

Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD220/2019

PETER HERMANN ECKARDT

Applicant

SIMS LIMITED

Respondent

ORDER

JUDGE: JUSTICE WIGNEY

DATE OF ORDER: 23 December 2022

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Approval of settlement

1. Pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth) (**Act**), the settlement of the proceeding is approved upon the terms set out in:
 - a. the Deed of Settlement at pages 115 to 143 of Exhibit BP-10 to the affidavit of Bill Petrovski sworn on 1 October 2022, as varied by the Deed of Variation at pages 144 to 150 of Exhibit BP-10 (**Deed**); and
 - b. the revised Settlement Distribution Scheme, in the form at pages 15 to 33 of Exhibit BP-13 of the affidavit of Blagoj (Bill) Petrovski sworn on 12 October 2022 (**Scheme**).
2. Pursuant to s 33ZF of the Act, the Applicant is authorised, *nunc pro tunc*, to enter into the Deed and to give effect to the settlement and all transactions contemplated by it for and on behalf of the group members as defined in paragraph 2 of the Second Further Amended Statement of Claim (save for any person who has opted out of the proceeding) (**Group Members**).
3. Pursuant to s 33ZB of the Act, the persons affected and bound by the settlement of the proceeding are the Applicant, Respondent, Group Members, William Roberts Pty Ltd and the Funder.

Referee's Reports

4. Pursuant to s 54A of the Act and r 28.67 of the *Federal Court Rules 2011* (**Rules**), the Court adopts in full the two reports of the Referee appointed pursuant to order 18 of the Court's orders made on 6 July 2022, being the reports from Ian Ramsey-Stewart dated 23 September 2022 and 28 September 2022, as provided by Mr Ramsey-Stewart to the Associate to Wigney J.

Appointment of Administrator

5. Pursuant to ss. 33ZF and 23 of the Act, William Roberts Pty Ltd is appointed Administrator of the Scheme, to act in accordance with the Scheme and have the powers and immunities contemplated by the Scheme.

Approval of amounts to be deducted pursuant to the Scheme

6. Pursuant to s 33V of the Act, the following amounts are approved for the purposes of the Scheme (utilising defined terms from it):
 - a. the amount of \$6,259,515.64 for "Project Costs" to be paid to the Funder, comprising the sum of: (A) the amount of \$5,461,430.45 legal costs and disbursements in including the fees paid to the Referee in the amount of \$27,500, and (B) the amount of \$798,085.19 to be paid to the Funder in respect of after-the-event insurance premiums, including applicable tax;
 - b. the amount of \$5,440,557.67 for "Funding Commission" to be paid to the Funder;
 - c. the amount of \$3,022,684.49 for "Unpaid Legal Costs" to be paid to William Roberts;
 - d. an amount up to \$241,123.95 for "Administration Costs"; and
 - e. the amount of \$10,000 to be paid to the Applicant for the "Applicant's Reimbursement Payment".

Deemed Registrant

7. Further to Order 6 made on 6 July 2022, the person identified at paragraph 11(b) of the affidavit of Blagoj (Bill) Petrovski sworn on 12 October 2022 be treated as a "Registered Group Member" for the purposes of the Scheme.

Costs and security

8. Order 4 of the orders made on 13 August 2021 requiring the provision of security for costs is vacated and all deeds of indemnity executed and provided by ICP Capital Pty Ltd and AmTrust Europe Limited as security for the Respondent's costs, be returned by the Respondent to the Applicant by providing them to the Applicant's solicitors or destroyed by the Respondent within 56 days from the date of these orders.
9. Pursuant to r 2.43 of the Rules, the monies paid into Court on 7 December 2020 in the amount of \$40,000 pursuant order 5 of the orders made by the Court on 1 December 2020 as security for the Respondent's costs, be returned to the Applicant by deposit into the Applicant's solicitors' trust account. The Applicant's Solicitors are to pay the \$40,000 to the Funder within 5 business days of receipt as cleared funds into their trust account.
10. All costs orders made to date in the proceeding are vacated.
11. No order as to costs.

Dismissal after completion of distribution

12. The proceeding is dismissed 7 days after the Administrator (as that term is defined in the Scheme) notifies the Court and the parties in writing that the distribution under the Scheme is complete.
13. Upon the dismissal of the proceeding, the Respondent, and the Respondent's legal representatives are released from the undertaking to the Court noted in the Court's orders dated 21 August 2020.

Date that entry is stamped: 19 January 2023


Registrar

Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD220/2019

PETER HERMANN ECKARDT

Applicant

SIMS LIMITED

Respondent

ORDER

JUDGE: JUSTICE WIGNEY

DATE OF ORDER: 23 December 2022

WHERE MADE: Sydney

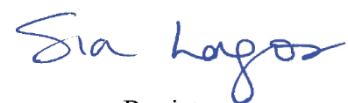
THE COURT ORDERS THAT:

Confidentiality orders

1. Until further order, pursuant to ss. 37AF and 37AG(1)(a) of the *Federal Court of Australia Act 1976 (Act)*, and in order to prevent prejudice to the proper administration of justice, the material identified in **Annexure A** to these orders is:
 - a. to be treated as confidential;
 - b. not to be published or made available and any electronic version thereof is to be treated in an analogous fashion;
 - c. not to be disclosed to any person other than:
 - i. the Court;
 - ii. the Applicant and his legal representatives; or
 - iii. ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd (together, **ICP** or **Funder**) and their legal representatives; and
 - d. not to be disclosed to the Respondent or its legal representatives, other than to the extent that the material identified in Annexure A has previously been disclosed to them during this proceeding.

2. Until 49 days from the date of any order approving the proposed settlement in these proceedings under section 33V of the Act, and in order to prevent prejudice to the proper administration of justice, the material identified in **Annexure B** to these orders is:
 - a. to be treated as confidential;
 - b. not to be published or made available and any electronic version thereof is to be treated in an analogous fashion;
 - c. not to be disclosed to any person other than:
 - i. the Court;
 - ii. the Applicant and his legal representatives; or
 - iii. ICP and its legal representatives; and
 - d. not to be disclosed to the Respondent or its legal representatives, other than to the extent that the material identified in Annexure B has previously been disclosed to them during this proceeding.
3. Within 28 days from the date of these orders, the Applicant is to file with the Court redacted copies of each of the documents set out in Annexures A and B (except those documents filed by the Funder set out in order 6 below), with those redactions to be applied in accordance with the details set out in Annexures A and B.
4. Within 28 days from the date of these orders, the Funder is to file with the Court a redacted copy of the affidavit of John Walker affirmed 11 October 2022 (with Confidential Exhibit JW-2) with those redactions to be applied in accordance with the details set out in Annexure B.

Date that entry is stamped: 19 January 2023


Registrar

ANNEXURE A – Confidential until further order

No	Description of filed document	Court Book reference	Page(s) of document	Details concerning aspect of document over which the confidentiality order applies	Basis for confidentiality
1.	Exhibit BP-12 to the second affidavit of Blagoj (Bill) Petrovski sworn 1 October 2022	Vol 2 983-1040	All pages 1 – 58	Entire document.	Legal professional privilege (including legal advice privilege and/or litigation privilege) (Privilege) .
2.	Exhibit BP-15 to the fourth affidavit of Blagoj (Bill) Petrovski sworn 12 October 2022	Vol 2 1098A-1098J	All pages 1 – 9	Entire document.	Privilege.

ANNEXURE B – Confidential until 49 days after the date of any approval order

No	Description of filed document	Court Book (CB) reference	Page(s) of document	Details concerning aspect of document over which the confidentiality order applies	Basis for confidentiality
1.	Referee Report of Ian Ramsey-Stewart dated 23 September 2022	Vol 2 263-264	10 – 11	Entire paragraphs 36 (except the chapeau) and 37.	Provides the terms of settlement, which pursuant to clause 11(a) of the Deed of Settlement, are confidential until orders approving the settlement on the terms set out in the Deed of Settlement and the Settlement Scheme pursuant to section 33V of the Act are made (Confidential in accordance with Deed).
2.		Vol 2 266	13	The figures contained in paragraph 51 and the first sentence of paragraph 55.	Provides information which has strategic value to the Respondent and may prejudice the Applicant and GMs should settlement not be approved (Prejudicial if no approval).
3.		Vol 2 297 and 689 [Please note: where there is more than one CB reference for the same table item, the document appears more than once in the CB and the same redactions have been applied.]	44	The figure contained in paragraph 14(a), the figure contained in paragraph 15 and the figures contained in paragraph 16.	Prejudicial if no approval.
4.		Vol 2 332-356 and 724-748	79 – 103	Entire pages.	Prejudicial if no approval. Contains Confidential Annexure B to the Referee Report dated 23 September 2022.
5.		Vol 2 369 and 650	116	Entire paragraphs 3 and 4.	Contains commercially sensitive information, which would be detrimental to ICP if competitors in the market had access to that information (Commercially Sensitive). Prejudicial if no approval.

6.		Vol 2 379 and 660	126	Entire clause 6.1 (except the chapeau).	Commercially sensitive. Prejudicial if no approval.
7.		Vol 2 380 and 661	127	The percentage figures in clauses 7.1, 7.2 and 7.3.	Commercially sensitive. Prejudicial if no approval.
8.		Vol 2 381 and 662	128	The percentage figure in clause 7.6.	Commercially sensitive. Prejudicial if no approval.
9.		Vol 2 383 and 664	130	Entire clause 10 except the heading “ <i>Termination</i> ”.	Prejudicial if no approval.
10.		Vol 2 388-389 and 669-670	135 – 136	Entire clauses 2.6, and 2.8. Also, the percentage figures in clauses 2.9 and 2.10.	Commercially sensitive.
11.		Vol 2 397 and 678	144	The figure contained in the second line of clause 4.5, the entire sub- paragraphs of clause 4.5(a)-(b) (including the chapeau) and the last sentence of clause 4.5.	Prejudicial if no approval.
12.		Vol 2 398-400 and 679-681	145 – 147	Entire clause 6.	Prejudicial if no approval.
13.		Vol 2 405 and 686	152	Entire page.	Prejudicial if no approval.
14.		Vol 2 407	154	Entire body of the letter (paragraphs 1 to 4).	Privilege.
15.		Vol 2 408	155	Entire body of the email (paragraphs 1 to 3 including headings).	Privilege.
16.	Appendix 5 of the Referee Report of Ian Ramsey-Stewart dated 23 September 2022	Excel spreadsheet saved on USB provided with Court Book	Tab “S2 – IRS Adjusted Fees”	Entire columns D (Description) and G (Units).	Prejudicial if no approval.
17.		Excel spreadsheet saved on USB	Tab “S2A – IRS Cross- Check”	Entire columns D (Description) and G (Units).	Prejudicial if no approval.

		provided with Court Book			
18.		Excel spreadsheet saved on USB provided with Court Book	Tab “S3 – WIP 02.06.22 to 02.09.22”	Entire columns B (Description) and E (Units).	Prejudicial if no approval.
19.		Excel spreadsheet saved on USB provided with Court Book	Tab “S5 – Rate Comparison Analysis”	Entire columns G (Sum of Units) and J (Sum of Units).	Prejudicial if no approval.
20.		Excel spreadsheet saved on USB provided with Court Book	Tab “S11 – WRL Estimate to 13.10.22”	Entire worksheet.	Prejudicial if no approval.
21.		Excel spreadsheet saved on USB provided with Court Book	Tab “S12 – WRL Estimate for SDS”	Entire worksheet.	Prejudicial if no approval.
22.		Excel spreadsheet saved on USB provided with Court Book	Tab “S13 – Hours worked from S2”	Entire columns B (Units), G (S2 units) and H (S3 units).	Prejudicial if no approval.
23.		Excel spreadsheet saved on USB provided with Court Book	Tab “S14 – Hours worked from S3”	Entire column B (Units).	Prejudicial if no approval.
24.	Appendix 8 of the Supplementary Referee Report of Ian Ramsey-Stewart dated 28 September 2022	Excel spreadsheet saved on USB provided with Court Book	Tab “Revised S11 – WRL Est 13.10.22”	Entire worksheet.	Prejudicial if no approval.
25.	Confidential Exhibit CEJ-2 to the affidavit of Carlos	Vol 2 491-605	3 – 117	Entire document.	Confidential in accordance with Deed.

	Jaramillo sworn 1 July 2022				
26.	First Affidavit of Blagoj (Bill) Petrovski sworn 1 October 2022	Vol 2 626	21	The figures contained in the tables at paragraphs 75(a)-(c).	Prejudicial if no approval.
27.		Vol 2 626-627	21 – 22	The entire first paragraph 75(d) except for the words “ <i>The SDS contemplates</i> ” and the words “ <i>I am informed by Mr Lei that this is correct and is a feature of the application to the trade data of the loss assessment formula, which is a confidential schedule to the SDS (Loss Assessment Formula).</i> ” The figures and headings contained in the table at paragraph 75(d).	Prejudicial if no approval.
28.		Vol 2 628-629	23 – 24	Third sentence in paragraph 79 which begins with “ <i>Further, the Loss Assessment Formula applies a weighting...</i> ”.	Prejudicial if no approval.
29.		Vol 2 638	33	Entire paragraph 107 except for the words “ <i>Further, Clause 6.1 of the Funding Agreement states:</i> ”	Commercially sensitive. Prejudicial if no approval.
30.		Vol 2 639	34	Entire paragraph 109(g).	Commercially sensitive. Prejudicial if no approval.
31.		Vol 2 641-642	36 – 37	The figure contained in paragraph 121(b). The figure contained in	Paragraph 121(b): Prejudicial if no approval. Paragraph 121(c): Prejudicial if no approval. Paragraph 121(d): Privilege.

				paragraph 121(c). Entire paragraph 121(d).	
32.	Exhibit BP-10 to the first affidavit of Blagoj (Bill) Petrovski sworn 1 October 2022	Vol 2 756-794	112 – 150	Entire pages.	Contains the Heads of Agreement, Deed of Settlement and Deed of Variation. Confidential in accordance with Deed.
33.		Vol 2 807	163	Entire page except the heading “ <i>Schedule Loss Assessment Formula</i> ”.	Prejudicial if no approval.
34.		Vol 2 808-812	164 – 168	Entire pages.	Prejudicial if no approval.
35.		Vol 2 917	273	Entire body of email.	Prejudicial if no approval.
36.		Vol 2 952-955	308 – 311	Entire column under the heading “ <i>Work Done</i> ” (third column from left).	Privilege.
37.		Vol 2 980	336	All the figures contained in the table.	Prejudicial if no approval.
38.	Third Affidavit of Blagoj (Bill) Petrovski sworn 12 October 2022	Vol 2 1041E-1041F	5-6	The figures contained in the tables at paragraphs 12(a)-(d) and the entire first paragraph 12(d) except for the words “ <i>The SDS contemplates</i> ” and the words “ <i>I am informed by Mr Lei that this is correct and is a feature of the application to the trade data of the Loss Assessment Formula.</i> ”	Prejudicial if no approval.
39.	Exhibit BP-13 to the Third Affidavit of Blagoj (Bill) Petrovski sworn on 12 October 2022	Vol 2 1042AC-1042AH	28-33	Entire pages except for the heading words “ <i>Schedule</i> ” and “ <i>Loss Assessment Formula</i> ” on page 28.	Prejudicial if no approval.

40.	Affidavit of John Walker affirmed 11 October 2022	Vol 2 1057-1058	14-15	Subparagraphs 65(a) and 65(b); in paragraph 66, the words after " <i>commission at</i> " and before " <i>the ICP Entities</i> " and the words after " <i>this circumstance is</i> ".	Commercially sensitive. Prejudicial if no approval.
41.		Vol 2 1059	16	Paragraph 75(a) - the words after "the total" and before the words "as set out".	Prejudicial if no approval.
42.	Confidential Exhibit JW-2 to the affidavit of John Walker affirmed 11 October 2022	Vol 2 1073-1096	30-53	Entire document.	Confidential based on the non-disclosure clause in the AmTrust policy (clause 4.13).