registrar



ANNEXURE A

Form 21
Rule 9.34

Opt out notice

No. QUD 591/2015

Federal Court of Australia
District Registry: Queensland
Division: General

Graeme Clarke and Marion Clarke in their capacity as Trustees of the G and M Clarke Superannuation Fund

Plaintiff

Sandhurst Trustees Limited ACN 004 030 737

Defendant

To: The Registrar
Federal Court of Australia
Queensland District Registry
Level 6
Harry Gibbs Commonwealth Law Courts Building
119 North Quay (cnr Tank Street)
Brisbane QLD

I, (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that I am opting out of the representative proceeding.

Date:

Signed by (print name)
Group Member / Lawyer for the Group Member

Filed on behalf of (name & role of party) _____
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____



OPT OUT NOTICE

Noteholders in WICKHAM SECURITIES LIMITED

1. Why is this Notice important?

This notice is a very important legal document which may affect your legal rights.

You should read it carefully. If you do not understand any part of it, you may wish to seek legal advice in relation to its contents.

Mr Graeme Clarke and Mrs Marion Clarke (**the Plaintiffs**) have commenced a representative proceeding in the Federal Court of Australia against Sandhurst Trustees Limited (ACN 004 030 737) (**Sandhurst**) on behalf of persons who were issued notes by Wickham Securities Limited (in liquidation) (ACN 111 421 811) (**Wickham**).

The Plaintiffs claim that Sandhurst contravened its obligations under the *Corporations Act 2001* (Cth) (**the Act**) by failing to exercise reasonable diligence to ascertain whether Wickham had breached the terms of the Trust Deed and the Act. Sandhurst denies that it is liable to the Plaintiffs and is defending the proceeding.

The Plaintiffs are represented by Shine Lawyers, and the proceeding is funded by Litman Holdings Pty Ltd (**Litman**).

The Federal Court of Australia has ordered that this Notice be published for the information of the persons who are members of the group on whose behalf the proceeding is brought and may be affected by the action.

You are a group member if you:

- (i) held notes issued by Wickham as at 21 December 2012;
- (ii) have suffered loss and damage by reason of the conduct of Sandhurst as set out in the Statement of Claim; and
- (iii) signed a litigation funding agreement with Litman (**Funding Agreement**).

If you are a group member, you should read this notice very carefully. 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 should seek legal advice.

If you are unsure whether or not you are a group member, you should contact Shine Lawyers by email to professionalnegligence@shine.com.au or by telephone on (07) 3006 6000 or seek your only legal advice without delay.

What is the representative proceeding?

This representative proceeding is a claim for damages that has been brought by the Plaintiffs against Sandhurst, on behalf of the group members (including themselves). This is possible and appropriate where the Plaintiffs and the group members have similar claims against Sandhurst.

Group members are bound by any judgment or settlement entered into in the representative proceeding and approved by the Court unless they have opted out of the proceeding. This means that:



- (a) if the representative proceeding is successful, group members will be eligible for a share of any settlement moneys or court-awarded damages;
- (b) if the representative proceeding is unsuccessful, the group members are bound by that result; and
- (c) regardless of the outcome of the representative proceedings, group members will be barred from pursuing their claims against Sandhurst in separate legal proceedings unless they have opted out.

2. 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 or to identify a specific group member.

However, a group member can cease to be a group member by opting out of the representative proceeding. An explanation of how a group member can opt out is found below in the section headed, "What if I do not want to remain as a group member?"

3. What is the claim about?

The Plaintiffs for and on behalf of the group members allege that:

- Sandhurst contravened its obligations under the Act by failing to exercise reasonable diligence to ascertain whether Wickham had breached the terms of the Trust Deed and the Act;
- if Sandhurst had exercised reasonable diligence as required by the Act, it would have ascertained that Wickham had committed such breaches and would have required Wickham to remedy such breaches and, if Wickham failed to do so, applied to the Court for an order appointing a receiver to the property of Wickham;
- prior to 31 December 2007, or alternatively about 21 December 2012, Sandhurst did not do any of those things;
- by reason of the contraventions by Sandhurst of its obligations under the Act, the Plaintiffs and each of the group members have suffered loss and damage, in that the assets of Wickham have been sold for an amount significantly less than the amount they would have been sold if Sandhurst had properly performed its statutory obligations; and
- the Plaintiffs claim damages for financial loss suffered by each of the group members, as well as interest on that amount and legal costs.

The detailed allegations are contained in the Plaintiffs' Statement of Claim. A copy of the Statement of Claim is available to be viewed on the websites referred to below.

Sandhurst is defending the claim. A copy of Sandhurst's Defence, is also available to be viewed on the websites noted under the heading, "Where can you obtain copies of relevant documents", subject to the directions of the presiding judge.



4. Will you be liable for legal costs?

Litman has agreed to fund part of the legal and other costs associated with the proceeding, including any adverse costs order, under the Funding Agreement.

That means group members are not individually responsible for Shine Lawyers' legal and other costs associated with the representative proceeding during the course of the proceeding.

Shine Lawyers have agreed to act for the Plaintiffs and the group members on a "no win no fee" basis meaning that they will only be entitled to recover their legal and other costs upon the successful outcome of the claim.

If the representative proceeding is successful, and group members obtain judgment for an award of damages, then the costs and fees set out in the Funding Agreement and the fees payable to Shine Lawyers will become payable and will be deducted from the amount of damages to be distributed to group members.

If the representative proceeding is unsuccessful, group members will have no liability for legal costs to Shine Lawyers or Litman.

Please be aware that Litman is not responsible for any costs you decide to incur on your own behalf, including legal advice you choose to obtain from lawyers other than Shine Lawyers.

5. What if I do not want to remain as a group member?

If you wish to opt out of the representative proceeding you must do so by completing a '*Notice of Opting Out by Group Member*' in the form attached, then returning it to the Registrar of the Federal Court of Australia at:

Level 6
Harry Gibbs Commonwealth Law Courts Building
119 North Quay (cnr Tank Street)
Brisbane QLD
(Entrance Tank St)

or

PO Box 13084
George Street Post Shop
Brisbane QLD 4003

IMPORTANT: the Notice must reach the Registrar by no later than 4 February 2016, otherwise it will not be effective.

Each group member should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (eg., director or partner).

If you opt out you will cease to be a group member and will not be bound by the outcome of the representative proceeding and any settlement, judgment or determination made in it. In such circumstances, you will not be entitled to share in the benefit of any order, judgment or settlement in the representative proceeding. If you opt out, you will be at liberty to bring your own claim against Sandhurst, provided that you issue a court



proceeding within the time limit applicable to your claim. If you wish to bring your own claim against Sandhurst, you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

6. What will happen if you choose to remain as a group member?

Unless you opt out, you 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 Plaintiffs and group members. (In some cases you may have to satisfy certain conditions before your entitlement arises.) 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 proceedings.

7. Do I have to take any steps to remain a group member?

If you have already agreed to become a group member by signing the Funding Agreement, you do not need to do anything more. The Plaintiffs will continue to bring the representative proceeding on your behalf up to the point where the Court determines those questions that are common to claims of the Plaintiffs and the group members.

8. Where can you obtain copies of relevant documents?

Subject to the directions of the presiding judge, copies of relevant documents, including the Statement of Claim, the Notice of a Representative Proceeding and the orders of the Court regarding this Notice, may be obtained by:

- (a) downloading them from: www.shine.com.au/wickham; or
- (b) requesting them by email to professionalnegligence@shine.com.au;
- (c) inspecting them between 9am and 5pm at one of Shine Lawyers' offices in Brisbane, contact details for which are available from www.shine.com.au or by calling (07 3006 6000); or
- (d) inspecting them on the Federal Court of Australia website: www.fedcourt.gov.au or by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin: the addresses for these registries are available at www.fedcourt.gov.au.

Please consider the above matters carefully.

If there is anything of which you are unsure, you should contact Shine Lawyers, by email to professionalnegligence@shine.com.au or by telephone on (07) 3006 6000. Alternatively, you may prefer to retain your own lawyer to provide you with independent legal advice in relation to your rights as a group member in the representative proceedings. However, please remember that you will be responsible for any legal costs incurred in retaining your own lawyer.