



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID513/2015

MONEY MAX INT PTY LTD (AS TRUSTEE FOR THE GOLDIE SUPERANNUATION FUND) (ACN 152 073 580)

Applicant

QBE INSURANCE GROUP LIMITED (ACN 008 485 014)

Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 15 February 2018

WHERE MADE: Melbourne

THE COURT ORDERS BY CONSENT THAT:

Notice to Class Members

1. Pursuant to ss 33X and 33Y(2) of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**), the form and content of the notice set out in Schedule A (**Notice**) is approved as the notice that must be given to class members under s 33X of the FCAA in respect of the application by the applicant under s 33V of the FCAA for approval of the settlement of this proceeding (**Proceeding**) (being the relief set out in paras [17]ff of the Interlocutory Application dated 5 February 2018 filed by the applicant) (**Section 33V Application**).

Timing and Mode of Distribution of Notice

2. Pursuant to s 33Y(3) of the FCAA, on or before 23 February 2018 the Notice is to be given by the respondent to each class member in accordance with the following procedure:
 - (a) the respondent shall provide to a mail house distribution service nominated by it details of all shareholders recorded on the respondent's share register (**Share Register**) who acquired an interest in ordinary shares of the respondent between 20 August 2013 and 6 December 2013 (inclusive);



- (b) the respondent shall cause the mail house to send the Notice by email to all of the shareholders referred to in order [2(a)] above that have an email address recorded on the Share Register; and
 - (c) to the extent that a shareholder referred to in order [2(a)] above does not have an email address recorded on the Share Register, the respondent shall cause the mail house to send the Notice by prepaid ordinary post to that shareholder at the address recorded for that person on the Share Register.
3. To the extent that the mail house receives notice of a delivery failure in relation to any email sent to a shareholder referred to in order [2(b)] above, the respondent shall cause the mail house to send the Notice by prepaid ordinary post to that shareholder at the address recorded for that person on the Share Register, within two (2) business days of receiving that delivery failure notice.
4. On or before 23 February 2018 the applicant shall cause a copy of the Notice, together with a copy of:
 - (a) the Amended Originating Application dated 24 October 2017;
 - (b) the Amended Statement of Claim dated 24 October 2017;
 - (c) the respondent's Defence dated 24 November 2015;
 - (d) the reasons for judgment of the Full Court delivered on 26 October 2016 ((2016) 245 FCR 191; [2016] FCAFC 148);
 - (e) the orders made by the Full Court on 15 November 2016;
 - (f) the orders made by the Court on 27 October 2017; and
 - (g) these orders,to be displayed on the website of the applicant's solicitors (<http://www.mauriceblackburn.com.au/current-class-actions/qbe-class-action>), and to remain continuously so displayed up to and including the final hearing and determination of the Section 33V Application.
5. On or before 23 February 2018 the District Registrar of the Victorian District Registry of the Federal Court of Australia shall cause a copy of the Notice, together with a copy of the documents referred to in orders [4(a)]-[4(g)] above, to be:



- (a) displayed on the website of the Federal Court of Australia (www.fedcourt.gov.au), and to remain continuously so displayed up to and including the final hearing and determination of the Section 33V Application; and
 - (b) available for inspection at the District Registry of the Federal Court of Australia in Melbourne, Sydney, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin, and to remain continuously so available up to and including the final hearing and determination of the Section 33V Application.
6. On or before 5 April 2018 the applicant shall cause a copy of the proposed Settlement Distribution Scheme (by which it is proposed to distribute the settlement sum) to be displayed on the website of the applicant's solicitors (<http://www.mauriceblackburn.com.au/current-class-actions/qbe-class-action>), and to remain continuously so displayed up to and including the final hearing and determination of the Section 33V Application.
7. The costs charged by the mail house distribution service referred to in orders [2] and [3] above shall be paid in the first instance by the applicant, but otherwise the costs of and incidental to the procedure set out in orders [2] to [6] above shall be costs in the Proceeding. For the avoidance of doubt, answering enquiries by class members and members of the public in relation to the Notice and other documents referred to in order [4] above is work incidental to orders [2] to [6] above.
8. The Notice may be amended by the applicant's solicitors before it is emailed, posted or displayed in order to correct any website or email address or telephone number or other non-substantive error.

Directions for Section 33V Application

9. Any class member who wishes to be heard in respect of the Section 33V Application (including any application by a class member who failed to register their claim by 4.00 pm (AEDT) on 27 November 2017 for leave to participate in the proposed settlement) is to file any affidavit evidence on which they propose to rely and/or a written outline of their grounds for supporting or opposing the application, and serve a copy on the applicant's solicitors, on or before 19 April 2018.



10. On or before 26 April 2018 the applicant's solicitors shall provide to the respondent's solicitors a copy of any documents received by them pursuant to order [9] above.
11. Save for any affidavit or written submissions in respect of which confidentiality orders will be sought (**Confidential Affidavit** and **Confidential Submissions** respectively), on or before 26 April 2018 the applicant file and serve (including on each class member who has served documents in accordance with order [9] above) any affidavit(s) and written submissions on which it proposes to rely in support of the Section 33V Application.
12. In relation to any Confidential Affidavit and/or Confidential Submissions on which the applicant proposes to rely in support of the Section 33V Application, the applicant is directed to provide, on or before 26 April 2018, to the Associate of the Judge hearing the Section 33V Application, the original and one copy of the Confidential Affidavit and/or Confidential Submissions in an envelope marked with the details of the Proceeding and a notation that it is a "Confidential [Affidavit or Submissions] for Purposes of Section 33V Application".
13. Until further order, pursuant to s 37AF(1)(b) of the FCAA, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, the evidence contained in the affidavit of Steven Mark Foale sworn 5 February 2018 and marked 'Confidential Affidavit' (including the annexures thereto) not be published or disclosed without the prior leave of the Court to any person or entity other than the applicant, the respondent, their respective legal advisers, each class member who has served documents in accordance with order [9] above (subject to execution of a confidentiality undertaking in a form reasonably satisfactory to Maurice Blackburn) and the Court.
14. Until further order, the evidence referred to in order [13] above be sealed on the Court file in an envelope marked "*Not to be opened except by leave of the Court*".
15. The balance of the Interlocutory Application dated 5 February 2018 filed by the applicant, being the Section 33V Application, be listed for hearing at 10.15 am on 3 May 2018.

Liberty to Apply

16. The parties have liberty to apply on 3 days' notice.



Date that entry is stamped: 15 February 2018

Warrick Soden
Registrar





SCHEDULE A
[Settlement Notice to Class Members]
NOTICE OF PROPOSED SETTLEMENT
FEDERAL COURT OF AUSTRALIA
QBE INSURANCE GROUP CLASS ACTION
Money Max Int Pty Ltd v QBE Insurance Group Ltd
VID 513 of 2015

This notice contains important information about the QBE Insurance Group Class Action proceeding (**QBE Class Action**) which is currently pending in the Federal Court of Australia.

You should read this notice carefully. If there is anything that you do not understand, you should seek legal advice.

On 3 May 2018 the Court will be asked to approve a proposed settlement of the QBE Class Action. If approved, the settlement will affect the legal rights of Class Members in the QBE Class Action.

The Court has ordered that this notice be sent to all Class Members in the QBE Class Action.

1. BACKGROUND TO THE QBE CLASS ACTION

The QBE Class Action was commenced in the Federal Court of Australia on 9 September 2015 by Money Max Int Pty Ltd (**Applicant**) against QBE Insurance Group Ltd (**QBE**). The action is being conducted by the Applicant on behalf of all persons who:

- at some time during the period 20 August 2013 to 6 December 2013 inclusive (**Relevant Period**) acquired an interest in ordinary fully-paid shares in QBE (**QBE Shares**);
- have suffered loss or damage by or resulting from the conduct of QBE pleaded in the action; and
- are not the Chief Justice or a Judge of the Federal Court of Australia or the Chief Justice or a Justice of the High Court of Australia,

(**Class Members**).

The QBE Class Action arises out of a claim that QBE contravened the continuous disclosure requirements of the *Corporations Act 2001* (Cth) and/or made statements that were misleading or deceptive, thereby causing loss to persons who acquired an interest in QBE Shares during the Relevant Period. QBE has denied the allegations, and has defended the action.

The Applicant is represented by solicitors Maurice Blackburn, and the action has been funded by International Litigation Funding Partners Pte Ltd (**ILFP**).



2. PROPOSED SETTLEMENT OF THE QBE CLASS ACTION

The parties to the QBE Class Action have agreed on terms for the settlement of the action. Settlement cannot be concluded until the Court approves the settlement.

Under the terms of the proposed settlement:

- QBE will pay (on a without admissions basis) a settlement amount of \$132.5 million to settle the claims of all Class Members. Subject to any contrary orders of the Court, that amount will (after deduction of certain amounts including legal costs and a funding commission payable to ILFP) be distributed only amongst those Class Members who, prior to 4.00 pm (AEDT) on 27 November 2017, registered their claim with Maurice Blackburn (see, in particular, Sections 5, 6 and 7 below).
- The Applicant and all Class Members will release QBE and its related entities from any and all claims arising from, connected with or related to: (1) any matter which is or ever has been the subject of the QBE Class Action; (2) the circumstances or allegations giving rise to or referred to in the QBE Class Action; (3) losses allegedly suffered arising or resulting from or connected with QBE's financial performance and market disclosures in respect of the 2012 and 2013 financial years; and (4) costs of, or incidental to, the QBE Class Action. The Applicant and all Class Members will also be bound not to sue QBE or its related entities in respect of those matters.

The process by which the settlement amount is proposed (subject to Court approval) to be distributed will be outlined in a 'Settlement Distribution Scheme', a copy of which can, from 5 April 2018, be:

- downloaded from the website of Maurice Blackburn (<http://www.mauriceblackburn.com.au/current-class-actions/qbe-class-action>); or
- inspected at the offices of Maurice Blackburn, Level 21, 380 La Trobe Street, Melbourne, Victoria between the hours of 9.00 am and 5.00 pm Monday to Friday.

Alternatively, a copy of the Settlement Distribution Scheme will be provided by Maurice Blackburn on request. Any loss assessment formula which may be referred to in the Settlement Distribution Scheme will also be made available by Maurice Blackburn on request, subject to an undertaking of confidentiality.

For the proposed settlement to take effect, it must be approved by the Court under s 33V of the *Federal Court of Australia Act 1976* (Cth). If the settlement is not approved by the Court, the QBE Class Action will continue. The proposed settlement is also subject to satisfactory completion of a verification process, by which the claims of some Class Members are to be verified. That verification process is currently taking place. If, at the end of that process, the quantum of Class Members' claims that are not satisfactorily verified exceeds a certain threshold, the proposed settlement may be terminated by QBE. If that occurs, the QBE Class Action will continue.

3. FUNDING OF THE QBE CLASS ACTION

As advised in previous notices to Class Members, ILFP has provided funding to the Applicant to enable it to conduct the QBE Class Action on its own behalf and on behalf of all



Class Members. That funding was provided by ILFP pursuant to a funding agreement entered into between ILFP and the Applicant, as well as funding agreements entered into between ILFP and several Class Members, and funding terms ordered by the Court on 15 November 2016 (**Common Fund Orders**). Pursuant to those funding agreements and the Common Fund Orders:

- ILFP has paid part of the costs incurred in conducting the QBE Class Action (with the balance of the costs to be paid upon a successful outcome);
- ILFP was required to pay any adverse costs orders which may have been made against the Applicant and/or Class Members in the QBE Class Action, and to provide any security for QBE's costs in the QBE Class Action as required by the Court; and
- at the conclusion of the QBE Class Action (whether by settlement or judgment), ILFP is entitled to receive, as a first priority out of the settlement or judgment amount:
 - (i) reimbursement of the amounts it has paid or is liable to pay in respect of the costs of conducting the QBE Class Action; and (ii) a commission, as consideration for the funding of the QBE Class Action, being a percentage (to be fixed by the Court) of the settlement or judgment amount.

In accordance with those obligations, ILFP:

- has to date paid into Court a total amount of \$5 million as security for QBE's costs in the QBE Class Action;
- has to date paid a total amount of approximately \$11.65 million in respect of the costs incurred by the Applicant in conducting the QBE Class Action; and
- is liable, if the Court approves the proposed settlement, to pay a further amount in respect of the deferred costs incurred by the Applicant in conducting the QBE Class Action.

As part of the Court's approval of the proposed settlement, it is proposed to seek orders discharging the undertakings given by the Applicant, ILFP and Maurice Blackburn in relation to the funding terms provided for in the Common Fund Orders, and for orders that amounts which ILFP has paid into Court as security for QBE's costs in the QBE Class Action be repaid to Maurice Blackburn (which will then repay those amounts to ILFP).

4. PROPOSED DEDUCTIONS FROM THE SETTLEMENT AMOUNT

As contemplated by the Common Fund Orders, the Applicant proposes to seek the Court's approval to deduct certain amounts from the settlement amount of \$132.5 million.

The Applicant proposes that the following amounts be paid as a first priority out of the settlement amount:

- an amount of approximately \$22.5 million on account of the legal costs incurred in conducting the QBE Class Action, part of which has been paid by ILFP (and will be reimbursed to it), and the balance of which represents the deferred (unpaid) costs that have not yet been paid by ILFP, but which it is liable to pay (enabling those costs to be paid directly to Maurice Blackburn, rather than paid to ILFP for payment back to Maurice Blackburn). Of the total amount of approximately \$22.5 million,



approximately \$16.2 million represents Maurice Blackburn's professional fees, and approximately \$6.3 million represents disbursements – in each case, those costs are inclusive of the costs of the application for court approval of the proposed settlement (save for those costs incurred between the filing of evidence in support of the application and the date of approval, in respect of which approval will be sought separately);

- to ILFP, an amount of \$30.75 million by way of commission, as consideration for the funding of the QBE Class Action (representing approximately 23.2% of the settlement amount); and
- to the Applicant, an amount of \$50,000 as compensation for time and expenditure reasonably incurred by the Applicant in the interests of prosecuting the QBE Class Action on behalf of the Class Members as a whole.

If the Court approves the above payments, it would result in an amount of approximately \$79.2 million remaining in the Settlement Distribution Fund under the Settlement Distribution Scheme (i.e. \$132.5 million, minus \$22.5 million, minus \$30.75 million, minus \$50,000) (not including any interest).

It is also proposed, as part of the Court's approval of the proposed settlement, that Maurice Blackburn be able to deduct from the Settlement Distribution Fund an amount representing the reasonable costs incurred in acting as administrator of the Settlement Distribution Scheme, and in obtaining court approval of the settlement (to the extent not already included in the \$22.5 million referred to above). Prior to those costs being deducted, they will be subject to approval by the Court, and it is presently anticipated that those costs will principally, if not entirely, be covered by interest accruing on the settlement amount, and so will not materially reduce the amount available for distribution to Class Members.

It is possible that the Court may make different orders. However, whatever orders the Court makes, Class Members will **not** be required to pay any amounts to ILFP or to Maurice Blackburn otherwise than as a deduction from their entitlements under the proposed settlement (and under no circumstances will they exceed those entitlements). Thus, no Class Member will be 'out-of-pocket' as a result of such orders.

5. WHO THIS NOTICE AFFECTS

This notice affects the Applicant and all Class Members in the QBE Class Action. You are receiving this notice because you have been identified as a person who may have acquired an interest in QBE Shares during the Relevant Period. If you did not acquire an interest in QBE Shares during the Relevant Period, please ignore this notice.

For the purposes of the proposed settlement, the Class Members in the QBE Class Action can be divided into three separate categories, each of whom will be affected in different ways if the proposed settlement is approved by the Court:

- **Registered Class Members (see Section 6 below)** – Registered Class Members are those Class Members who, prior to 4.00 pm (AEDT) on 27 November 2017, registered their claim with Maurice Blackburn.



- ***Unregistered Class Members (see Section 7 below)*** – Unregistered Class Members are those Class Members who, prior to 4.00 pm (AEDT) on 27 November 2017, did not either: (i) register their claim with Maurice Blackburn; or (ii) file with the Court a valid opt out notice, indicating their desire to opt out of the QBE Class Action. For the avoidance of doubt, Unregistered Class Members include those Class Members who registered, or sought to register, their claim with Maurice Blackburn after 4.00 pm (AEDT) on 27 November 2017.
- ***Former Class Members (see Section 8 below)*** – Former Class Members are those persons who otherwise meet the definition of a Class Member (set out on the first page of this notice), but who, prior to 4.00 pm (AEDT) on 27 November 2017, filed with the Court a valid opt out notice, indicating their desire to opt out of the QBE Class Action.

6. REGISTERED CLASS MEMBERS

For Registered Class Members, there is nothing which you need to do at this stage in order to progress your claim or participate in the proposed settlement. If the proposed settlement is approved by the Court, Maurice Blackburn will be in touch with you soon to outline your expected entitlement (if any) from the settlement amount.

If, however, you wish to make submissions on why the Court should not approve the proposed settlement, or should not approve the payments referred to above to be paid to ILFP, Maurice Blackburn and the Applicant out of the settlement amount, you are required to file with the Court, and serve on Maurice Blackburn, **by no later than 19 April 2018**, any affidavit evidence which you wish to rely on and/or a written outline of your grounds for supporting or opposing the application. The address of the Court and of Maurice Blackburn are set out in Section 9 below. You may also, if you wish, attend and make submissions to the Court at the hearing of the application for approval of the proposed settlement. That hearing has been scheduled for **3 May 2018** in Melbourne.

7. UNREGISTERED CLASS MEMBERS

For Unregistered Class Members, if the proposed settlement is approved by the Court, and in the absence of any further order of the Court:

- you will be bound by the settlement, which means that you will not be able to pursue a claim against QBE in relation to the matters that are the subject of the releases referred to above; and
- you will not be entitled to participate in the settlement, and will therefore not be entitled to receive any distribution from the settlement amount.

If you wish to make submissions on:

- why the Court should not approve the proposed settlement, or should not approve the payments referred to above to be paid to ILFP, Maurice Blackburn and the Applicant out of the settlement amount; and/or
- why the Court should allow you to participate in the proposed settlement (assuming it is approved by the Court), notwithstanding that you did not register your claim with



Maurice Blackburn prior to the registration deadline of 4.00 pm (AEDT) on 27 November 2017,

you are required to file with the Court, and serve on Maurice Blackburn, **by no later than 19 April 2018**, any affidavit evidence which you wish to rely on and/or a written outline of your grounds for supporting or opposing the application. The address of the Court and of Maurice Blackburn are set out in Section 9 below. You may also, if you wish, attend and make submissions to the Court at the hearing of the application for approval of the proposed settlement. That hearing has been scheduled for **3 May 2018** in Melbourne.

8. FORMER CLASS MEMBERS

For those Class Members who, prior to 4.00 pm (AEDT) on 27 November 2017, filed with the Court a valid opt out notice, you are no longer a Class Member in the QBE Class Action, and are not bound by the outcome of the QBE Class Action. Accordingly, if the proposed settlement is approved by the Court, you will not be entitled to participate in the settlement, and will therefore not be entitled to receive any distribution from the settlement amount, but you will also not be precluded from pursuing a separate claim against QBE in relation to the matters that are the subject of the releases referred to above, should you wish to do so.

9. ADDRESSES FOR FILING / SERVICE OF NOTICES

The address for Maurice Blackburn is:

Level 21
380 La Trobe Street
Melbourne Vic 3000

The address for the Court is:

Re QBE Class Action (VID 513 of 2015)
Federal Court of Australia
Victoria District Registry
305 William Street
Melbourne Vic 3000

Copies of relevant documents can be obtained from the website of Maurice Blackburn (<http://www.mauriceblackburn.com.au/current-class-actions/qbe-class-action>) or from the website of the Federal Court of Australia (www.fedcourt.gov.au).

If you have any questions in relation to the above, or wish to obtain copies of other relevant documents, you should contact Maurice Blackburn by email: qbeclasseaction@mauriceblackburn.com.au, or telephone: 1800 631 766, or seek your own legal advice without delay.