



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1390/2017

CLIME CAPITAL LIMITED (ACN 106 282 777)

Applicant

UGL PTY LIMITED (ACN 009 180 287)

Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 04 October 2018

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

1. Subject to further order, upon Resolution and in accordance with the Funding Terms, the Applicant and Group Members shall pay from any Resolution Sum:
 - (a) the costs and expenses of the Proceedings, to be approved by the Court; and
 - (b) an amount which shall not exceed 30% of the aggregate Resolution Sums, and which percentage the Court considers reasonable at the time the Claims are settled or judgment is given in respect of themwhere “Resolution”, “Resolution Sums”, “Proceedings”, “Applicant”, “Group Member”, “Claims”, “Funding Terms” have the meanings set out in Annexure B to this order.
2. Paragraph 1 of these orders is subject to IMF Bentham Ltd, the Applicant and Phi Finney McDonald providing an undertaking 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.
3. Pursuant to section 33X of the Act, notice be given to Group Members of these orders on a date and manner to be fixed.



Date that entry is stamped: 4 October 2018

Warrick Soden
Registrar



ANNEXURE A
FORM OF UNDERTAKING

No: VID 1390 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

UNDERTAKING

[IMF Bentham Ltd OR Clime Capital Ltd OR Phi Finney McDonald Pty Ltd] undertakes to [the other two of [IMF Bentham Ltd AND Clime Capital Ltd AND Phi Finney McDonald Pty Ltd] and to the Court to comply with its obligations under the Funding Terms (being Annexure B to the Orders dated [date]) and the terms of Order 1 of those Orders.

Signature:

Party: [IMF Bentham Ltd OR Clime Capital Ltd OR Phi
Finney McDonald Pty Ltd]

Signatory:

Capacity:

Date:



ANNEXURE B
FUNDING TERMS
UGL PTY LTD SHAREHOLDER CLASS ACTION
FUNDING TERMS

1. Definitions and interpretation

1.1 The following definitions apply in these Funding Terms:

Applicant means a lead applicant or representative party in the Proceedings who has entered into a Funding Agreement with IMF whom, as at the commencement of the Funding Period is Clime Capital Limited.

Claims means the claim or claims the Applicant or any Group Member has or may have against any one or more of the Respondents for loss and damage caused to the Applicant or Group Member by the conduct of one or more of the Respondents in relation to or arising out of the Applicant or Group Member's acquisition of an interest in UGL Securities during the period specified in the statement of claim in respect of the Proceedings as amended from time to time.

Costs Order means any 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.

Funder means IMF Bentham Limited (ACN 067 298 088), its successors and assigns.

Funding Agreement means a funding agreement between the Funder and a Group Member in relation to the Claims (as amended from time to time), including the funding agreement between the Funder and the Applicant as at the commencement of the Funding Period.

Funding Period means the period commencing on the date orders are made allowing a 'common fund' in respect of the Proceedings on the terms set out in these Funding Terms and ending upon the Termination Date.

Funding Terms means these terms.

Group Members means all persons who are identified as group members in the Proceedings and who do not validly opt out of the Proceedings.



- GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Lawyers** means Phi Finney McDonald Pty Ltd (ACN 618 727 905), or any firm of lawyers appointed in their place by the Applicant, and with the Funder's consent, in accordance with the Funding Agreements.
- Legal Work** means legal work performed by the Lawyers pursuant to the Retainer Agreements, including such advice and legal services reasonably necessary to: (a) investigate the Claims; (b) prosecute the Proceedings; (c) negotiate a Settlement of the Claims; and (d) comply with the Funding Agreements and these Funding Terms.
- Other Parties** means any other person or entity which:
- (a) becomes a party to the Proceedings at the initiative of a Respondent; or
 - (b) the Lawyers recommend be joined to the Proceedings and in respect of whom the Funder agrees in writing to accept adverse Cost Order exposure.
- Proceedings** means any legal proceedings to prosecute some or all of the Claims, including:
- (a) proceedings brought in contemplation of those legal proceedings including, without limitation, proceedings for preliminary discovery; and
 - (b) any other proceedings or process as part of or consequent on the class action (including any alternative dispute resolution processes engaged to resolve some or all of the Claims),
- but does not include any appeals of such legal proceedings or related enforcement actions unless the Funder has (in its absolute discretion) agreed to fund the particular appeal or enforcement proceedings.
- Project Costs** means:
- (a) the costs and expenses incurred by the Funder in performing the project investigation and project management, as contemplated by the Funding Agreements;



- (b) the costs involved in the provision by the Funder of any security for costs;
- (c) any Quantified Costs Order payable by the Funder pursuant to the Funding Agreements;
- (d) the costs associated with the Funder quantifying any adverse Costs Order;
- (e) the legal fees and disbursements of the Lawyers payable by the Funder pursuant to the Funding Agreements and Standard Lawyers Terms;
- (f) any other costs or expenses which are expressly stated to form part of the “Project Costs” payable by the Funder pursuant to the Funding Agreements;
- (g) all of the Funder’s out of pocket costs and expenses paid or incurred in relation to the conduct of the Proceedings in order to achieve resolution of the Claims, including in relation to any consultants engaged by a Funder (other than those costs and expenses already referred to in this definition); and
- (h) any GST payable on any supply made by any entity as a result of the above costs or expenses being incurred,

and for the avoidance of doubt, and unless expressly stated otherwise, includes amounts described in (a) to (h) above which have been incurred during, or are in respect of, a period before or during the Funding Period.

Quantified Costs Order means an adverse Costs Order payable by the Funder pursuant to the Funding Agreements, which has been quantified either:

- (a) by agreement between IMF and the Respondent; or
- (b) by a Court order (including a Court order on taxation).

Remaining Costs is as defined in the Standard Lawyers Terms.

Resolution means when all or any part of a Resolution Sum is received and, where a Resolution Sum is received in parts, a “Resolution” occurs each time a part is received.



Resolution Sum	means the amount or amounts, or the market value of any goods or services, for which some or all of the Claims are Settled, or for which judgment is given, including the value of any favourable terms of future supply of goods or services, any interest and any costs recovered pursuant to a Costs Order in favour of the Applicant or by agreement.
Respondent	means UGL and any Other Parties named as defendants or respondents in the Proceedings.
Retainer Agreement	means the retainer and costs agreement between the Lawyers and a Group Member, including the costs agreement signed by Clime Capital Limited on 26 September 2016, as amended by the Standard Lawyers Terms.
Settlement	means any settlement, compromise, discontinuance or waiver of the Claims or part of the Claims, and “Settles” and “Settled” shall be construed accordingly.
Standard Lawyers Terms	means the Standard Lawyers Terms agreed between the Funder and the Lawyers in respect of the Proceedings, dated 27 July 2017.
Termination Date	means the date on which the termination of these Funding Terms in accordance with clause 9 below becomes effective.
Trust Account	means an interest-bearing trust account established and maintained by the Lawyers for the sole purpose of receiving Resolution Sums under these Funding Terms.
UGL	means UGL Pty Ltd.
UGL Securities	means an ordinary fully-paid share issued by UGL and listed on the Australian Securities Exchange.

1.2 Unless the context otherwise requires, the following rules of interpretation apply to these Funding Terms:

1.2.1 a reference to any agreement or document is a reference to such agreement or document as validly amended, varied, restated, assigned or novated from time to time (in each case, other than in breach of the relevant agreement or the provisions of these



Funding Terms, in which case it shall remain a reference to such agreement or document immediately prior to such amendment); and

- 1.2.2 a reference to any legislation or legislative provision includes any statutory modification, amendment or re-enactment of that legislation or legislative provision, and includes any subordinate legislation or regulations issued under that legislation or legislative provision.

2. Funding Agreements and Retainer Agreements

2.1 For the duration of the Funding Period, these Funding Terms will prevail over:

- 2.1.1 any inconsistent provision in the Funding Agreements which, subject to these Funding Terms, shall continue in full force and effect; and
- 2.1.2 any inconsistent terms of the Retainer Agreements which, subject to these Funding Terms, shall continue in full force and effect.

3. Obligations of the Funder

3.1 The Funder must pay the Project Costs in accordance with the terms of the Funding Agreements.

4. Receipt and Application of Resolution Sum

4.1 Any Resolution Sum will be received by the Lawyers and paid immediately into a Trust Account;

4.2 If the Applicant or any Group Member obtains any Settlement or obtains any judgment in respect of the Claims, it will:

- 4.2.1 treat any money, other asset or benefit received from the Respondent in connection with the Settlement or judgment as the Resolution Sum; and
- 4.2.2 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.

4.3 The Lawyers will pay to the Funder and/or itself out of the Trust Account, all payments referred to in paragraph 5.1 below, with the balance to be distributed to the Group Members on a pro rata basis and in accordance with any distribution scheme approved by the Court.

5. Costs and Commission

5.1 Upon Resolution, the Funder and the Lawyers are entitled to be paid or to have distributed the following amounts from any Resolution Sum, to be paid or distributed in the order of priority



listed below and with all payments within a priority level to be made pari passu and pro rata prior to any distributions to Group Members:

- 5.1.1 first, pay to the Funder an amount equal to the total Project Costs;
- 5.1.2 second, pay to the Funder 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 any Group Member by the Funder under or in connection with the Funding Agreements and/or these Funding Terms, but only to the extent that such GST has been borne by the Funder and not recovered as an input tax credit or otherwise (unless otherwise defined, terms used in this clause have the same meaning as in the GST Act); and
- 5.1.3 third:
 - (a) pay to the Lawyers the Remaining Costs; and
 - (b) pay to the Funder, as consideration for the funding of the Proceedings, an amount which shall not exceed 30% of the aggregate Resolution Sums, and which percentage the Court considers reasonable at the time the Claims are settled or judgment is given in respect of them.

5.2 The amounts referred to in clause 5.1 above will not become due or owing by the Applicant and Group Members unless and until a Resolution occurs and must not exceed the aggregate Resolution Sums.

6. Relationship Between the Applicant, Lawyers and Funder

- 6.1 The Lawyers' professional duties are owed to the Applicant and not to the Funder.
- 6.2 The Funder will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings, subject to clause 6.3 and clause 8.
- 6.3 The Applicant may override any instruction given by the Funder, subject to clause 8 below. The Applicant may give binding instructions to the Lawyers and make binding decisions on behalf of the Group Members in relation to the Proceedings 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.
- 6.4 The Lawyers will:



6.4.1 keep the Funder fully informed of all matters concerning the Claims and the Proceedings, including any mediation and settlement discussions; and

6.4.2 ensure that the Funder is given all necessary information and advice in order for the Funder to provide informed instructions.

7. Confidentiality

7.1 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 in accordance with its confidentiality obligations in the Funding Agreements and shall adopt proper and effective procedures for maintaining the confidentiality and safe custody of the information.

8. Settlement

8.1 If there is a disagreement between the Funder and the Applicant as to whether to settle the Proceedings, or as to the appropriate terms for the settlement of the Proceedings:

8.1.1 the Lawyers will brief the most Senior Counsel of those retained by the Lawyers to advise as to whether, in Senior Counsel's opinion, settlement of the Proceedings on the terms is fair and reasonable in all of the circumstances;

8.1.2 representatives of the Funder may attend any conference with Senior Counsel at which the issue is to be discussed;

8.1.3 the legal costs of obtaining counsel's advice shall be met by the Funder as part of the Project Costs; and

8.1.4 the advice of Senior Counsel will be final and binding on both the Applicant and the Funder.

8.2 Without limiting clause 8.1 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:

8.2.1 the strengths and weaknesses of the claims of all Group Members;

8.2.2 the quantum of the claims of all Group Members and any difficulties which might exist in proving that quantum;

8.2.3 the recoverability of a judgment sum from the Respondent;



- 8.2.4 the extent to which further legal costs incurred in the Proceedings are likely to be recoverable from the Respondent;
- 8.2.5 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;
- 8.2.6 the matters set out at 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
- 8.2.7 any other matters Senior Counsel considers relevant.

9. Termination

- 9.1 The Funder's obligations under these Funding Terms may only be terminated by order of the Court, granted on application made by the Applicant or the Funder, and upon notice given to the Applicant, the Funder and such other persons as ordered by the Court.
- 9.2 If an application to terminate these Funding Terms is made by the Funder, and the Court grants that application, then all obligations of the Applicant, Group Members, the Funder and the Lawyers under these Funding Terms will cease on the Termination Date, save for the following:
 - 9.2.1 the Funder will continue to be entitled to receive payment from any Resolution Sum (whether received before or after the Termination Date) pursuant to clauses 5.1.1 and 5.1.2 above (for the avoidance of doubt, neither the Funder nor the Lawyers will be entitled to receive any payment from any future Resolution Sums pursuant to clause 5.1.3 above); and
 - 9.2.2 the Funder must pay:
 - (a) any outstanding costs pursuant to clause 3.1 above incurred up to the Termination Date; and
 - (b) to the extent such amounts are not captured by clause 9.2.2(a) above, any Quantified Costs Order against the Applicant (whether made before or after the Termination Date) to the extent that it relates to costs which have arisen in, or are attributed to, the period ending on the Termination Date.
- 9.3 If an application to terminate these Funding Terms is made by the Applicant, and the Court grants that application, then all obligations of the Applicant, Group Members, the Funder and



the Lawyers under these Funding Terms will cease on the Termination Date, save for the following:

9.3.1 the Funder and the Lawyers will continue to be entitled to receive payment from any Resolution Sum (whether received before or after the Termination Date) pursuant to clause 5; and

9.3.2 the Funder must pay:

(a) any outstanding costs pursuant to clause 3.1 above incurred up to the Termination Date; and

(b) to the extent such amounts are not captured by clause 9.3.2(a) above, any Quantified Costs Order against the Applicant (whether made before or after the Termination Date) to the extent that it relates to costs which have arisen in, or are attributed to, the period ending on the Termination Date.

9.4 Termination of these Funding Terms shall not affect any rights or obligations pursuant to the Funding Agreement or the Retainer Agreement in respect of the parties thereto, which shall remain in full force and effect in accordance with their respective terms.