

Opt Out Notice
FEDERAL COURT OF AUSTRALIA
ALLCO FINANCE GROUP CLASS ACTION
Blairgowrie Trading Ltd & Ors v Allco Finance Group Ltd (recs & mgrs apptd) (in liq) & Ors
NSD 1609 of 2013

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Blairgowrie Trading Ltd and Alan & Chrystine Flitcroft (**Applicants**) against Allco Finance Group Ltd (recs & mgrs apptd) (in liq) (**AFG**), the estate of the late David Raymond Coe (deceased) and KPMG (collectively, the **Respondents**). The action arises out of a claim that the Respondents either contravened the continuous disclosure requirements of the *Corporations Act 2001* (Cth), or otherwise made statements that were misleading or deceptive, thereby causing loss to persons who acquired an interest in ordinary shares in AFG during the period 21 August 2007 to 27 February 2008 (**Relevant Period**).

The Applicants are represented by solicitors Maurice Blackburn, and the action is being funded by International Litigation Funding Partners Pte Ltd (**ILFP**).

The Applicants, AFG and KPMG will be participating in a mediation before 4 November 2016, at which the parties will explore the possibility of a settlement of this Class Action.

The Federal Court has ordered that this notice be published for the information of persons who might be members of the class on whose behalf the action is brought and may be affected by the action. You have been identified as a potential class member. **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.

2. What is a class action?

A class action is an action that is brought by one or more persons (the Applicants) on their own behalf and on behalf of a group of people (**class members**) against another person or persons (the Respondents) where the Applicants and the class members have similar claims against the Respondents.

Class 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 Applicants are responsible for the costs.

Class members are bound by any judgment or settlement entered into in the class action unless they have opted out of the action. This means that:

- (a) if the class action is successful, class members may be eligible for a share of any settlement monies or Court-awarded damages (though it may be necessary for class members to prove their individual losses in order to recover any such share);
- (b) if the class action is unsuccessful, class members are bound by that result; and
- (c) regardless of the outcome of the class action, class members will not be able to pursue their claims against the Respondents in a separate legal action unless they have opted out.

3. What is Opt Out?

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

4. What is this class action?

This class action, the Allco Finance Group Class Action is brought by the Applicants (Blairgowrie Trading Ltd and Alan & Chrystine Flitcroft) on their own behalf and on behalf of all persons who are “**class members**” as defined in the action.

The Applicants allege in the Further Amended Statement of Claim in Federal Court action NSD 1609 of 2013 that: (i) during the Relevant Period AFG contravened the continuous disclosure requirements of the *Corporations Act 2001* (Cth) and the ASX Listing Rules in a number of respects and/or made misleading or deceptive statements in several of its announcements to the ASX, pertaining particularly to the amount of the current liabilities of the Allco group of companies as at 30 June 2007, and the terms of, and the occurrence of a review event in relation to, its senior debt facilities; (ii) Mr Coe, as the executive chairman of AFG throughout the Relevant Period, was involved in each of AFG’s contraventions; (iii) the audit opinion given by the Allco group’s auditor, KPMG, for the year ended 30 June 2007 was misleading or deceptive; and that, as a result of the above contraventions, the price of ordinary shares in AFG on the ASX was unduly inflated, thereby causing loss to persons who acquired an interest in such shares during the Relevant Period.

The respondents to the class action are AFG, the estate of Mr Coe, and KPMG. The Respondents deny the allegations, and are defending the class action.

5. Are you a class member?

You are a class member if you acquired an interest in ordinary shares in AFG during the Relevant Period (i.e. 21 August 2007 to 27 February 2008) and suffered loss or damage by, or which resulted from, the alleged contraventions referred to above.

If you are unsure whether or not you are a class member, you should contact Maurice Blackburn by email: allcoclassaction@mauriceblackburn.com.au, or telephone: (03) 8102 2007, or seek your own legal advice without delay.

6. Will you be liable for legal costs?

You will **not become liable for any legal costs** simply by remaining as a class member for the determination of the common questions. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maurice Blackburn, solicitors for the Applicants, or other lawyers to do that work for you. A copy of the terms on which Maurice Blackburn are acting in the class action may be obtained from them on the number shown above. If, following the settlement or determination of common

questions in the class action, it is necessary for you to prove your individual losses, and they are disputed by the Respondents, you may be required to pay their costs of that dispute if you are unsuccessful, or only partly successful; and

- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Applicants in running the class action but which are not able to be recovered from the Respondents; and
- (c) class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer. However, you may still need to prove your individual losses in order to claim from any settlement amount.

7. Funding of this Class Action

For the purpose of funding this class action, the Applicants and some class members have entered into Funding Agreements with ILFP, the terms of which include:

- ILFP will pay part of the costs incurred in conducting the class action (with the balance of those costs to be paid only if there is a successful outcome);
- ILFP will pay any adverse costs orders which are made in the class action against the Applicants; and
- at the conclusion of the class action (whether by settlement or judgment), ILFP is entitled to receive, as a first priority out of that person’s share of the settlement or judgment amount: (i) reimbursement of that person’s share of the amounts paid by ILFP under the Funding Agreements (which includes legal costs and disbursements); and (ii) a commission, being a percentage of that person’s share of the settlement or judgment amount, which will vary for each class member depending on how many ordinary shares in AFG they held. Specifically, the percentages are:

| Number of Shares Held | Resolution on or by 30 June 2014 ¹ | Resolution on or by 30 June 2015 ¹ | Resolution after 30 June 2015 ² |
|-----------------------|-----------------------------------------------|-----------------------------------------------|--------------------------------------------|
| < 1,000,000 | 25% | 30% | 35% |
| > or = 1,000,000 | 22.5% | 27.5% | 32.5% |

1. The percentages set out in these two columns are no longer applicable, given that the relevant dates have now passed.
2. These percentage amounts will increase in the event that ILFP funds an appeal from a final judgment in the class action, specifically, by 5.0% for each appeal so funded.

(If you wish to see the full terms of the Funding Agreements, see the section below headed “Where can you obtain copies of relevant documents”.)

The Applicants propose to seek orders from the Court which would have the effect that the above funding arrangements will apply to all class members, even if they have not entered into a Funding Agreement with ILFP (**Common Fund Orders**). The Applicants have previously applied for similar orders. Those orders were opposed by the Respondents and the Federal Court declined to make the orders at that stage of the action. The Applicants propose to make a further application, either in connection with settlement discussions (if they occur), or if a successful outcome is obtained (either by settlement or judgment). The Respondents may or may not oppose the orders at this stage.

If the Court makes Common Fund Orders, all class members who have not opted out of the action will in effect be bound by the funding arrangements and will ultimately be bound to contribute, out of any amount which they become entitled to receive by way of settlement or judgment of their claims, an amount payable to ILFP (including legal costs, disbursements and commission) as if they had agreed to the funding arrangements with ILFP.

It is possible that the court may make no order, or other orders, in respect of funding arrangements. An example of an alternative order is an "equalisation order", which would result in ILFP being paid only the total amount to which it is entitled under the funding arrangements it has actually agreed with class members, but that amount being shared across all class members rather than only those who have entered the funding arrangements.

Class members will **not** be required to pay any amounts to ILFP (or to Maurice Blackburn) unless and until there is a successful outcome in the class action, whereupon any amounts payable will be deducted from the amount to which each class member is otherwise entitled (but under no circumstances will they exceed that amount). No class member will be 'out-of-pocket' simply by remaining as a class member.

8. What will happen if you choose to remain a class member?

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicants and class members. (In some cases you may have to satisfy certain conditions before your entitlement arises). Further, the amounts to which you are entitled may be partly reduced by any amounts the Court orders be payable in respect of legal costs and disbursements (as outlined in Section 6 above) and any amounts the Court orders be payable to ILFP (as outlined in Section 7 above). If the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other action.

9. How can you remain a class member?

If you wish to remain a class member there is **nothing you need to do** at the present time. The Applicants will continue to bring the action on your behalf up to the point where the Court determines those questions that are common to the claims of the Applicants and the class members.

However, it is important for the parties to know who the possible group members are in order to consider settlement. In that context, if you do not wish to opt out of this class action, **it is important that you contact Maurice Blackburn** to provide information relating to your possible claim, if you have not done so previously. Please do this by **21 October 2016**. The contact details are set out below. The information required is set out in the attached form titled 'Group Member Registration Form'. You can either complete the form in writing, and either post or email it to Maurice Blackburn, or alternatively, provide that information electronically via Maurice Blackburn's website (<https://www.mauriceblackburn.com.au/Allco>). Failure to provide the details of your claim to Maurice Blackburn by that date will not prevent you from later seeking to make a claim in this class action, but it might affect the size of any settlement amount agreed.

10. How can you opt out of the class action?

If you do not wish to remain a class member you must opt out of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Respondents, provided that you issue Court action within the time limit applicable to your claim. You should note that, given the timing of the events which are the subject of the class action, it is likely that if you have not already commenced your own action against the Respondents, the time limit for doing so will expire within a few weeks or months of you opting out. If you wish to bring your own claim against the Respondents, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing an “**Opt Out Notice**” in the form shown below (Form 21 of the Court’s approved forms), then returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later than 4.00 pm on 21 October 2016**, otherwise it will not be effective.

You should submit the Opt Out Notice if:

- (a) you qualify as a class member and you wish to opt out of the class action; or
- (b) you believe that you have been incorrectly identified as a class member, because you do not meet the criteria set out in the section headed “Are you a class member” above.

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

11. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Further Amended Originating Application, Further Amended Statement of Claim, the Defence of each of the Respondents, and the previous judgment of the Federal Court referred to in Section 7 above, may be obtained by:

- (a) downloading them from <https://www.mauriceblackburn.com.au/Allco>;
- (b) inspecting them between 9.00 am and 5.00 pm at one of the offices of Maurice Blackburn, contact details for which are available from www.mauriceblackburn.com.au or by calling (03) 8102 2007;
- (c) inspecting them on the Federal Court website, www.fedcourt.gov.au or by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin; the addresses for these registries are available at www.fedcourt.gov.au or by calling the New South Wales District Registry on (02) 9230 8567.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Maurice Blackburn by email: allcoclassaction@mauriceblackburn.com.au, or telephone: (03) 8102 2007, or seek your own legal advice. You should not delay in making your decision.

Form 21
Rule 9.34

Opt out notice

NSD 1609 of 2013

Federal Court of Australia
District Registry: New South Wales
Division: General

BLAIRGOWRIE TRADING LTD
and others

Applicants

ALLCO FINANCE GROUP LTD
(RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION)
(ACN 077 721 129)
and others

Respondents

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building, Queens Square, Sydney

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

Date: 2016

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

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

Group Member Registration Form
FEDERAL COURT OF AUSTRALIA
ALLCO FINANCE GROUP CLASS ACTION

Blairgowrie Trading Ltd & Ors v Allco Finance Group Ltd (recs & mgrs apptd) (in liq) & Ors
NSD 1609 of 2013

To: Maurice Blackburn
Level 10, 456 Lonsdale Street
Melbourne VIC 3000
Attention: Steven Foale
(Tel: (03) 8102 2007)
(Email: allcoclassaction@mauriceblackburn.com.au)

The group member named below provides the following information in respect of their claim in this representative proceeding.

| | |
|------------------------------------------------------------------------------------|----------------|
| Name of group member: | |
| Person completing this form (print): | |
| Authority of person completing this form (eg., company director, lawyer): | |
| Telephone contact: | |
| Postal address: | |
| Email address: | |
| How many AFG shares did you hold at the commencement of trading on 21 August 2007? | |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>How many AFG shares did you acquire in the period 21 August 2007 to 27 February 2008, and on what dates were those shares acquired?</p> | |
| <p>How many AFG shares did you dispose of in the period 21 August 2007 to 27 February 2008, and on what dates were those shares disposed of?</p> | |