



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID513/2015

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

Applicant

**QBE INSURANCE GROUP LIMITED (ACN 008 485 014)**

Respondent

### **ORDER**

**JUDGE:** JUSTICE MURPHY, JUSTICE GLEESON and JUSTICE BEACH

**DATE OF ORDER:** 15 November 2016

**WHERE MADE:** Melbourne

#### **THE COURT ORDERS THAT:**

Upon the undertaking by each of International Litigation Funding Partners Pte Ltd, the Applicant and Maurice Blackburn to each other and to the Court, in the terms set out in Annexure A to this order (being that they will comply with their obligations under the Funding Terms (being Annexure B to this order) and the terms of Order 1), within seven days of the date of this order:

#### **THE COURT ORDERS THAT:**

1. Subject to further order, upon Resolution (as defined in the Funding Terms) the Applicant and Group Members pay from any Resolution Sum (as defined in the Funding Terms), the amounts referred to in sub-clauses 6(a) to (d) of the Funding Terms, prior to any distribution to Group Members, in accordance with the Funding Terms.
2. Upon Resolution, no amount payable by the Applicant and Group Members in the aggregate pursuant to Order 1 is to exceed an amount that would otherwise be payable by the Applicant and Group Members in the aggregate in the event that Order 1 had not been made.



3. The parties' costs of and incidental to the Applicant's interlocutory application dated 3 December 2015 and 13 May 2016 be costs in the cause.

Date that entry is stamped: 15 November 2016

*Warrick Soden*  
Registrar



**ANNEXURE A  
FORM OF UNDERTAKING**

No. VID513 of 2015

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Money Max Int Pty Limited (ACN 152 073 580), as trustee for the Goldie Superannuation Fund**

Applicant

**QBE Insurance Group Limited (ACN 008 485 014)**

Respondent

**UNDERTAKING**

[International Litigation Funding Partners Pte Ltd *OR* Money Max Int Pty Limited, as trustee for the Goldie Superannuation Fund *OR* Maurice Blackburn Pty Ltd] undertakes to [the other two of International Litigation Funding Partners Pte Ltd *AND* Money Max Int Pty Limited, as trustee for the Goldie Superannuation Fund *AND* Maurice Blackburn Pty Ltd] and to the Court to comply with its obligations under the Funding Terms (being Annexure B to the Orders dated 15 November 2016) and the terms of Order 1 of those Orders.

Signature:

Party: \_\_\_\_\_  
[International Litigation Funding Partners Pte Ltd  
*OR* Money Max Int Pty Limited, as trustee for the  
Goldie Superannuation Fund *OR* Maurice  
Blackburn Pty Ltd]

Signatory:

Capacity:

Date of signature:



## ANNEXURE B FUNDING TERMS

### Definitions

1. The following definitions apply in these Funding Terms:
  - (a) “**Applicant**” means Money Max Int Pty Limited (ACN 152 073 580), as trustee for the Goldie Superannuation Fund, and any other person who is a lead applicant or representative party in the Proceedings;
  - (b) “**Claims**” means the claim or claims the Applicant and the Group Members have or may have against some or all of the Respondent and Other Parties arising out of, or connected with, an alleged failure to immediately publicly disclose information relevant to the price or value of QBE Shares and/or misleading or deceptive conduct in relation to QBE Shares in the period 20 August 2013 to 6 December 2013 (inclusive) or such other period as the Lawyers advise and the Funder accepts;
  - (c) “**Common Benefit Work**” means Legal Work for the common benefit of Group Members, or a sub-group of Group Members;
  - (d) “**Costs Order**” means an order made by a court requiring one or more parties to the Proceedings to pay the costs incurred by another party or parties to the Proceedings;
  - (e) “**Disbursement**” means any expense the Lawyers incur whether as principal or as agent on the Group Members’ behalf in relation to the Legal Work, including (without limitation) barristers and other experts’ fees, searching fees, lodging fees, travel expenses, courier fees and photocopying fees;
  - (f) “**Funding Agreements**” means the funding agreement between the Funder and the Applicant signed by the Applicant on 3 September 2015 and any funding agreements between the Funder and other Group Members in relation to the Claims;
  - (g) “**Funding Period**” means the period commencing on the date orders are made pursuant to the Interlocutory Application filed on 3 December 2015;



- (h) “**Gross Recovery**” means the gross amount payable by way of Settlement or judgment in respect of the Claims, excluding any costs;
- (i) “**Group Members**” means all persons who are identified as group members in the Proceedings, and who do not opt out of the Proceedings by the time specified by the Court for doing so;
- (j) “**GST**” means goods and services tax;
- (k) “**Individual Legal Work**” means Legal Work in connection with the specific Claims of a specific Group Member, not including Common Benefit Work;
- (l) “**Lawyers**” means the lawyers, Maurice Blackburn Pty Ltd (ACN 105 657 949), or any firm of lawyers appointed in their place by the Applicant after consultation with the Funder;
- (m) “**Legal Work**” means such advice and legal services to the Group Members or for the Group Members’ benefit, including the Common Benefit Work and any Individual Legal Work, as the Lawyers may consider reasonably necessary to: (a) investigate the Claims; (b) prosecute the Claims; (c) negotiate a Settlement of the Claims; and (d) negotiate to secure and maintain funding on behalf of the Group Members in relation to the Claims;
- (n) “**Other Parties**” means any other entity which the Lawyers recommend be joined to proceedings commenced or to be commenced against the Respondent, the joinder of whom the Funder agrees to fund;
- (o) “**Proceedings**” means any legal proceedings to prosecute the Claims and includes a proceeding brought in contemplation of Proceedings, including without limitation proceedings for preliminary discovery;
- (p) “**QBE**” means QBE Insurance Group Limited (ACN 008 485 014);
- (q) “**QBE Share**” means an ordinary fully-paid share issued by QBE;
- (r) “**Resolution**” means when all or any part of the Resolution Sum is received and, where the Resolution Sum is received in parts, a “Resolution” occurs each time a part is received;



- (s) “**Resolution Sum**” means the amount or amounts, or the value of any goods or services, for which the Claims are settled, or for which judgment is given, including the value of any favourable terms of future supply of goods or services and including any interest and including costs recovered pursuant to a Costs Order or by agreement;
- (t) “**Respondent**” means QBE and any Other Parties named as defendants or respondents in the Proceedings;
- (u) “**Retainer Agreements**” means the retainer and costs agreement between the Lawyers and the Applicant signed by the Applicant on 3 September 2015 and any retainer and costs agreements between the Lawyers and other Group Members in relation to the Claims; and
- (v) “**Settlement**” means any settlement, compromise, discontinuance or waiver of the Claims or part of the Claims and “**settles**” shall be construed accordingly.

### **Obligations of the Funder**

#### 2. The Funder must:

- (a) pay to the Lawyers all reasonable Disbursements upon receipt of each bill from the Lawyers, including any amounts in relation to GST payable by the Lawyers, in so far as the Disbursements were incurred either before or during the Funding Period;
- (b) pay to the Lawyers 75% of the Lawyers’ reasonable professional fees upon receipt of each bill from the Lawyers, including any amounts in relation to GST payable by the Lawyers, in so far as the professional fees were incurred either before or during the Funding Period;
- (c) pay to the Lawyers interest on any billed and unpaid professional fees or Disbursements, at a rate that is equal to the percentage (or maximum percentage) specified by the Reserve Bank of Australia as the cash rate target, plus 2%, from the period beginning at the end of the month in which the relevant item of work was performed to which those professional fees or Disbursements relate, plus any amounts in relation to GST payable by the Lawyers;



- (d) upon Resolution, pay to the Lawyers any unpaid portion of the Lawyers' reasonable professional fees and reasonable Disbursements and an additional amount equal to 25% of the unpaid portion of any reasonable professional fees, including any amounts in relation to GST payable by the Lawyers, in so far as the professional fees were incurred either before or during the Funding Period;
- (e) pay any Costs Order which the Court makes in the Proceedings against the Applicant or other Group Member in favour of the Respondent and Other Parties (or any one or more of them), in so far as those costs were incurred either before or during the Funding Period; and
- (f) provide any security for costs in the Proceedings, in the form that the Court orders, or in the absence of any order, in such other form as the Funder determines and the Respondent and Other Parties accept, relating to costs incurred during the Funding Period.

#### **Receipt and Application of Resolution Sum**

- 3. Any Resolution Sum will be received by the Lawyers and paid immediately into an account kept for that purpose.
- 4. If the Applicant or any Group Member obtains any Settlement or obtains any judgment in respect of the Claims, it will:
  - (a) treat any money, other asset or benefit received from the Respondent in connection with the Settlement or judgment as the Resolution Sum; and
  - (b) cause the money, or an amount being the reasonable market value of the asset or benefit, to be delivered to the Lawyers to be dealt with as part of the Resolution Sum.
- 5. Subject to any Court order, the Lawyers will pay to the Funder out of the account referred to in paragraph 3 above all payments referred to in paragraph 6 below, with the balance to be distributed to the Group Members on a pro rata basis by reference to the Gross Recovery of all Group Members in accordance with any distribution scheme approved by the Court.



### **Costs and Commission**

6. Upon Resolution, the Funder or its nominee shall be paid the following amounts from the Resolution Sum, prior to any distributions to Group Members:
  - (a) an amount equal to the total monies paid by the Funder pursuant to paragraph 2 above;
  - (b) an amount, as consideration for the funding of the Proceedings, expressed as a percentage of the Resolution Sum as approved by the Court;
  - (c) if the Funder funds an appeal, or the defence of an appeal, or any further appeal or the defence of any further appeal, a further amount expressed as a percentage of the Resolution Sum as approved by the Court, in respect of each appeal so funded; and
  - (d) an additional amount, on account of GST, being the amount obtained by multiplying the prevailing rate of GST (currently 10%) by an amount equal to the consideration to be received by the Funder for any taxable supply made to the Applicant by the Funder under or in connection with these Funding Terms.
7. The amounts referred to in paragraph 6 above will not become due or owing by the Group Members to the Funder unless and until Resolution, and then will not exceed the Resolution Sum. In the event that the total of the amounts referred to in paragraph 6 above exceeds the Resolution Sum, the total amount which the Funder is entitled to be paid shall be reduced so as to equal the Resolution Sum.

### **Relationship Between the Applicant, Lawyers and Funder**

8. The Lawyers' professional duties are owed to the Applicant and not to the Funder. The Applicant, as the representative applicant in the Proceedings, will give binding instructions to the Lawyers and make binding decisions on behalf of the Group Members in relation to the Claims up to the time of any court approval of settlement of the Claims or the delivery of judgment in respect of the common issues in the Proceedings (including, but not limited to, instructions and decisions in relation to Settlement), save where, in the reasonable professional opinion of the Lawyers, separate instructions are required from the Group Members.
9. The Lawyers will:





- (a) provide the Funder with confidential updates of the progress of the Proceedings;
- (b) consult with the Funder with regard to any significant issue in the Proceedings;
- (c) properly consider the Funder's views as to the conduct of the Proceedings; and
- (d) promptly respond to any reasonable request by the Funder for information relating to the Proceedings.

### **Confidentiality**

10. The Funder shall strictly maintain the confidentiality of any information provided to the Funder by the Applicant or the Lawyers for a purpose connected to the Proceedings, and shall adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information.

### **Settlement**

11. If there is a disagreement between the Funder and the Applicant as to the appropriate terms for settlement of the Proceedings:
- (a) the Lawyers will brief Senior Counsel to provide an advice as to whether the proposed settlement is reasonable having regard to all the circumstances;
  - (b) a representative of the Funder may attend any conference with Senior Counsel at which the issue is to be discussed;
  - (c) the legal costs of obtaining the advice shall be met by the Funder as part of the reasonable costs of the Proceedings; and
  - (d) the advice of Senior Counsel will be final and binding on both the Applicant and the Funder.
12. Under paragraph 11 above, in determining whether a proposed settlement is reasonable having regard to all the circumstances, Senior Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her advice, but any such determination shall include the following considerations:
- (a) the strengths and weaknesses of the claims of all Group Members;
  - (b) the quantum of the claims of all Group Members and any difficulties which might exist in proving that quantum;



- (c) the recoverability of a judgment sum from the Respondent;
- (d) the extent to which further legal costs incurred in the Proceedings are likely to be recoverable from the Respondent;
- (e) the risk of the Funder being ordered to pay adverse costs and the quantum of such costs. Counsel will have regard to this factor as though all Group Members carried such risk rather than the Funder;
- (f) the matters set out in paragraph [248.95] of the Australian Securities and Investments Commission's *Regulatory Guide 248: Litigation schemes and proof of debt schemes: Managing conflicts of interest* (April 2013); and
- (g) any other matter Senior Counsel considers relevant.

### **Termination**

13. The funding arrangements under these Funding Terms may only be terminated by order of the Court, granted on application made by the Applicant, the Funder or a Group Member, upon notice given to the Applicant, the Funder and such other persons as ordered by the Court.
14. If an application is made by the Funder under paragraph 13 above, and the Court grants that application, then (subject to any contrary order of the Court):
  - (a) the Funder will not be entitled to receive any payment from any Resolution Sum pursuant to paragraph 6(b) and 6(c) above;
  - (b) the Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to paragraphs 6(a) and 6(d) above;
  - (c) all obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
    - (i) payment of any outstanding costs pursuant to paragraph 2 above incurred up to the date of termination;
    - (ii) indemnification of the Group Members for any costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and



- (iii) payment of any quantified Costs Order against any Group Members in the Proceedings in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.
15. If an application is made by the Applicant or a Group Member under paragraph 13 above, and the Court grants that application, then (subject to any contrary order of the Court):
- (a) the Funder will continue to be entitled to receive payment from any Resolution Sum pursuant to paragraph 6 above;
  - (b) all obligations of the Funder under these Funding Terms will cease on the date the Funder's termination becomes effective, save for the following obligations accrued to the date of termination:
    - (i) payment of any outstanding costs pursuant to paragraph 2 above incurred up to the date of termination;
    - (ii) indemnification of the Group Members for any costs and Disbursements reasonably incurred and payable to the Lawyers up to the date of termination; and
    - (iii) payment of any quantified Costs Order against any Group Members in the Proceedings in respect of costs which arise in, or are attributed to, the period ending on the date the Funder's termination becomes effective.

### **Funding Agreements and Retainer Agreements**

16. These Funding Terms prevail over any inconsistent provision in the Funding Agreements.
17. These Funding Terms prevail over the terms of the Retainer Agreements to the extent of any inconsistency.