

UGL CLASS ACTION

Clime Capital Limited v UGL Pty Limited (VID 1390/2017)

NOTICE OF PROPOSED SETTLEMENT

This Notice is provided pursuant to Orders made by the Federal Court of Australia on 24 October 2019. This Notice is an important legal document and you should read it carefully as it concerns your legal rights.

1. You have received this Notice because you have been identified as a potential group member in the Federal Court of Australia proceeding *Clime Capital Limited v UGL Pty Limited (VID 1390/2017)* (**UGL Class Action**).
2. In summary, this Notice is to inform you that an in-principle settlement of AUD\$18 million (the **Settlement Sum**) has been reached in the proceeding between the Respondent (UGL Pty Limited (**UGL**)) and the Applicant (**Clime Capital Limited**). The Applicant (who brings the action on behalf of itself and group members) is represented by solicitors Phi Finney McDonald, and the class action has been funded by IMF Bentham Limited (**IMF**).
3. The in-principle settlement requires Court approval before it is effective and monies can be distributed to eligible group members. The Court has been asked to approve the settlement at a hearing to be held on 4 December 2019 at 10.15am, Australian Eastern Standard Time (**AEST**). You are entitled to attend the hearing if you wish to.
4. If you do not oppose any aspect of the proposed settlement, no action is required. However, if you wish to oppose any aspect of the proposed settlement, you must take the steps outlined in Part F of this notice.
5. If there is anything in this Notice that you do not understand or if you have any questions, you should **not** contact the Federal Court and should instead seek independent legal advice or contact Phi Finney McDonald (for contact details see paragraph 39 of this Notice, below).
6. If you have a query as to whether you are a group member, please contact IMF on 402633@imf.com.au or free call 1800 016 464.

A. WHAT IS THE UGL CLASS ACTION?

7. The UGL Class Action was commenced on 18 December 2017 and alleges that UGL breached its obligations of continuous disclosure and engaged in misleading and/or deceptive conduct between 16 April 2014 and 5 November 2014 inclusive (**claim period**) by failing to disclose that its Ichthys LNG Project was running behind schedule and was subject to increased project costs, which caused UGL securities to trade on the ASX at artificially inflated prices, and persons who acquired UGL shares within the claim period to suffer compensable loss.
8. The allegations are denied by UGL.
9. Full details of the allegations made by the Applicant and of UGL's defence against those allegations are set out in the Second Further Amended Statement of Claim and Second Further Amended Defence. See Part G of this Notice, below, for details on how to access

these documents.

B. GROUP MEMBERS

10. You are receiving this Notice because you have been identified as a potential group member in the UGL Class Action.
11. A group member is defined in the Second Further Amended Statement of Claim as someone who:
 - (a) acquired an interest in ordinary shares in UGL during the claim period;
 - (b) suffered loss and damage by or resulting from the conduct of UGL as alleged in the Second Further Amended Statement of Claim; and
 - (c) is not a director, officer, close associate, related party, related body corporate or associated entity of UGL, or a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.
12. You are group member if you meet the criteria outlined at paragraph 11 above and did not opt out of the proceeding in accordance with the orders of Justice Murphy dated 23 October 2018 as varied by the orders dated 20 December 2018.
13. Your rights in relation to the UGL Class Action depend on whether you are a Registered Group Member or an Unregistered Group Member:
 - (a) **Registered Group Members** are those persons who registered as a group member in the UGL Class Action by completing and returning a Group Member Registration Form to IMF or completing and returning to IMF a funding agreement with IMF (**Funded Group Members**) in accordance with the orders of Justice Murphy dated 23 October 2018 (as varied by the orders dated 20 December 2018), 22 March 2019 and 16 July 2019.
 - (b) **Unregistered Group Members** are those group members who did not register as a group member in accordance with paragraph 13(a) above.
14. Registered Group Members are to be bound by the settlement and are to be **eligible** to participate in the distribution and potentially receive monies from the Settlement Sum. Unregistered Group Members are to be bound by the settlement but **excluded** from sharing in the Settlement Sum.

C. COMMON FUND

15. As a party to the proceeding, the Applicant would have been required to pay the Respondent's legal costs in the event that the UGL Class Action was unsuccessful and a costs order was made by the Court against the Applicant (**adverse costs order**).
16. IMF provided litigation funding to the Applicant and the group members. Under this arrangement, IMF:
 - (a) indemnified the Applicant against any adverse costs orders; and
 - (b) paid legal costs incurred in prosecuting the proceeding, including the cost of solicitors, barristers, consultants and independent experts.
17. In exchange for this litigation funding, the Applicant and group members who entered into

a funding agreement with IMF and a retainer agreement with PFM (**Funded Group Members**) agreed to reimburse IMF for the legal costs that it paid during the proceeding and to pay IMF a funding commission set at a percentage of any entitlement that they would receive (on a gross basis, i.e., before legal costs were deducted).

18. On 4 October 2018, Justice Murphy made orders (**Common Fund Orders**) pursuant to which, subject to further order as part of settlement approval, IMF became entitled to receive, out of any settlement or judgment amount, reimbursement of the costs they have paid or are liable to pay in respect of the UGL Class Action, and a funding commission in an amount which shall not exceed 30% of the aggregate settlement or judgment amount.
19. The Common Fund Orders have the effect that Registered Group Members who are not Funded Group Members and have therefore not signed a funding agreement with IMF or a retainer with Phi Finney McDonald, will be required to make the same proportionate contribution to IMF's funding commission and/or legal costs as the Funded Group Members out of the Settlement Sum. Put another way, the litigation costs and commission, both of which are subject to Court approval as part of the settlement approval process, are spread evenly among all participating group members.
20. In recognition of the value derived from the Applicant's experience as an institutional investor and the involvement and expertise of its senior officer, as a result of Clime acting as representative applicant in the UGL Class Action, IMF has agreed to waive the Applicant's payment of its proportionate contribution to IMF's funding commission. This arrangement will not impact on the pool of funds available for distribution to Registered Group Members, or affect the net amount that Registered Group Members may receive pursuant to the terms of the proposed settlement and the distribution of the Settlement Sum.
21. In addition to benefiting from the waiver of its proportionate share of the commission payment, the Applicant will seek Court approval of a reimbursement payment for its time and expenses incurred in the interests of prosecuting the proceeding on behalf of group members, in an amount that will not exceed approximately \$84,000 (which amount is subject to Court approval).

D. PROPOSED SETTLEMENT

22. On 9 August 2019, the parties notified the Court that they had reached an 'in-principle' agreement to settle the UGL Class Action, subject to the approval of the Court. The proposed settlement is without admission of liability by UGL.
23. Under the terms of the proposed settlement, UGL will pay a Settlement Sum of AUD\$18 million, inclusive of legal costs, expenses and disbursements, any funding commission and interest, to settle the UGL Class Action. If the proposed settlement is approved, the Settlement Sum, together with any interest accrued on the account in which the Settlement Sum is to be held (subject to any account fees and tax payable pursuant to applicable taxation law), will become available for distribution.
24. Under the terms of the proposed settlement, the rights of Registered Group Members and Unregistered Group Members against the Respondent and any related parties of the Respondent, in respect of or relating to the matters that are, were or could have been raised in the proceeding, will be finally resolved. This does not include any group members who filed an opt-out notice in the proceeding.
25. As above, Registered Group Members are to be bound by the settlement and are to be eligible to participate in the distribution and potentially receive monies from the Settlement Sum, subject to the name of each Registered Group Member being provided on a strictly confidential (and Court approved) basis to the insurer for the Respondent for the sole purpose of the Respondent's insurers' compliance with legal obligations concerning the

prevention of payment to persons or entities associated with terrorism and/or money laundering. Unregistered Group Members are to be bound by the settlement but excluded from sharing in the Settlement Sum.

26. Under the proposed Settlement Distribution Scheme, the following amounts will be deducted from the Settlement Sum before it is distributed to Registered Group Members:
 - (a) Court-approved legal costs (including the Applicant's own legal costs and other reasonable costs and expenses). Court-approved legal costs will be shared on a pro rata basis by all Registered Group Members. Although legal costs and likely administration costs exceed this amount, Phi Finney McDonald and IMF have agreed in seeking Court approval of the Applicant's legal costs and the administration costs, to cap that recovery at AUD\$5.95 million. The Applicant will seek Court approval of legal costs in an amount to be determined as fair and reasonable by the Court following provision by a report by a Court-appointed Costs Referee;
 - (b) Court-approved funding commission. The Applicant will seek Court approval of a funding commission amount of AUD\$4.05 million to be paid to IMF being 22.5% of the gross Settlement Sum;
 - (c) Court approved project costs. The Applicant will seek Court approval of project costs incurred by IMF in the amount of \$15,458, which relate to disbursements incurred by IMF in bringing the UGL Class Action;
 - (d) Court-approved payment to the Applicant to reimburse them for time, trouble and expenses incurred in representing the class in the UGL Class Action. The Applicant will seek Court approval of a payment to the Applicant in an amount to be determined as fair and reasonable by the Court but not exceeding approximately \$84,000; and
 - (e) Court-approved administration costs (being the costs of administering the Settlement Distribution Scheme, as approved as reasonable by a costs assessor).
27. If the Court approves the various proposed deductions from the Settlement Sum there will be approximately \$8 million available for distribution to Registered Group Members.
28. If you wish to oppose these or any other aspects of the proposed settlement, you must follow the procedure in Part F below.

E. COURT APPROVAL PROCESS

29. Under section 33V of the *Federal Court of Australia Act 1976* (Cth), the Court must assess whether any class action settlement is fair and reasonable in the interests of group members. Only if that is the case will the Court approve the settlement.
30. The Court will be asked to review and approve the terms of the settlement agreed by the parties and the proposed Settlement Distribution Scheme, which includes the Loss Assessment Formula through which distribution entitlements are calculated, the legal costs (which are also subject to independent external review), the proposed funding commission, the reimbursement payment to the Applicant and the administration costs.
31. If the settlement is approved, then:
 - (a) Registered Group Members will receive a right to participate in the distribution of the Settlement Sum;
 - (b) the rights of Registered Group Members and Unregistered Group Members against

the Respondent and any related party of the Respondent, in respect of or relating to the matters that are, were or could have been raised in the proceeding, will be finally resolved. This does not include any group members who filed an opt-out notice in the proceeding;

- (c) Phi Finney McDonald will be appointed as the Administrators of the proposed Settlement Distribution Scheme, and trustees in relation to the Settlement Sum. Under Court supervision, they will be obliged to act impartially and will no longer act as lawyers for the Applicant or the individual group members; and
 - (d) Registered Group Members' distribution entitlements will be calculated by the Administrators in accordance with the proposed Settlement Distribution Scheme.
32. If the proposed settlement is not approved by the Court, the UGL Class Action will continue and there will be no distribution of compensation to group members unless and until the Applicant is successful in the proceeding, or a further settlement is reached.

F. WHAT STEPS CAN GROUP MEMBERS NOW TAKE?

33. If you wish to support the settlement, there is nothing you need to do. If you are a Registered Group Member you will be kept informed about further developments in the Court Approval Process. You are encouraged to refrain from contacting Phi Finney McDonald unnecessarily, in order to keep costs to a minimum.
34. If you think you might wish to oppose any aspect of the settlement, you should obtain independent legal advice immediately.
35. If you wish to **oppose** any aspect of the settlement then you **must**, by no later than 4:00pm (AEST) on 18 November 2019, fill in the form entitled 'Notice of Objection to Proposed Settlement' attached to this Notice (which can be obtained in word format from Phi Finney McDonald upon request), duly execute it, and file it with the Court and serve it on Phi Finney McDonald by sending it by email to:
ea.anasatassiou@fedcourt.gov.au; and
cameron.myers@phifinneymcdonald.com
36. You **may** attend the approval hearing to explain the basis of your objection to the Judge if you wish to do so. If you do not attend, then the Court may give consideration to the approval of the settlement in your absence.
37. The approval hearing will take place on 4 December 2019 at 10.15am (AEST) in the Victoria Registry of the Federal Court of Australia located at **Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne Victoria 3000**. You are entitled to attend the hearing if you wish to.
38. If you are not sure whether you are a group member, please contact IMF on 402633@imf.com.au or free call 1800 016 464.

G. FURTHER INFORMATION

39. Copies of relevant documents, including the Second Further Amended Statement of Claim, the Second Further Amended Defence and the Common Fund Orders may be obtained by:
- (a) requesting them by email to cameron.myers@phifinneymcdonald.com; or
 - (b) inspecting them at the Federal Court 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 Victoria District Registry on (03) 8600 3333.

40. Group members can obtain access to the proposed and confidential Settlement Distribution Scheme and the Loss Assessment Formula, from anytime after 31 October 2019 by:
 - (a) contacting Phi Finney McDonald at cameron.myers@phifinneymcdonald.com; and
 - (b) signing and returning a confidentiality undertaking.
41. If you need further information about the proposed settlement, please contact Phi Finney McDonald on (03) 9134 7100, or by email to cameron.myers@phifinneymcdonald.com.

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

No. VID1390 of 2017

Federal Court of Australia
District Registry: Victoria
Division: General

CLIME CAPITAL LIMITED (ACN 106 282 777)

Applicant

UGL PTY LIMITED (ACN 009 180 287)

Respondent

To: The Federal Court of Australia, by email to ea.anatatassiou@fedcourt.gov.au
cc: Phi Finney McDonald, by email to cameron.myers@phifinneymcdonald.com

The person identified below gives notice pursuant to paragraph 18 of the orders of the Court made on 24 October 2019 that the person **OBJECTS** to the proposed settlement of this proceeding.

A. DETAILS OF OBJECTOR

Name of Group Member	
ACN/ABN <i>[if company]</i>	
Person completing this form	
Capacity <i>[e.g., individual, partnership, trustee/agent]</i>	
Telephone	
Email	
Postal address	

B. GROUND(S) OF OBJECTION

My submissions in support of my objection to the proposed settlement are as follows *[set out in the space below any submissions you wish to make, attach additional pages if necessary]*:

C. ATTENDANCE AT HEARING AT 10.15AM ON 4 DECEMBER 2019

- I do not intend to appear, but wish for my submissions to be considered in my absence
- I intend to appear before the Court at the hearing at 10:15AM (AEST) ON 4 DECEMBER 2019

[please tick one]

If you intend to appear, please complete the following:

- I will appear on my own behalf
- I will be represented by a lawyer:

[please tick one if you intend to appear]

D. EXECUTION OF NOTICE

Signed:	Second signature:
	<i>[if company]</i>
Name of person:	Name of person
signing	signing
Position:	Position
<i>[if applicable]</i>	<i>[if applicable]</i>
Date: / / 2019	Date: / / 2019