

FEDERAL COURT OF AUSTRALIA NOTICE

Simon Mallia v Colonial First State Investments Limited & Ors (VID28/2020)

THIS NOTICE IS IMPORTANT.

PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS

A class action has been commenced in the Federal Court of Australia against Colonial First State Investments Limited (**CFSIL**) the former trustee of the Colonial First State FirstChoice Superannuation Trust (**FirstChoice Fund**), The Colonial Mutual Life Assurance Society Pty Limited (**CMLA**) and AIA Australia Limited (**AIAA**) (collectively, the **Respondents**).

The class action relates to group insurance policies which were issued by CMLA and AIAA, and offered by CFSIL to members of its FirstChoice and Commonwealth Essential superannuation funds during the period 22 January 2014 to 15 February 2022. Members of these superannuation funds who held these policies are alleged to have been overcharged for their insurance premiums. The Respondents deny the allegations and are defending the class action.

This notice has been sent to you because the Court considers you might be a group member.

As explained further below, you have two options in response to this notice:

1. **Do nothing** – meaning you will remain part of the class action and may receive compensation; or
2. **Opt out of the class action before 4.00 pm on 3 October 2025** – meaning you will no longer be a part of the class action. If you opt out you **will not receive any compensation from the class action if compensation is awarded by the Court, or if a settlement is agreed between the parties.**

You may be receiving this notice because you are the executor or contact for the estate of a former member of the FirstChoice or Commonwealth Essential superannuation funds. In that case, you should provide a copy of this notice to each beneficiary of the estate.

WHY ARE YOU GETTING THIS NOTICE?

1. You are receiving this notice because the Respondents' records confirm that you may have held a relevant CMLA and/or AIAA policy in your CFSIL superannuation fund.
2. You have therefore been identified as a potential 'group member' in the class action, and the Federal Court of Australia has ordered that you be sent this notice.
3. **You should read this notice 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.
4. If you are unsure whether or not you are a group member, you should contact Shine Lawyers on 1800 560 661 or email colonialfirstsuper@shine.com.au or seek your own legal advice without delay. **Note that CFSIL, CMLA or AIAA will not be able to assist you with information regarding the class action.**

WHAT IS A CLASS ACTION?

5. A class action is brought by a person/s (called the Applicant) on his or her own behalf and on behalf of a group of people (called the group members) against another person/s (called the Respondent) where the Applicant and the group members have similar claims against the Respondent.
6. The Applicant's claim has certain issues that are also common to the claims of group members, which are referred to as common issues. When the Court decides the Applicant's claims, it decides the common issues, and the group members are bound by the Court's decision.
7. Group Members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicant(s) are responsible for costs.
8. Although group members are not asked whether they wish to join a class action, they are given an opportunity to choose not to participate in the class action - this is called **opting out**. This notice explains how to opt out, if that is a step you want to take. Before explaining this, the notice gives you some information about the class action, so that you can make an informed decision whether to opt out.

9. Group members, unless they have opted out of the proceeding, are bound by any judgment or settlement entered into in the class action. This means that:
- (a) if the class action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
 - (b) if the class action is unsuccessful, group members are bound by that result; and
 - (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Respondent in separate legal proceedings unless they have opted out.

WHAT IS THE CLASS ACTION ABOUT?

10. The class action is brought by Mr Simon Mallia (the **Applicant**), on his own behalf and on behalf of all persons who are group members as defined in the proceeding, against the Respondents.
11. Group members are defined as anyone who, during the period 22 January 2014 to 15 February 2022, held a group insurance policy inside one or more of the following superannuation products:
- (a) FirstChoice Personal Super;
 - (b) FirstChoice Wholesale Personal Super;
 - (c) FirstChoice Employer Super; and
 - (d) Commonwealth Essential Super.
12. The Applicant alleges that:
- (a) CFSIL owed a duty to act in the best interests of the members of its superannuation funds, and to not improperly use its position to gain an advantage for itself and/or for CommInsure; and
 - (b) CFSIL breached these duties by selecting an insurance provider, CMLA, that charged members of its superannuation funds excessive premiums rather than a fair market premium rate.
13. The Respondents deny that they breached any of their duties and are defending the class action.

WHAT IS OPT OUT?

14. The Applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group members are able to opt out is found below in the section headed “What do you need to do?”.

WILL YOU BE LIABLE FOR LEGAL COSTS?

15. The Applicant’s lawyers are Shine Lawyers. A company called Woodsford Group Limited (**Woodsford**) is funding the matter. That means that Woodsford is paying the Applicant’s legal costs, including the Applicant’s costs of bringing the claim on behalf of all group members.
16. **You do not have to pay any money out of pocket to participate in this class action and no money will be taken from your superannuation account.** If the class action is unsuccessful, you will not have to pay anything. If the class action is successful and compensation is awarded by the Court, or, if the parties agree a settlement to the class action, you will likely receive compensation into your superannuation account or be paid directly, depending on the terms of any proposed settlement, or determination by the Court.
17. In order to bring the class action, the Applicant signed a litigation funding agreement with Woodsford (**Funding Agreement**). In doing so, the Applicant agrees that if the class action is successful, and the Applicant obtains proceeds from a settlement or judgment, he will repay from those proceeds:
 - (a) Any costs advanced plus all other fees and costs reasonably incurred by Woodsford in relation to the class action (including any interim adverse costs, security for costs, or upfront insurance premiums relating to “after the event” (**ATE**) insurance or adverse costs insurance);
 - (b) Woodsford’s funding commission or “Success Fee”;
 - (c) unpaid (including deferred and contingent) insurance premiums due under any ATE insurance policy; and
 - (d) fees deferred by Shine Lawyers for recovery from any settlement or judgment, together with an uplift of 25% on those deferred fees.

18. Pursuant to the Funding Agreement, the Applicant has agreed to apply for an order that will fairly distribute the Applicant's obligations under the Funding Agreement among all group members who have benefited from the action. This may be by way of what is known as a **Common Fund Order** or may be by another order of the Court.

Applicant's costs and Woodsford's Success Fee

19. In return for the funding that Woodsford provides under the Funding Agreement for the Applicant's costs (as distinct from the adverse costs risk, which is discussed further below), Woodsford charges a 'Success Fee' payable from any Gross Proceeds. This is sometimes referred to as a "commission".
20. Gross Proceeds is the total amount received (including but not limited to any settlement sum, or compensation, costs and damages award by the Court and interest) paid or credited to, in favour of, for the benefit of, or to the order of, the Applicant or group members, by the Respondents or any third party which relates to the subject matter of the class action.
21. The Applicant has agreed to apply for a Common Fund Order, in an amount consistent with Woodsford's Success Fee, which is defined in the Funding Agreement. Woodsford's Success Fee is defined as the greater of 27.5% of Gross Proceeds or 3.5x the Cash Outlay.
22. The Cash Outlay is the total amount of legal and other fees and costs (including GST) advanced by Woodsford plus all other fees and costs relating to the class action reasonably incurred by Woodsford. Those costs include:
- (a) Shine Lawyers' fees;
 - (b) third party costs (including barristers' fees); and
 - (c) upfront (but not deferred and contingent) premiums for ATE insurance and other costs relating to ATE insurance.

ATE Insurance

23. If the class action is unsuccessful, the Court may order the Applicant (and/or other third parties such as Woodsford) to pay some part of a successful Respondent's costs (known as **Adverse Costs**).
24. To protect against the risk of Adverse Costs, Woodsford has:
- (a) indemnified the Applicant against liability for any Adverse Costs order made against the Applicant; and
 - (b) obtained ATE insurance to:

- (i) provide the Applicant and Group Members with additional protection against the risk of Adverse Costs (the ATE insurance policy expressly covers Adverse Costs payable by the Applicant); and
 - (ii) assist the Applicant to provide security for the Respondents' costs (for example by purchasing deeds of indemnity from the ATE insurer).
- 25. In return for this protection against the risk of having to pay Adverse Costs, the Applicant has agreed to apply for the cost of any such ATE insurance, including any deferred and contingent ATE insurance premiums, to be payable from Gross Proceeds (in addition to the costs in paragraph 22 above), in addition to Woodsford's Success Fee.
- 26. To summarise, and to assist you in understanding the effect of the Applicant's agreement with Woodsford and Shine Lawyers, **strictly subject to the Court's approval**, the Applicant will apply for the Gross Proceeds obtained by the Applicant from a settlement or judgment to be distributed as follows:
 - (a) First, repayment of Woodsford's Cash Outlay as described above in paragraph 22, any Adverse Costs paid or payable by Woodsford or an ATE Insurer, and any security for costs paid by Woodsford;
 - (b) Secondly, payment of Woodsford's Success Fee plus Shine Lawyers' deferred fees and an uplift on those deferred fees, plus any unpaid insurance premiums relating to ATE insurance or Adverse Costs insurance due, including any deferred and contingent premiums; and
 - (c) Thirdly, payment of the balance to all group members (including the Applicant) in accordance with a distribution scheme approved by the Court.
- 27. The Applicant also intends to apply to have any fees incurred for their own time involved in the class action paid from proceeds obtained from a settlement or judgment.

WHAT DO YOU NEED TO DO?

You have one of two options in response to this notice:

Option 1 – Do Nothing and Remain a Group Member

- 28. If you wish to remain a group member in this class action, there is **nothing you need to do**. This means that:

- (a) if the class action is successful, you may be entitled to share in the benefit of any order, judgment or settlement sum awarded in favour of the Applicant and group members. Money may either be paid directly to group members or into superannuation accounts held by group members. This will be determined at the conclusion of the class action; and
- (b) if the class action is unsuccessful, or not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against the Respondents in other legal proceedings.

Option 2 – Opt Out of the Class Action

- 29. If you opt out, you will cease to be a group member. This means that you will not be bound by the outcome of the class action, and you will not be entitled to participate in any court-ordered compensation or settlement that might be agreed in the class action.
- 30. By opting out, you will be entitled to bring your own claim in relation to the allegations covered by this class action against the Respondents. However, if your reason for opting out is so that you may bring your own claim against any of the Respondents, then you should seek legal advice about that claim, including in relation to any applicable time limits on your claim.
- 31. To opt out you must complete an “**Opt Out Notice**” form. A copy of this form is at **Annexure A** to this Notice. You must return the completed form directly to the Victorian District Registry of the Federal Court (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne) or by email to vicreg@fedcourt.gov.au before the Opt Out Deadline of 4pm AEDT on **3 October 2025**.
- 32. **You should seek independent legal advice before doing so. Opting out is a serious step and you should not do so unless you understand what it means.**
- 33. Any Opt Out Notices received after the Opt Out Deadline will be invalid and, unless otherwise ordered, you will remain a member of the Class Action.

WHERE CAN YOU OBTAIN COPIES OF RELEVANT DOCUMENTS?

- 34. Copies of relevant documents, including the application, the statement of claim, and the defences, may be obtained by:
 - (a) downloading them from the Shine Lawyers website: shine.com.au/colonial-first-state-class-action; or

- (b) by contacting a District Registry of the Federal Court (contact details are available www.fedcourt.gov.au) and paying the appropriate inspection fee.

REGISTERING YOUR CONTACT DETAILS

35. Registering your contact details is **optional**, and is not required in order to remain a group member in the class action. If you register your contact details, you will be kept will up to date with material developments in the case and you will be able to contact Shine Lawyers with any questions you might have about the class action. If you have moved your superannuation account to a new trustee, you can provide those details.
36. You can register your contact details via Shine Lawyers' website at shine.com.au/colonial-first-state-class-action. If you are not able to complete the online registration form, please email colonialfirstsuper@shine.com.au or phone 1800 560 661.
37. If you have already completed a registration form with Shine Lawyers, you do not need to provide your details again.

Annexure A

Form 21
Rule 9.34

OPT OUT NOTICE

IMPORTANT: You should only complete this form if you do NOT want to participate in the Class Action

No. VID 28 of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

Simon Mallia
Applicant

Colonial First State Investments Ltd (ACN 002 348 352) and others
Respondents

By Post: The Registrar
Federal Court of Australia
Victoria District Registry
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

By Email: vicreg@fedcourt.gov.au

I, (*insert name*), a Group Member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that I am opting out of the class action.

Date	
Signed by Group Member or Lawyer for Group Member (circle as applicable)	

Please complete the information on the following page

Group Member Details

Full Name:	
Telephone number	
Email	
Address	
Colonial First State account number (if known)	

If you are signing as the solicitor or representative of the Group Member:

Full Name	
Capacity (eg, legal practitioner)	
Telephone number	
Email	
Address	