



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD544/2019

JONES ASIRIFI-OTCHERE and another named in the schedule
Plaintiffs

SWANN INSURANCE (AUST) PTY LTD ABN 80 000 886 680 and another named in the
schedule
Defendants

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 17 December 2020

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Settlement approval

1. Pursuant to s 33V(1) of the *Federal Court of Australia Act 1976* (Cth) (**Act**):
 - a. the terms of the settlement of the proceeding (**Settlement**) as recorded in the Settlement Deed executed by the applicant, the respondents and Balance Legal Capital I UK Limited (**Funder**) and other parties on 5 October 2020 (**Settlement Deed**) be approved (save for any substantive provision of the Settlement Deed which relates to the release of any Claim of each of the Released Parties (as defined in the Settlement Deed) which is to be provided for by order 3 below); and
 - b. the terms of the Settlement Distribution Scheme (**SDS**) appearing as the annexure to these orders is approved.
2. Pursuant to s 33ZB(a) of the Act, the persons affected and bound by the Settlement (including order 3 below) be the applicant, the respondents and the "**Bound Group Members**", being all group members other than who have (or are deemed by these orders to have) opted out.



3. Pursuant to s 33ZF of the Act, each of the Released Parties (as defined in the Settlement Deed) is released by the applicant and each of the Bound Group Members (including the Sample Group Members (as defined in the Settlement Deed)), from each Claim (as defined in the Settlement Deed) made by or on behalf of the applicant or any Bound Group Member in this proceeding.

Opt out notices

4. The group members who did not provide opt out notices to the Court but rather provided opt out notices to the applicant's solicitors on or before 2 September 2020 (being those opt out notices contained in annexures "PAR-3" and "PAR-5") are to be deemed as having opted out on the date fixed for opt out.
5. Pursuant to s 33ZF of the Act, Mr Glen Wayne Lacy and Mr Nigel Haywood are to be deemed as having opted out on the date fixed for opt out.

Administration of settlement

6. Pursuant to s 33ZF of the Act, George Georges and John Lindholm of KPMG be appointed as Administrators of the SDS (**Settlement Administrators**).
7. The Settlement Administrators be granted liberty to relist upon notice to the Associate to Justice Lee.
8. The Settlement Administrators must, within two business days of the final distribution of the Resolution Sum (as defined in the SDS), are to inform the Court and the parties in writing that this has occurred.

Dismissal

9. The Proceeding is dismissed with such dismissal to take effect upon completion of administration of the SDS, being the date of receipt and notation by the Court of the final distribution of the Resolution Sum (as defined in the SDS) in accordance with order 8.

Return of security for costs

10. The \$30,000 security paid into the Federal Court Investment Account pursuant to order 1 made on 4 September 2019, and any interest accrued on that amount, be returned to the Funder.

Confidentiality



11. Pursuant to ss 37AF and 37AG(1)(a) of the Act in order to prevent prejudice to the proper administration of justice, the following documents remain confidential until 21 December 2025:

- a. Annexures PAR-1, PAR-3, PAR-4, PAR-5, PAR-6, PAR-7, PAR-8 and PAR-9 to the Confidential Affidavit of Paul Andrew Reidy sworn on 2 December 2020;
- b. Annexure PAR-10 to the supplementary Confidential Affidavit of Paul Andrew Reidy sworn on 15 December 2020;
- c. paragraphs 44(b), 50 to 51, 55 to 57, 67 to 68, 76 to 82, 83 to 86 of the affidavit of Simon Robert Burnett sworn 1 December 2020 (**Burnett affidavit**); and
- d. pages 1 to 69, 219 to 224 and 225 to 287 of Exhibit Confidential SB-2 to the Burnett affidavit.

Costs referee fees

12. Order 13(g) of the orders made on 5 November 2020 be vacated.
13. Pursuant to s 54A of the Act, without affecting the power of the Court as to costs, in respect of the fees of Ms Liz Harris as Referee in the amount of \$43,999.96:
 - a. Bannister Law will bear 25% of those costs, in the amount of \$10,999.99; and
 - b. the balance of those costs shall become part of the Applicant's Legal Costs, as defined in the SDS.

Date that entry is stamped: 21 December 2020

Sia Lagos
Registrar



Schedule

No: NSD544/2019

Federal Court of Australia

District Registry: New South Wales

Division: General

Plaintiff COSTANZO LAWYERS

Second Defendant INSURANCE AUSTRALIA LIMITED ABN 11 000 016 722

CORPORATIONS ACTION

Plaintiff JONES ASIRIFI-OTCHERE



Settlement Distribution Scheme

Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd & Anor
Federal Court of Australia proceeding no. NSD 544 of 2019

JOHNSON WINTER & SLATTERY

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Settlement Distribution Scheme

Recitals

- A. The Applicant, the Respondents, the Funder and JWS have executed a Settlement Deed.
- B. This Settlement Distribution Scheme (**SDS**) establishes a procedure for allocating and distributing the Resolution Sum to be paid by the Respondents pursuant to the Settlement Deed, as approved by the Court.
- C. This SDS does not become operative until the Court has made the Approval Order.
- D. This SDS provides, among other things, for the following steps:
 - a. George Georges and John Lindholm of KPMG will be appointed as joint and several Administrators of the SDS;
 - b. prior to any Distribution to Group Members, the Administrators will deduct from the Scheme Distribution Fund amounts, as approved by the Court, in respect of:
 - i. the Applicant's Legal Costs;
 - ii. the Funder Payment;
 - iii. the Group Member Reimbursement; and
 - iv. the Administration Costs,
leaving a Residual Resolution Sum;
 - c. the Administrators will then distribute the Residual Resolution Sum to the Applicant and Participating Group Members on a pro-rata basis in accordance with the Assessments made by the Administrators;
 - d. the Administrators will deliver to each Eligible Group Member in accordance with clause 3.2 below a Settlement Notice (or Settlement Notices) which will set out the Administrators' Assessment of the Eligible Group Member's Claim (calculated in accordance with the Loss Assessment Formula) and an estimate of the likely range for the Eligible Group Member's Scheme Payment;
 - e. the Administrators' Assessment of Group Members' Claims will (subject to any discretion provided to the Administrators in this SDS) be based solely



on the information contained in the Purchaser Data, being data provided by the Respondents to JWS pursuant to Court orders made in the Proceeding, or any updated data provided by the Respondents to JWS or the Administrators for the purposes of the administration of this SDS. Under the Settlement Deed, the Respondents are required to use reasonable endeavours to provide the Administrators with any information they reasonably request to implement this SDS, provided such information is not reasonably obtainable through direct communication with the Applicant or Group Members, and only to the extent that the information requested is in the possession of the Respondents and readily available;

- f. in order to receive a Scheme Payment, a Group Member must, within a specified period of time determined by the Administrators, register their intention to do so and provide the Administrators (in the form determined by the Administrators) with any details that the Administrators reasonably require to confirm their entitlement to a Scheme Payment and to make a Scheme Payment to the Group Member by electronic means or, subject to additional requirements set out in clause 3.3(a)(iv) below, by cheque;
- g. interest earned on the amount in the Scheme Distribution Fund will be applied, to the extent necessary, to payment of Administration Costs (with any excess allocated to the Applicant and Participating Group Members).

Operative part

1 Definitions and interpretation

1.1 Definitions

In this SDS, the following terms have the meanings defined below (clause references are references to the clauses of this document unless otherwise specified):

Act means the *Federal Court of Australia Act 1976* (Cth).

Add On Insurance Product means any of the products described at paragraph 11 of the 2FASOC, being (without affecting the definition in paragraph 11 of the 2FASOC) the following insurance products issued by the First Respondent:

- (a) Loan Protection Insurance;



- (b) Walkaway Insurance;
- (c) Protection Plus Insurance;
- (d) Gapcover Insurance, also known as Purchase Price Protection Insurance;
- (e) Motor Vehicle Mechanical Breakdown Insurance, also known as WarrantyASSIST or Motor Vehicle Extended Warranty Insurance; and
- (f) Tyre and Rim Insurance.

Administration Costs mean the costs and disbursements incurred by JWS and/or the Administrators of up to \$3,428,000.00 (inclusive of GST) as approved by the Court, and any further amounts that may be approved by the Court, in connection with the administration of this SDS, including (without limitation) any costs and disbursements in connection with:

- (a) obtaining an order or orders of the Court approving the settlement pursuant to section 33V of the Act, insofar as such costs are or were not included in the Applicant's Legal Costs;
- (b) work performed by JWS and the Administrators prior to the appointment of the Administrators and the approval of the SDS by the Court relating to the preparation of this SDS, the provision of notices to Group Members, arranging Court-ordered advertisements and preparing for implementation of this SDS;
- (c) the assessment of Group Members' Claims;
- (d) any application by the Administrators to the Court pursuant to clause 7 below;
- (e) work performed by JWS pursuant to clause 2.4 below;
- (f) reporting to the parties to the Proceedings as required by section 3.3 of the Settlement Deed;
- (g) any bank charges, taxes or other statutory fees or charges.

The Administrators' hourly rates in connection with the administration of this SDS shall be calculated at the rates set out in Schedule B.



Administrators means George Georges and John Lindholm of KPMG acting jointly and severally as the Court appointed administrators of this SDS.

Appeal Date has the meaning given in clause 2.5(b) of the Settlement Deed.

Applicant means Mr Jones Asirifi-Otchere.

Applicant's Legal Costs means the Applicant's reasonable legal costs and disbursements incurred on his own behalf and/or on behalf of all Group Members in conducting the Proceedings, in the amount of up to \$8,678,735.16 (inclusive of GST) as approved by the Court.

Approval Order means orders of Court approving the settlement of the Proceedings on the terms set out in the Settlement Deed under section 33V of the Act and approving this SDS.

Assessment means the value of the Applicant's or a Group Member's Claim calculated in accordance with clause 3.1 below.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales (not being a Saturday, Sunday or public holiday in that place).

Claim includes any claim or liability of any kind (including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order) and any proof of debt or claim.

Court means the Federal Court of Australia.

Distribution means payment to the Applicant and each of the Participating Group Members as described in clause 5.2 below.

Eligible Group Member means a person, other than an Excluded Group Member, who is listed in the Purchaser Data and who has suffered a loss on at least one Add On Insurance Product when the Loss Assessment Formula is applied to the information in the Purchaser Data for that person by the Administrators.

Excluded Group Member means any person who has opted out of the Proceedings or is permitted by the Court to opt out of the Proceedings.



Funder means Balance Legal Capital I UK Limited (Registration Number 12453594).

Funder Payment means a payment to the Funder out of the Scheme Distribution Fund in relation to:

- (a) the Funder's expenses incurred in connection with providing security for costs in the Proceedings in the amount of \$194,953.50 (inclusive of GST) as approved by the Court; and
- (b) funding charges or commissions in the amount of \$34,500,000.00 (inclusive of GST), being 25% of the Resolution Sum, as approved by the Court.

Group Members means the persons on whose behalf the Applicant brings the Proceedings as defined in paragraphs 1 to 1B of the 2FASOC, but excluding any Excluded Group Member.

Group Member Reimbursement means payments totalling \$53,000.00 of:

- (a) \$20,000.00 to the Applicant;
- (b) \$6,000.00 to each of the Sample Group Members; and
- (c) \$3,000.00 to each of the Witnesses,

as approved by the Court, to reimburse them for expenditure reasonably incurred in the Proceedings for the benefit of the Group Members. For the avoidance of doubt, the Group Member Reimbursement payments are in addition to any Scheme Payment payable to the Applicant, the Sample Group Members and the Witnesses.

JWS means the legal firm of Johnson Winter & Slattery.

Loss Assessment Formula means the formula by which the losses of each of the Applicant and Participating Group Members are calculated as contained in Schedule A to this SDS.

Participating Group Member means an Eligible Group Member who has complied with the requirements of clause 3.2(b)(ii)(A) below in the manner, and within the time, determined by the Administrators.

Proceedings means the proceedings brought by the Applicant against the Respondents, being Federal Court of Australia Proceedings NSD 544 of 2019 titled



Jones Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd & Anor, a representative proceeding under Part IVA of the Act.

Purchaser Data means:

- (a) the data provided by the Respondents to JWS in the Proceeding pursuant to orders made by the Court on 28 June 2019, 19 August 2019, 26 September 2019 and 3 October 2019, setting out information including (without limitation) the names and contact details, and policy details (including details of premiums, refunds and claims paid), of purchasers of Add On Insurance Products; and
- (b) any additional data regarding the names and contact details, or policy details (including details of premiums, refunds and claims paid), of purchasers of Add On Insurance Products that may be provided by the Respondents pursuant to their obligations under clause 3.4 of the Settlement Deed.

Residual Resolution Sum means the amount of the Resolution Sum and any interest on the Resolution Sum, after deduction of the Funder Payment, Applicant's Legal Costs, Group Member Reimbursement and Administration Costs from the Scheme Distribution Fund.

Resolution Sum means the sum of \$138,000,000 as defined in clause 1.1 of the Settlement Deed.

Respondents means, collectively:

- (a) Swann Insurance (Aust) Pty Ltd (ACN 000 886 680), the First Respondent in the Proceedings; and
- (b) Insurance Australia Limited (ACN 000 016 722), the Second Respondent in the Proceedings.

Sample Group Members means each of Ms Lindi Glick, Ms Amanda Melvin and Ms Leanne Rea who were appointed as sample Group Members by the Court in the Proceedings on 25 September 2020.

Scheme Distribution Account has the meaning given in clause 2.2(a) below.



Scheme Distribution Fund means the Resolution Sum and any interest on that amount held by the Administrators on trust for the Applicant and Group Members until the Scheme Distribution Fund is distributed.

Scheme Objective means the objective of administering this SDS with regard to the best interests of Group Members as a whole and, in particular, with a view to striking a balance between:

- (a) providing a reasonable time and opportunity for as many Group Members as possible who may be entitled to receive a Scheme Payment under this SDS to be able to do so;
- (b) ensuring that the Administration Costs incurred in implementing this SDS are reasonable and the methods employed in implementing this SDS are practical, proportionate and cost effective having regard to the interests of the Group Members as a whole; and
- (c) providing for the payment of Scheme Payments to the Applicant and Participating Group Members within a reasonable period of time.

Scheme Payment means the amount to be distributed to the Applicant or a Participating Group Member from the Residual Resolution Sum pursuant to this SDS.

SDS means the terms of this settlement distribution scheme as approved by the Court, including any Schedules and Annexures.

Settlement Deed means the Settlement Deed executed by the Applicant, the Respondents, the Funder and JWS and dated 5 October 2020.

Settlement Notice means the notice required by clause 3.2 below to be sent by the Administrators to each Eligible Group Member, in the form set out in Annexure 1 to this SDS.

Witnesses means each of Ms Fiona Hewish, Ms Rebecca Baranyi, Ms Angela Fisher, Ms Sonia Cammarano and Ms Corena Brennan, who were to give lay witness evidence in the trial of the Proceedings.



2FASOC means the Second Further Amended Statement of Claim filed in the Proceedings on 28 September 2020.

1.2 Interpretation

In this document, the following rules of interpretation apply unless a contrary intention appears.

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural, and the converse also applies;
- (c) a gender includes all genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to dollars and \$ is to Australian currency; and
- (g) a reference to anything done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Settlement Deed or this SDS.

2 Scheme Administrators and Scheme Distribution Fund

2.1 Commencement of SDS

The procedure outlined below will occur on and after the making of the Approval Order, at which time the terms of the SDS become effective, subject to any further order of the Court.

2.2 Payment of Resolution Sum

- (a) The Administrators will open an interest-bearing account held with an Australian authorised deposit-taking institution (**Scheme Distribution Account**) of which the account-holders are the Administrators no later than 2 Business Days after the Appeal Date.



- (b) Within 5 Business Days of the Resolution Sum being paid into the Holding Account (as that term is defined in the Settlement Deed) by the Respondents pursuant to clause 2.5(a) of the Settlement Deed, JWS will cause the Resolution Sum (and any interest earned on it, less any applicable bank charges, taxes or other statutory fees or charges) to be paid into the Scheme Distribution Account.

2.3 Administration of Scheme Distribution Fund

- (a) The Scheme Distribution Fund shall be administered and applied by George Georges and John Lindholm of KPMG as Administrators.
- (b) The Administrators will:
 - (i) hold the Scheme Distribution Fund on trust for the Applicant and Group Members in the Scheme Distribution Account until the Scheme Distribution Fund is distributed; and
 - (ii) distribute the Scheme Distribution Fund as expeditiously as possible,in accordance with this SDS, the Scheme Objective and any orders made by the Court in relation to the administration of this SDS.
- (c) The Applicant and each Group Member accept, in substitution of their Claim against the Respondents in the Proceedings, their rights under this SDS to receive a Distribution from the trust referred to in clause (b)(i) above in accordance with the terms of this SDS.

2.4 Assistance by JWS

- (a) The Administrators may reasonably require JWS, in their capacity as lawyers for the Applicant, to assist with aspects of the administration of this SDS should the Administrators consider it necessary or expedient to do so and/or may, subject to any conflict of interest, retain JWS to act for the Administrators in connection with any application to the Court pursuant to clause 7 below or otherwise in relation to the Proceedings (having regard, among other things, to JWS's accumulated knowledge of the Proceedings).



- (b) JWS may retain counsel, including counsel retained in the Proceedings, in connection with any such requirement or retainer by the Administrators.
- (c) The rates of JWS and counsel shall be as per the rates submitted to the costs referee in the Proceedings.

2.5 *Duties, Obligations and Role of the Administrators*

Without limiting the duties, obligations and role of the Administrators otherwise specified in this SDS, the Administrators:

- (a) are responsible for administering and distributing the monies in the Settlement Distribution Fund;
- (b) must act independently;
- (c) must perform their obligations conscientiously;
- (d) may engage third party service providers including, but not limited to, accountants, tax advisors, registry service providers and mailing houses;
- (e) may obtain advice in respect of tax matters arising from the administration of, and making payments from, the Settlement Distribution Fund and may seek a ruling from the Federal Commissioner of Taxation and any of the Commissioners of State Revenue if the Administrators determine that obtaining such a ruling would be in the best interests of the Group Members; and
- (f) will determine Group Member entitlements to receive a Scheme Payment under the SDS.

2.6 *Corrections*

Notwithstanding anything elsewhere contained in this SDS, the Administrators may at any time and in their sole discretion correct any error, slip or omission occurring in the course of their administration of the SDS.

2.7 *Resignation and Replacement*

- (a) If one of the Administrators retires or is unable to act at a given time, the remaining Administrator will become the sole Administrator.



- (b) If the Administrators retire or are unable to act at a given time simultaneously, they must:
- (i) refer the matter of appointing a replacement Administrator to the Court pursuant to clause 7 below;
 - (ii) subject to any orders or directions made by the Court, do all things necessary to promptly transfer legal title to:
 - (A) all monies held in the Settlement Distribution Fund; and
 - (B) any other property held on trust subject to the terms of this SDS,to the person or persons who are appointed as the replacement Administrator under clause (i) above and together with any continuing Administrator (where applicable).
- (c) Any replacement Administrator will be bound by the terms of this SDS.
- (d) This clause is operative for the period commencing on the date of the making of the Approval Order to the date that the Administrators' role ends in accordance with clause 11.2 below.

2.8 Duties and liability of Administrators

- (a) The Administrators' duties as trustees in respect of dealing with the Scheme Distribution Fund shall be as set out in this SDS.
- (b) The performance of the Administrators' obligations under this SDS shall constitute full performance of the Administrators' duties as trustee, and no claim shall be available against the Administrators in respect of any breach of trust except on the grounds that the Administrators have breached one or more of their obligations under this SDS.
- (c) Notwithstanding clause (b) above, the Administrators and their staff, in discharging any function or exercising any power or discretion conferred by this SDS, shall not be liable for any loss to Group Members arising by reason of any mistake or omission made in good faith or of any other matter



or thing except wilful and individual fraud and wrongdoing on the part of the Administrators or their staff.

3 Assessments and Settlement Notices

3.1 Calculation of Assessments

- (a) As soon as practicable after this SDS is approved by the Court, the Administrators will calculate an Assessment of the Claim of each person, or in respect of each policy, listed in the Purchaser Data.
- (b) The Assessment for each person or policy shall be calculated by applying the Loss Assessment Formula to the data pertaining to that person or policy as set out in the latest version of the Purchaser Data available to the Administrators at the time of making the Assessment.
- (c) The Administrators may, in exceptional circumstances and in their absolute discretion, based on information provided to them by a Group Member (or a person who purports to be a Group Member):
 - (i) make corrections or amendments to the Purchaser Data or the calculation of the Assessment for that person if they consider it fair and appropriate to do so; and/or
 - (ii) allow a person who is not listed in the Purchaser Data but who the Administrators consider to be a Group Member to be a Participating Group Member if they also satisfy the requirements of clause 3.2(b)(ii)(A) below (in which case the person shall thereafter be treated as an Eligible Group Member for the purposes of this SDS),

but are not subject to any obligation to do so.

3.2 Settlement Notices

- (a) The Administrators will deliver to each Eligible Group Member a Settlement Notice in accordance with clause 8.1 below at a time determined



by the Administrators having regard to the Scheme Objective, which shall be not more than 4 weeks after the Appeal Date.

- (b) Where an Eligible Group Member holds or held, or appears to hold or have held, multiple Add On Insurance Policies (as set out in the Purchaser Data), the Administrators:
- (i) shall, where they consider it appropriate to do so based on the Purchaser Data and any other information held by the Administrators in relation to the relevant Eligible Group Member, send a single Settlement Notice to that Eligible Group Member in relation to all of the Add On Insurance Policies held by them (or that appear to be held by them); and
 - (ii) may, if the Administrators are not satisfied that the Add On Insurance Policies were held by the same Eligible Group Member, or the Administrators consider that the cost of investigating whether those Add On Insurance Policies were in fact held by the same Eligible Group Member are not justified, send separate Settlement Notices in relation to each Add On Insurance Policy.

For example:

- (A) two Add On Insurance Policies may have been purchased on the same date, one by "John Smith" and the other by "J. Smith", each with the same address, email number and telephone number. The Administrators may be satisfied that the two Add On Insurance Policies were purchased by the same Group Member, and send a single Settlement Notice in respect of both Add On Insurance Policies;
- (B) two Add On Insurance Policies may have been purchased on different dates, each by "John Smith" but with different addresses and no email or telephone information. The Administrators may not be satisfied that the two Add On Insurance Policies were purchased by the same Group



Member, and send a separate Settlement Notice for each Add On Insurance Policy.

3.3 Response by Eligible Group Members

- (a) In order to be entitled to receive a Scheme Payment under this SDS, an Eligible Group Member must:
- (i) register to do so with the Administrators in the manner provided for by the Settlement Notice;
 - (ii) provide the Administrators with any information that the Administrators reasonably require to confirm their entitlement to a Scheme Payment; and
 - (iii) provide the Administrators with any details that the Administrators reasonably require to make a Scheme Payment to that Eligible Group Member by electronic means; or
 - (iv) in the event that the Eligible Group Member seeks to receive their Scheme Payment by way of cheque, provide the Administrators with:
 - (A) any details that the Administrators reasonably require as to why the Eligible Group Member cannot, or does not wish to, or it is not practical to, receive a payment by electronic means;
 - (B) any details that the Administrators reasonably require to make a Scheme Payment to the Eligible Group Member by way of cheque and to send that cheque to the Eligible Group Member by post;
 - (C) an authorisation, in a form determined by the Administrators, to deduct administration fees of up to \$100 from the Eligible Group Member's Scheme Payment to cover the costs (including administrative costs) of making payment by cheque and, where applicable, the potential costs (including administrative costs) involved



in cancelling or otherwise dealing with any cheque that is not presented for payment;

- (D) an acknowledgement, in a form determined by the Administrators, that the Eligible Group Member takes the risk of non-delivery of any cheque issued under this SDS; and
- (E) an acknowledgement, in a form determined by the Administrators, that the Eligible Group Member's information provided under subclause (A) above may be provided to a third party for the purposes of facilitating payment by cheque,

by whatever means, and within any time period - which period must not be less than 6 weeks after Settlement Notices (or the majority of them) are sent to Eligible Group Members pursuant to clause 3.2 above - the Administrators determine.

- (b) Subject to clause 9 below, any Eligible Group Member that does not provide the information or details sought under clause (a) above to the Administrators' satisfaction, or does not provide the information or details sought in the time determined by the Administrators, is not entitled to receive any Scheme Payment under this SDS.
- (c) The Administrators may, in their discretion, send further notices to Eligible Group Members who have not complied with clause (a) above, or advertise generally in relation to this SDS, having regard to the Scheme Objective.

3.4 *Purchaser Data determinative*

Subject to any exercise of discretion by the Administrators under clause 3.1(c) above, the Administrators' application of the Loss Assessment Formula to the Purchaser Data available to the Administrators at the time of calculating Assessments under clause 3.1 shall be treated as determinative of the entitlements of the Applicant and Group Members to any portion of the Scheme Distribution Fund, and for that purpose:



- (a) the Administrators are to assume that no person is a Group Member unless listed in the Purchaser Data;
 - (b) all Eligible Group Members are taken to be Group Members; and
 - (c) the Administrators are not to, and are not required to, make any inquiry of an Eligible Group Member as to whether they fulfil the requirements of paragraphs 1A or 1B of the 2FASOC in making any determination as to the entitlement of that Eligible Group Member to a Scheme Payment.
-

4 Application of interest to Administration Costs

- (a) Interest earned on the Scheme Distribution Account (net of any liability for tax on that interest) will be applied, in the first instance, to payment of Administration Costs if and to the extent that the Administration Costs are approved by the Court.
 - (b) Any additional Administration Costs incurred or estimated shall, subject to Court approval, be paid to the Administrators out of the Scheme Distribution Account before any Distribution of the Scheme Distribution Fund pursuant to clause 5 below.
 - (c) If the total amount of interest earned on the Scheme Distribution Fund exceeds the Administration Costs, including any estimated Administration Costs referred to in clause (b) above, such residual interest will be allocated to the Applicant and Participating Group Members in the proportion that their Assessments bear to the Residual Resolution Sum distributed in accordance with clause 5 below.
-

5 Distribution

5.1 Initial payments

- (a) Prior to any distribution of the Scheme Distribution Fund to Participating Group Members, the following payments shall be made from the Scheme Distribution Fund:



- (i) an amount of \$6,906,974.17 to the Funder for the portion of the Applicant's Legal Costs that have been paid by the Funder;
 - (ii) amounts of:
 - (A) up to \$354,858.15 to Bannister Law; and
 - (B) up to \$1,416,902.84 to JWS,for the balance of the Applicant's Legal Costs that have not been paid by the Funder;
 - (iii) an amount to the Funder for the Funder Payment;
 - (iv) an amount to each of the Applicant, the Sample Group Members and the Witnesses for the Group Member Reimbursement; and
 - (v) an amount to JWS and/or the Administrators (as the case may be) for Administration Costs incurred to date.
- (b) Once the payments referred to in clause (a) above are made, the amount in the Scheme Distribution Account, referred to as the Residual Resolution Sum, shall then be distributed to the Applicant and Participating Group Members in accordance with the remainder of this clause 5.

5.2 Allocation of Residual Resolution Sum

- (a) The Residual Resolution Sum shall be allocated between the Applicant and Participating Group Members in the proportion which the Assessment of the Applicant and each Participating Group Member (less any administration fee authorised to be deducted from a Participating Group Member's Scheme Payment in accordance with clause 3.3(a)(iv)(C) above) bears to the aggregate of the Assessments for the Applicant and all Participating Group Members.
- (b) In distributing the Residual Resolution Sum pursuant to this clause 5, the Administrators shall withhold (and retain in the Scheme Distribution Account) an amount representing the Administrators' estimate of the future Administration Costs (in addition to those already paid pursuant to clause 5.1(a)(v) above) to be incurred in finalising the administration of the SDS,



and such amount shall not form part of the Residual Resolution Sum to be allocated between the Applicant and Participating Group Members, subject to clause 5.3(c) below.

5.3 *Distribution of Residual Resolution Sum*

- (a) The Administrators may determine the date upon which they will make a Distribution of the Residual Resolution Sum to the Applicant and Participating Group Members, which date must not be less than 3 months after Settlement Notices (or the majority of them) are sent to Eligible Group Members pursuant to clause 3.2 above.
- (b) The Administrators are not obliged to but may, in their discretion and having regard to the Scheme Objective, make a further attempt or attempts to make a Scheme Payment to a Participating Group Member (including confirming payment details with the Participating Group Member) where an initial payment has failed (including, for example, where an electronic funds transfer is unsuccessful or a cheque is not presented for payment). Where a Participating Group Member fails to respond to a request from the Administrators for confirmation of their payment details within 14 days, the Administrators may treat their Scheme Payment as subject to redistribution in accordance with clause (c) below.
- (c) If, after the Distribution of the Residual Resolution Sum to the Applicant and Participating Group Members, any amount remains or is held in the Scheme Distribution Fund, such as:
 - (i) further interest amounts accrued prior to the Distribution but received after the Distribution;
 - (ii) the proceeds of any cheques that remain unpresented for 180 days;
 - (iii) the proceeds of any electronic funds transfers that were unsuccessful; or
 - (iv) if the Administrators estimate that a lesser amount than that withheld under clause 5.2(b) above is now required to finalise the administration of the SDS, the difference between that estimate



and the amount so withheld, the amount (net of any tax or bank charges) shall be distributed pro rata among the Applicant and Participating Group Members in accordance with the Assessments, subject to clause (d) below.

- (d) the Administrators are to approach the Court for directions as to any residual amount which is impracticable to be distributed.

5.4 Method of payment

- (a) The Administrators may determine the method or methods of making payments to the Applicant and Group Members pursuant to this SDS, which may include, without limitation, payments by electronic funds transfer to an account nominated by the relevant person or by cheque sent by post to an address nominated by the relevant person.
- (b) Notwithstanding clause (a) above, the Administrators are not obliged to make any payment by cheque unless the relevant Applicant or Group Member has complied with clause 3.3(a)(iv) above.
- (c) In determining the method or methods to use in making payments to the Applicant or a Group Member under this SDS, the Administrators shall have regard to the following:
 - (i) the Scheme Objective;
 - (ii) the information held for the relevant person by the Administrators, including whether any particular information appears to be invalid, incorrect or out of date;
 - (iii) any previous failures to send payments to that person using a particular payment method;
 - (iv) the cost of each payment method and any administration fees paid or payable by the relevant person; and
 - (v) the quantum or estimated quantum of the relevant person's Scheme Payment.



- (d) Where a Participating Group Member held more than one Add On Insurance Product, the Administrators shall, where possible, make a single Scheme Payment to that Participating Group Member (rather than separate Scheme Payments in relation to each Add On Insurance Product).
-

6 Immunity from claims

- (a) The completion of Distributions made pursuant to clause 5 above (including any Distributions made by way of unsuccessful payments as referred to in clauses 5.3(b) and 5.3(c) above) shall satisfy any and all rights, claims or entitlements of the Applicant and all Group Members in or arising out of the Proceedings.
- (b) As a condition of receiving the payment of a benefit from the trust referred to in clause 2.3(b)(i) above, each Participating Group Member receives their Scheme Payment subject to the deduction by the trust of its reasonable costs and expenses, including reasonable litigation funding charges or commission to be shared by all persons who have benefited from the action, in such amounts as the Court may approve in accordance with clause 5.1(a) above.
-

7 Supervision by the Court

- (a) The Administrators may refer any issues arising in relation to the SDS or the administration of the SDS to the Court for determination.
- (b) Any costs incurred in any such reference to the Court made by the Administrators shall be deemed to be Administration Costs.
-

8 Notices

8.1 How to give notices

- (a) The Administrators may determine the method or methods of providing notices to Group Members and other persons pursuant to this SDS, which



may include, without limitation, providing notices by email, text (Short Message Service) message or post.

- (b) In determining the method or methods to use in giving notices to a person under this SDS, the Administrators shall have regard to the following:
- (i) the Scheme Objective;
 - (ii) the contact information held for the relevant person by the Administrators, including whether any particular contact information appears to be invalid, incorrect or out of date;
 - (iii) any previous failures to send notices to that person using a particular notice method;
 - (iv) the cost of each notice method; and
 - (v) the quantum of the Assessment of the relevant person's Claim.
- (c) Notwithstanding clause (a) above, any notice to be given pursuant to the SDS shall be deemed given and received for all purposes associated with this SDS if it is:
- (i) addressed to the person to whom it is to be given; and
 - (ii) either:
 - (A) delivered, or sent by pre-paid mail, to that person's postal address, being the postal address recorded in the Purchaser Data or any updated postal address notified to the Administrators by that person; or
 - (B) sent by email to that person's email address, being the email address recorded in the Purchaser Data or any updated email address notified to the Administrators by that person, and a server through which it is transmitted produces a report that states that the email has been delivered to the inbox of that person;
 - (C) sent by text (Short Message Service) message to that person's mobile telephone number, being the mobile



telephone number recorded in the Purchaser Data or any updated mobile telephone number notified to the Administrators by that person.

8.2 *Time of receipt*

A notice that complies with clause 8.1 above will be deemed to have been given and received:

- (a) if it was sent by mail, five clear Business Days after being sent;
- (b) if it was sent by email or text (Short Message Service) message, at the time it was sent.

8.3 *Nominated persons*

- (a) Where a Group Member is not a natural person and where one person has been nominated as the contact in respect of several Group Members (and/or related entities), it is sufficient for the purpose of giving notice that any of the provisions of clause 8.1 above are complied with in relation to that nominated person.
- (b) Where a Group Member is a Participating Group Member by virtue of information or registration submitted on their behalf by a trustee, investment manager, responsible entity, agent or legal personal representative, the Administrators may rely on any information, instruction or declaration provided by that trustee, investment manager, responsible entity, agent or legal personal representative as if it had been provided by the Group Member itself.

8.4 *Notices to Administrator*

The Administrators' address and email addresses shall be as set out below unless and until the Administrators provide notification otherwise:

George Georges and John Lindholm
KPMG Australia
GPO Box 2291U
MELBOURNE VIC 3001
swannclassaction@kpmg.com.au



9 Timing

- (a) Except where otherwise provided, the Administrators may determine the time or time periods for taking the necessary steps under this SDS, having regard to the Scheme Objective.
 - (b) The time for doing any act or thing under the SDS may be extended by the Administrators in their absolute discretion.
 - (c) The time for doing any act or thing under the SDS may be extended or abridged by order of the Court.
-

10 Reporting to JWS and Respondents

- (a) Throughout the course of the administration of the SDS, the Administrators must provide quarterly reports to JWS and the Respondents detailing:
 - (i) the progress of Distributions to Participating Group Members, including the number of Distributions made, the amounts paid, the Participating Group Members to whom Distributions have been made and the number of any outstanding Distributions; and
 - (ii) any complaints by Group Members or by any other person, including the name of the complainant, a description of their complaint and a description of the response of the Administrators.
 - (b) Promptly upon the conclusion of the administration of the SDS, the Administrators must provide a report to the Respondents informing them of that fact.
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11 Finalisation of Administration

11.1 Distribution Report

Within 21 days following the date on which the final Distribution from the Settlement Distribution Fund is made, the Administrators shall provide a brief report to the Court on:



- (i) the total of all Distributions paid to Participating Group Members;
and
- (ii) the number of Participating Group Members who have received Distributions.

11.2 *End of Administration*

The Administrators will cease to be Administrators upon the later of the following.

- (a) all Distributions to the Applicant and Participating Group Members have been made;
- (b) any amounts payable in accordance with clause 5 above are paid; or
- (c) there remain no funds in the Settlement Distribution Fund.



Schedule 1 – Loss Assessment Formula

1. Introduction

- a. This Schedule sets out the formula (**Loss Assessment Formula**) by which the Applicant's and Participating Group Members' losses are calculated for the purposes of this SDS.
 - b. In this Schedule, a reference to "**interest**" means simple interest calculated at the rates set out in clause 3 of this Schedule to 12 October 2020 (the scheduled first day of trial in the Proceedings).
-

2. Loss Assessment Formula

For the purposes of this SDS, the Applicant's and Group Members' losses (each referred to herein as a Claimant) are to be calculated in accordance with this clause 2.

- a. A Claimant's loss (if any) is calculated as the sum of the losses suffered in respect of each Add On Insurance Policy the Claimant purchased, as set out in the Purchaser Data.
- b. Subject to clause (c) below, the loss on any single Add On Insurance Policy is calculated as the greater of nil (that is, a Claimant cannot have a negative loss) and the following:

$$\text{Loss} = \left((\text{Premium} + \text{Interest}_p) - (\text{Remediation} + \text{Interest}_{\text{Rem}}) - (\text{Refund} + \text{Interest}_{\text{Ref}}) - (\text{Claims} + \text{Interest}_c) \right) \times \text{Claim Factor}$$

where:

Premium is the total premium paid or payable (whether paid in full upfront or added to a loan) by the Claimant for the relevant Add On Insurance Policy, as set out in the Purchaser Data.

Interest_p is interest calculated on the *Premium* from the later of the "Created Date" and the "Cover From" date for the policy, as set out in the Purchaser Data.

Remediation is any payment received by the Claimant pursuant a remediation program agreed with the Australian Securities & Investments Commission in relation to the relevant Add On Insurance Policy, as set out in the Purchaser Data.



Interest_{Rem} is interest calculated on the *Remediation* from the date of the remediation payment or, if that date is not included in the Purchaser Data, the later of the "Created Date" and the "Cover From" date for the policy, as set out in the Purchaser Data.

Refund is any refund received by the Claimant in relation to the relevant Add On Insurance Policy, as set out in the Purchaser Data.

Interest_{Ref} is interest calculated on the *Refund* from the date of the refund, as set out in the Purchaser Data.

Claims is the sum of the value of all claims paid to or for the benefit of the Claimant under the relevant Add On Insurance Policy, as set out in the Purchaser Data.

Interest_C is the sum of interest calculated on the value of each claim paid to or for the benefit of the Claimant under the relevant Add On Insurance Policy from the date each claim was paid, as set out in the Purchaser Data.

Claim Factor is:

- (i) 10% if the Claimant:
 - (A) in the case of a natural person, purchased the relevant Add On Insurance Policy on or before 10 April 2013; or
 - (B) in the case of an entity other than a natural person, purchased the relevant Add On Insurance Policy on or before 15 August 2013; or

The date of purchase of the relevant Add On Insurance Policy is to be taken to be the later of the "Created Date" and the "Cover From" date for the policy in the Purchaser Data.

- (ii) 100% in all other cases.

The date of purchase of the relevant Add On Insurance Policy is to be taken to be the later of the "Created Date" and the "Cover From" date for the policy in the Purchaser Data.

- c. If the loss on an Add On Insurance Policy using the formula set out in clause (b) above is less than \$30, that loss shall be deemed to be nil unless:
 - i. the Administrators identify that the Claimant holds one or more additional Add On Insurance Policies; and



- ii. the sum of the losses on all Add On Insurance Policies held by the Claimant calculated using the formula set out in clause (b) above, is \$30 or greater.

 - d. Where the circumstances of a Claimant do not fall precisely within the terms of this clause 2, or the Purchaser Data does not include all information required to calculate a Loss, the Administrators may make such assumptions, or adjustments to the calculation, as they see fit in order that the calculation of the Claimant's losses is made consistently with the purpose, intent and spirit of this clause 2.
-

3. Interest rates

The following interest rates shall be used in the calculation of interest pursuant to the Loss Assessment Formula. The dates in the table below are inclusive.

From:	To:	Interest rate:
1 January 2008	30 June 2008	10.75%
1 July 2008	31 December 2008	11.25%
1 January 2009	30 June 2009	8.25%
1 July 2009	31 December 2009	7.00%
1 January 2010	30 June 2010	7.75%
1 July 2010	31 December 2010	8.50%
1 January 2011	31 December 2011	8.75%
1 January 2012	30 June 2012	8.25%
1 July 2012	31 December 2012	7.50%
1 January 2013	30 June 2013	7.00%
1 July 2013	31 December 2013	6.75%
1 January 2014	30 June 2015	6.50%
1 July 2015	30 June 2016	6.00%
1 July 2016	31 December 2016	5.75%
1 January 2017	30 June 2019	5.50%
1 July 2019	31 December 2019	5.25%
1 January 2020	30 June 2020	4.75%
1 July 2020	12 October 2020	4.25%



Schedule 2 – Hourly rates for Administration Costs incurred by KPMG

KPMG Rate Card	
Position	Hourly rate (\$)
<i>Deal Advisory</i>	
Partner	700
Director	611
Associate Director	536
Manager	484
Executive	357
Analyst	282
<i>IT</i>	
IT Partner	536
IT Director	489
Project Manager	348
Senior Solution Architect	447
Functional Architect	348
Offshore consultant	155
<i>Operations</i>	
ITS Build	500
Ops Team Leader	133
Ops Contact Centre	93



JOHNSON WINTER & SLATTERY

Settlement Distribution Scheme

Annexure 1 – Form of Settlement Notice

SETTLEMENT NOTICE – SWANN INSURANCE CLASS ACTION

Asirifi-Otchere v Swann Insurance (Aust) Pty Ltd & Anor – Federal Court of Australia action no. NSD 544 of 2019

TO: **[Name of Eligible Group Member]**

You are receiving this Settlement Notice because you are an Eligible Group Member pursuant to the Settlement Distribution Scheme (SDS) approved by the Court in the Swann Insurance Class Action and may be entitled to receive a share of the Resolution Sum.

Terms defined in the SDS have the same meaning when used in this Settlement Notice. A copy of the SDS can be obtained from www.swannclassaction.com.au.

The purpose of this Settlement Notice (provided pursuant to clause 3.2 of the SDS) is to provide you with our (the Administrators') Assessment of the value of your Claim (called your Loss) and our estimate of the likely range for your share of the Resolution Sum (called your Scheme Payment). Your Loss and your Scheme Payment are calculated in accordance with the SDS.

If you held multiple Add On Insurance Products the subject of these proceedings, we have endeavoured to send you a single Settlement Notice covering each of those Products.

However, based on the data available to us, it may not be possible for us to group all Add On Insurance Products held by you and you may receive multiple Settlement Notices in relation to multiple policies. As a result, please do not discard or ignore what may appear to be multiple versions of the same Settlement Notice sent to you, as each Settlement Notice may concern a different Add On Insurance Product or Products.

This Settlement Notice is issued to you in relation to the following Add On Insurance Products:

[List Add On Insurance Product types (without personal identifying information)]

IMPORTANT: In order to be entitled to receive any Scheme Payment from the Resolution Sum (if you are entitled to do so), you must follow the steps set out below in this Settlement Notice to register for a payment and provide the information required by the Administrators by no later than [date]. Failure to register or provide the necessary information by that date may result in you losing any right to a Scheme Payment.

Assessment of Loss

Your Loss is calculated by applying the Loss Assessment Formula to the data pertaining to you as set out in the latest version of the Purchaser Data available to us as Administrators at the time of making this Assessment (as those terms are defined in the SDS).

On the information available to the Administrators, you may have suffered a loss in relation to the Add On Insurance Products set out above in the amount of **[insert Assessment amount]**.



Further details as to how your Loss has been calculated will be available when you register, as described below.

If you purchased a policy on or before 10 April 2013 (for natural persons) or 15 August 2013 (for other entities), then the calculation of your Loss in relation to that policy is subject to the application of a 90% discount. As a result, your calculated Loss will be lower than if you had purchased that policy after the relevant date.

Estimate of Scheme Payment

The precise amount that will be payable to you is not yet known and cannot yet be accurately estimated. Among other things, it will be affected by a number of factors which cannot yet be known precisely, including how many Group Members register to receive a Scheme Payment (referred to below as the Participation Rate) and the final amount of Administration Costs spent in administering the SDS.

The final Participation Rate is not yet known, and will depend upon how many Eligible Group Members respond to this Settlement Notice. However, based on our current estimates (of costs, interest earned, fees and charges, etc.), based on your Loss as calculated above, and assuming a Participation Rate of between [*lower Participation Rate estimate*] and [*upper Participation Rate estimate*], we estimate the likely range for your Scheme Payment in relation to the Add On Insurance Products set out above is between [*insert lower Scheme Payment estimate*] and [*upper lower Scheme Payment estimate*].

Your Scheme Payment may be less or more than the estimate above depending upon the actual Participation Rate (including if the actual Participation Rate falls outside the range estimated above) and other factors (such as the total amount of Administration Costs) that may affect the final calculations.

Next steps

If you do not wish to receive a Scheme Payment from the Resolution Sum, you do not need to take any action (although you may receive further communications or reminders from the Administrators as a result). However, if you do not register to receive a Scheme Payment, you will not be able to pursue any claims against Swann and IAL of the kind made in the Swann Insurance Class Action (even if you have not registered to participate in the settlement).

If you wish to receive a Scheme Payment from the Resolution Sum (should you be entitled to do so in accordance with the SDS), you must visit the website at www.swannclassaction.com.au to register your intention to receive a Scheme Payment, to provide your current and relevant contact and payments details, and to provide any other information the Administrators may require to confirm your entitlement to a Scheme Payment.

You must complete this task by [*date*], otherwise you may lose any right to a Scheme Payment from the Resolution Sum.

If you have any queries, you should also visit the website at www.swannclassaction.com.au.

Dated [*date*]

George Georges and John Lindholm

Administrators of the Settlement Distribution Scheme