

## GETSWIFT CLASS ACTION (NSD 580 of 2018)

*Raffaele Webb v GetSwift Limited ACN 604 611 556 (In Liquidation) and Anor*

### SUPPLEMENTARY NOTICE OF PROPOSED SETTLEMENT (further to the November 2021 [Notice of Proposed Settlement and Registration](#))

This Notice is provided pursuant to Orders made by the Federal Court of Australia on 16 December 2022. It should be read together with the November 2021 [Notice of Proposed Settlement and Registration \(2021 Notice\)](#) previously provided to you.

This Notice is an important legal document and you should read it carefully as it concerns your legal rights.

This Notice deals with the following matters:

- Section 1: Overview
- Section 2: Important updates since the 2021 Notice
- Section 3: What options do group members have?
- Section 4: Proposed settlement and Court approval
- Section 5: How will the Settlement Sum be distributed?
- Section 6: Calculation of Registered Group Member Entitlements
- Section 7: Settlement Administration
- Section 8: Further information
- Annexure 1: Individual distribution examples

## 1 OVERVIEW

- 1.1 In November 2021, the Court ordered that group members in the Federal Court of Australia proceeding *Raffaele Webb v GetSwift Limited ACN 604 611 556 (In Liquidation) and Anor (NSD580/2018)* (**GetSwift Class Action**) be provided with a Notice of Proposed Settlement and Registration ([2021 Notice, available at: https://phifinneymcdonald.com/content/uploads/2021/11/211119-Notice-of-Proposed-Settlement-and-Registration285496.2.pdf](#)).
- 1.2 The [2021 Notice](#) provided information about a conditional settlement that had been reached in the proceeding between the Applicant and the Respondents (GetSwift Limited and Joel Macdonald) to resolve the claims of all group members (**Proposed Settlement**). GetSwift Limited's Canadian parent company, GetSwift Technologies Limited (BC 1250648), is also a party to the Proposed Settlement. The Proposed Settlement is without admission of liability by GetSwift Limited or Mr Macdonald.
- 1.3 If you are a group member in the GetSwift Class Action, you should have received the 2021 Notice. Please refer to section C of the [2021 Notice](#) for information about the group member definition.

- 1.4 This **Supplementary Notice** provides important updates about the Proposed Settlement including the settlement value.
- 1.5 You should read this Supplementary Notice carefully. Any questions you have concerning the matters contained in this Supplementary Notice should not be directed to the Court. You should instead seek independent legal advice or contact Phi Finney McDonald (for contact details see paragraph 8.1 of this Supplementary Notice, below).
- 1.6 The Applicant (who brought the action on behalf of himself and group members) is represented by solicitors Phi Finney McDonald, and the class action has been funded by Therium Litigation Finance A IC (IC125471) (**Therium**).
- 1.7 The Proposed Settlement requires Court approval to be effective and for monies to be distributed to eligible group members. The Court must assess whether any class action settlement is fair and reasonable in the interests of group members.
- 1.8 The Court has been asked to approve the Proposed Settlement at a hearing to be held on 2 February 2023 (**Settlement Approval Hearing**).
- 1.9 The Settlement Approval Hearing will take place at **10.15am on 2 February 2022** in the Victorian Registry of the Federal Court of Australia located at **305 William Street, Melbourne VIC 3000**. You are entitled to attend the hearing if you wish to. Due to the coronavirus, a hearing may not happen in a courtroom where people come along in person, and if you want to attend, you may be provided instead with a video link or telephone link.
- 1.10 No action is required from you, as the court-ordered date to register for or oppose the Proposed Settlement has now passed. However, if you wish to oppose the Proposed Settlement, please refer to paragraph 3.6 of this Supplementary Notice.
- 1.11 Please refer to section B of the [2021 Notice](#) for a background of the GetSwift Class Action.

## **2 IMPORTANT UPDATES SINCE THE 2021 NOTICE**

- 2.1 Previously, the Settlement Formula (as summarised in Annexure C of the [2021 Notice](#)) included an upfront payment of \$1.5m, to be paid in three equal instalments by 7 January 2022, as well as payments based on percentages of GetSwift Technologies Limited's capital raising or revenue in financial years 2022, 2023 and 2024.
- 2.2 However, only the first two instalments of the upfront payment were made, totalling \$1,000,000, which is held on trust. The third instalment (of \$500,000) was not paid.
- 2.3 On 29 July 2022, GetSwift Limited (and another Australian registered entity, GetSwift Logistics Pty Ltd (together, **GetSwift**)) went into liquidation. It is unlikely that the third instalment of \$500,000 will be paid.

- 2.4 On 2 August 2022, GetSwift Technologies Limited (and another USA registered entity, GetSwift Inc.) (together, **GTL**) commenced a bankruptcy plan in the United States (**GTL Liquidation Plan**).

Availability of funds

- 2.5 Accordingly, given the position of the companies, the third instalment of the upfront payment remains outstanding and there will be no further payments via capital raising or revenue.
- 2.6 Therefore, the Applicant seeks approval of the settlement on the basis that the settlement sum that will be available for distribution is the \$1,000,000 held on trust (**Settlement Sum**).

### 3 WHAT OPTIONS DO GROUP MEMBERS HAVE?

Registration closed

- 3.1 As explained in the [2021 Notice](#) (section D and Annexure B), registration to participate in the Proposed Settlement closed on 4 February 2022. Unregistered group members are no longer able to register.
- 3.2 **Registered Group Members** are group members who registered their claim in accordance with order 6 or 7 of the Orders made on 19 November 2021, that is group members:
- a. who registered their claim by:
    - i. completing the Group Member Registration form by 22 November 2019;
    - ii. completing the Group Member Registration form by 16 December 2019; or
    - iii. submitting an incomplete Group Member Registration form or indicating an intention to do so by 16 December 2019, and doing so by 10 January 2020; and
  - b. who registered their claim by completing the online Group Member Registration form by 4 February 2022.
- 3.3 Registered Group Members do not have to take any action. You are encouraged to refrain from contacting Phi Finney McDonald unnecessarily, in order to keep costs to a minimum.
- 3.4 If you are not sure whether you are a Registered Group Member, please contact Phi Finney McDonald at [GetSwiftClassAction@phifinney-mcdonald.com](mailto:GetSwiftClassAction@phifinney-mcdonald.com).

Objections closed

- 3.5 As explained in the [2021 Notice](#) (section D and Annexure B), the time for filing any objections to the Proposed Settlement closed on 4 February 2022.
- 3.6 However, given the important updates in section 2 above, if you are a group member (either registered or unregistered) and you wish to oppose the Proposed Settlement or any aspect of it, you may, by no later than **20 January 2023**:
- a. email the Court at [EA.MurphyJ@fedcourt.gov.au](mailto:EA.MurphyJ@fedcourt.gov.au) AND Phi Finney McDonald at [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com); and
  - b. outline your reasons for objection.

The Court will then decide, in its discretion, whether or not to consider the objection as part of the Settlement Approval Hearing.

#### 4 PROPOSED SETTLEMENT AND COURT APPROVAL

**Why is there a Proposed Settlement in the GetSwift Class Action?**

While the Settlement Sum of \$1,000,000 is substantially below what Phi Finney McDonald's opinion was of the real value of the case (having regard to the strength of the evidence on liability), the insolvency of GetSwift and GTL means that it is the best that can be achieved.

The Proposed Settlement will not be enough to cover the legal and other costs of running the GetSwift Class Action.

However, the Applicant and Phi Finney McDonald support Court approval of the Proposed Settlement because they consider it to be the best possible outcome for Registered Group Members in all the circumstances.

That is so because, notwithstanding the view that the case was strong on liability and was likely to succeed, the liquidation of GetSwift and the GTL Liquidation Plan means that Registered Group Members are highly unlikely to recover any more than under the Proposed Settlement.

- 4.1. The financial positions of GetSwift and GTL have significantly worsened since the [2021 Notice](#), with GetSwift in liquidation and GTL undergoing the GTL Liquidation Plan.
- 4.2. For the reasons outlined in the [2021 Notice](#), aside from GetSwift and GTL, Phi Finney McDonald considers that Mr Joel Macdonald also does not have sufficient assets to make any meaningful contribution to the Proposed Settlement or meet a Court judgment (even if leave to proceed was granted in that circumstance), and Phi Finney McDonald

understands that there is no insurance policy from which there are likely to be funds available in relation to the GetSwift Class Action.

## 5 HOW WILL THE SETTLEMENT SUM BE DISTRIBUTED?

Subject to Court approval, Phi Finney McDonald, Therium and AmTrust Europe Limited (**AmTrust**) have committed to ensure that Registered Group Members receive 50% of the AU\$1,000,000 Settlement Sum. That is, they propose that Registered Group Members will receive AU\$500,000.

Although \$500,000 is significantly lower than the real value of Registered Group Members' claims, Phi Finney McDonald, Therium and AmTrust will also not be repaid a significant amount of the legal costs and expenses associated with prosecuting the case.

Therium will not be paid at all for funding the GetSwift Class Action.

Phi Finney McDonald will ask for AmTrust to be paid one third of the contingent component of the premium it is owed in exchange for adverse costs insurance.

5.1 The Applicant will ask the Court to order that:

- a) **AU\$500,000**, or 50% of the Settlement Sum, go to Registered Group Members;
- b) **AU\$100,000** go to Phi Finney McDonald for the legal costs, primarily to cover disbursements involved with the Proposed Settlement application and, if approved by the Court, administering the settlement distribution;

In section G of the [2021 Notice](#), Phi Finney McDonald said it would apply to the Court to approve approximately:

- i. AU\$7,826,723 as fair and reasonable costs associated with running the GetSwift Class Action, including expenses, having regard to the opinion of an independent expert costs assessor; and
- ii. if appointed as Administrator, AU\$229,552.95 for administering the settlement.

**However**, given the further deterioration in GetSwift and GTL's financial circumstances, the Applicant will now request that Phi Finney McDonald be paid AU\$100,000 in legal costs. This will primarily cover disbursements involved with the

Proposed Settlement application and, if approved by the Court, distributing 50% of the Settlement Sum to Registered Group Members.

- c) AU\$0 go to Therium relating to the payment of premiums for adverse costs insurance and three deeds of indemnity provided to the Respondents by way of security for costs:

Section G of the [2021 Notice](#) stated Therium had incurred a further AU\$659,130 in the GetSwift Class Action, principally relating to the payment of premiums for adverse costs insurance and three deeds of indemnity provided to the Respondents by way of security for costs.

In accordance with the Proposed Settlement Distribution Scheme, if approved, Therium will not be repaid these costs.

- d) approximately AU\$6,130 go to the Applicant, Mr Webb, for undertaking the GetSwift Class Action on behalf of himself and group members:

Also detailed at section G of the [2021 Notice](#), the Applicant, Mr Webb, has incurred approximately AU\$6,130 in undertaking the GetSwift Class Action on behalf of himself and group members.

The Applicant will ask the Court to pay these costs from the Settlement Sum.

- e) approximately AU\$393,870 go to AmTrust for the contingent component of the insurance policy Therium took out so that it could guarantee to the Applicant that it would meet any adverse costs.

Also detailed at section G of the [2021 Notice](#), Therium took out an insurance policy with AmTrust so that it could guarantee to the Applicant that it would meet any adverse costs order made against the Applicant in the proceeding. The contingent component of the premium payable under the policy (meaning the amount of the premium payable to AmTrust in the event of a successful outcome, such as a settlement) is AU\$1,167,390.

In the circumstances, AmTrust has agreed for the Applicant to ask the Court that it receive only one third of this premium, being AU\$393,870, from the Settlement Sum.

### **Outstanding \$500,000**

The Settlement Sum, being \$1m is held in trust, is this sum that is proposed to be distributed among eligible Registered Group Members.

The additional \$500,000 of the upfront settlement payments under the Deed of Settlement has not been paid by the Respondents (**Default Payment**), and is not held in trust. The likelihood of recovering the Default Payment from GetSwift in the liquidation

process, or GTL in the GTL Liquidation Plan, is extremely low, including because neither GetSwift nor GTL have substantial assets for distribution in their respective liquidations.

Similarly, for the reasons outlined at 4.2 above, Mr Macdonald does not have sufficient assets to make any meaningful contribution to the Proposed Settlement. Accordingly, the likelihood of recovering the Default Payment from Mr Macdonald is low.

For this reason, Phi Finney McDonald has not committed to represent the Applicant or group members in any recovery application from GetSwift under the liquidation process or from GTL under the GTL Liquidation Plan, or in any breach of contract action against Mr Macdonald to recover the Default Payment.

However, if the settlement is approved, Registered Group Members may individually engage solicitors (either Phi Finney McDonald or otherwise) to pursue recovery of a portion of the Default Payment from either GetSwift in the liquidation process, GTL in the GTL Liquidation Plan, or Mr Macdonald in an action for breach of contract.

## 6. CALCULATION OF REGISTERED GROUP MEMBER ENTITLEMENTS

- 6.1. At the Settlement Approval Hearing, the Applicant will seek orders from the Court to approve a proposed Settlement Distribution Scheme which will establish the process to distribute the Settlement Sum as efficiently as possible.
- 6.2. The Settlement Distribution Scheme will include a confidential schedule containing a “Loss Assessment Formula” which details how each Registered Group Member’s entitlement will be calculated.
- 6.3. As outlined in Section B of the [2021 Notice](#), the Applicant alleged in the GetSwift Class Action that, because of the conduct of the Respondents, group members paid more (“an inflated price”) for their GetSwift shares than they would have otherwise paid. The Respondents denied this allegation.
- 6.4. To determine the price that the Applicant alleges would have otherwise been paid, the Applicant engaged the services of a Forensic Economist, Dr Ramsey Zein, to produce what is referred to as an “inflation series”. That inflation series estimates the amount of inflation in the price of GetSwift shares for each day during the Claim Period and will be used to determine the compensation Registered Group Members will receive from 50% of the Settlement Sum.
- 6.5. Accordingly, the Applicant will calculate a Registered Group Member’s loss using the total amount of inflation paid on shares purchased during the Claim Period (**Claim Shares**). This loss will be offset by the amount of inflation received on Claim Shares sold during the Claim Period (for the purpose of identifying sales of Claim Shares during the Claim Period, individual sale transactions are matched against purchase transactions on a “last-in-first-out” basis).

### VALUE OF ALL REGISTERED GROUP MEMBER CLAIMS

- 6.6. The final number of Registered Group Members is currently 1,305. The share trades of all Registered Group Members can be used to illustrate the calculation of return to Registered Group Members.
- 6.7. Applying Dr Zein's inflation series results in a total loss of approximately \$42,830,577.30 in respect of the claims of all Registered Group Members (plus 12 group members who sought to register late that the Applicant will apply to be deemed as Registered Group Members).
- 6.8. Applying Federal Court interest (calculated as at 1 December 2022) to this amount brings the above claims value to \$50,443,366.41.

### VALUE OF INDIVIDUAL GROUP MEMBER CLAIMS

- 6.9. The value of individual claims will vary for individual Registered Group Members and will depend on a number of factors including the type and volume of trades in GetSwift shares and when those transactions occurred during the Claim Period.
- 6.10. Phi Finney McDonald would incur more costs in distributing nominal payments from the comparatively low Settlement Sum in contrast to the total claim value. For this reason, a monetary threshold of \$10 will be applied for Registered Group Members to qualify for a distribution under the Settlement Distribution Scheme. Excluding Registered Group Members whose distribution would be less than \$10, and applying Federal Court interest (calculated as at 1 December 2022), brings the total value of eligible claims to **50,307,485.86 (Eligible Claims Value)**.
- 6.11. For the reason set out at 6.9 above, it is impossible to state in this Supplementary Notice how much compensation each Registered Group Member will receive.
- 6.12. However, to guide Registered Group Members, Annexure 1 of this Supplementary Notice contains worked examples of how Registered Group Member entitlements will be calculated depending on three different hypothetical loss values.
- 6.13. The three examples at Annexure 1 are based on low, medium and high average retail investor claim values.
- 6.14. Note that the value of these distribution examples would increase slightly if the Court does not approve inclusion of the 12 group members who sought to register late (see 6.7 above) to participate in the settlement.
- 6.15. If the Proposed Settlement is approved by the Court, individual entitlements to 50% of the Settlement Sum will be distributed to eligible Registered Group Members pursuant to the Settlement Distribution Scheme shortly after that time.

## **7. SETTLEMENT ADMINISTRATION**



- 7.1. If the Court approves the Proposed Settlement, Phi Finney McDonald (or such other Administrator that is appointed by the Court) will be appointed as the Administrator of the proposed Settlement Distribution Scheme, and trustees in relation to the Settlement Sum. Under Court supervision, the Administrator will be obliged to act impartially and will no longer act as lawyers for the Applicant.
- 7.2. Group members can request a copy of the proposed Settlement Distribution Scheme including relevant confidential schedules, from any time after 9 December 2022, by:
  - a. contacting the Applicant's solicitors at [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com); and
  - b. signing and returning a confidentiality undertaking which will be sent to you in response to your request for a copy of the Settlement Distribution Scheme.

## **8. FURTHER INFORMATION**

- 8.1. If you need further information about the Proposed Settlement, please contact Phi Finney McDonald by email to [GetSwiftClassAction@phifinneymcdonald.com](mailto:GetSwiftClassAction@phifinneymcdonald.com).

“Annexure 1” – Individual distribution examples

**EXAMPLE 1: Individual loss of \$1,394**

In this scenario, the hypothetical Registered Group Member purchased 1,000 shares on 16 November 2017 for \$2.00 each, totalling \$2000, and didn't sell any GetSwift shares for the remainder of the Claim Period.

The inflation series assessed the above share price as being inflated by \$1.394 per share.

1. The first step is to determine the value of the individual loss by applying the inflation series prepared by Dr Zein:

$$1,000 \text{ shares} \times \$1.394 \text{ inflation per share} = \$1,394$$

So, the individual loss, excluding interest, would be **\$1,394**.

2. The second step is to determine the individual loss as a percentage of the total value of all Registered Group Members' claims, against the \$500,000 available for distribution:

$$\$1,394 \text{ loss} / \$50,307,485.86 \text{ Eligible Claims Value} \times \$500,000 \text{ available for distribution} = \$13.85$$

So, the individual settlement entitlement would be approximately **\$13.85**.

### **EXAMPLE 2: Individual loss of \$11,386.40**

In this scenario, the hypothetical Registered Group Member purchased 33,100 shares on 4 July 2017 for \$0.91 each, totalling \$30,121, and didn't sell any GetSwift shares for the remainder of the Claim Period.

The inflation series assessed the above share price as being inflated by \$0.344 per share.

1. The first step is to determine the value of the individual loss by applying the inflation series prepared by Dr Zein:

$$33,100 \text{ shares} \times \$0.344 \text{ inflation per share} = \$11,386.40$$

So, the individual loss, excluding interest, would be **\$11,386.40**.

2. The second step is to determine the individual loss as a percentage of the total value of all Registered Group Members' claims, against the \$500,000 available for distribution:

$$\$11,386.40 \text{ loss} / \$50,307,485.86 \text{ Eligible Claims Value} \times \$500,000 \text{ available for distribution} = \$113.17\%$$

So, the individual settlement entitlement would be approximately **\$113.17**.

### EXAMPLE 3: Individual loss of \$21,700

In this scenario, the hypothetical Registered Group Member purchased 10,000 shares on 19 January 2018 for \$2.96 each, totalling \$29,600, and didn't sell any GetSwift shares for the remainder of the Claim Period.

The inflation series assessed the above share price as being inflated by \$2.170 per share.

1. The first step is to determine the value of the individual loss by applying the inflation series prepared by Dr Zein:

$$10,000 \text{ shares} \times \$2.170 \text{ inflation per share} = \$21,700$$

So, the individual loss, excluding interest, would be **\$21,700**.

2. The second step is to determine the individual loss as a percentage of the total value of all Registered Group Members' claims:

$$\$21,700 \text{ loss} / \$50,307,485.86 \text{ Eligible Claims Value} \times \$500,000 \text{ available for distribution} = \$215.67$$

So, the individual settlement entitlement would be approximately **\$215.67**.