

**Annexure A**  
**SUPREME COURT OF VICTORIA**  
**SCOTSBURN FIRE CLASS ACTION**

**SCHMID**

**V**

**SKIMMING, JOHNS & ORS**

**(S CI 2016 05027)**

**IMPORTANT NOTICE**

**NOTICE OF PROPOSED SETTLEMENT OF SCOTSBURN FIRE CLASS ACTION**

The Supreme Court has ordered that this notice be published for the information of persons who might be group members of the Scotsburn Fire Class Action.

**You should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in this notice that you do not understand, you should seek legal advice.

**1. What is the Scotsburn Fire Class Action?**

The plaintiff commenced the class action on his own behalf and on behalf of all those who suffered loss as a result of the bushfire which started at 260 Finns Rd, Scotsburn on 19 December 2015 (**Scotsburn Fire**).

**2. Are you a group member?**

You are a group member in the class action if you suffered personal injury, or loss of or damage to property as a result of the Scotsburn Fire, or are the legal personal representative of the estate of any deceased person who would otherwise have qualified as a group member.

**3. The parties to the proceeding**

The defendants to the class action are:

- (a) Mr Roger James Skimming, who was operating an “Agrison” branded tractor and slasher at 260 Finns Road, Scotsburn on 19 December 2015;
- (b) Ms Maureen Lynette Johns, who owned the property upon which Mr Skimming was operating the tractor and slasher;
- (c) Auto & General Insurance Company Limited (ACN 111 586 353), Mr Skimming’s insurer; and
- (d) EL Mining Solutions Pty Ltd (ACN 151 983 603), the manufacturer of the tractor and slasher.

EL Mining Solutions Pty Ltd has also joined Harley Industrial Pty Ltd (ACN 115 230 905), the supplier of chain which allegedly failed on the slasher on the day of the Scotsburn Fire, as a party to the class action.

**4. The Allegations**

The plaintiff alleges that the Scotsburn Fire started as a result of sparks discharged during the operation of the tractor and slasher in a paddock at 260 Finns Road, Scotsburn on a day of high fire risk. He makes different allegations against each defendant in the class action.

The plaintiff alleges that Mr Skimming and Ms Johns owed to him and the group members a duty of care to take reasonable precautions to prevent a fire starting as a result of the operation of the tractor and slasher. The plaintiff alleges that Mr Skimming and Ms Johns breached that duty because of negligence by them in the operation of the tractor and slasher on a day of high bushfire risk causing the plaintiff and group members to suffer loss and damage.

Auto & General Insurance Company Ltd has refused to indemnify Mr Skimming against his liability to the plaintiff and group members arising from the Scotsburn Fire. The plaintiff seeks a declaration from the Court that Auto & General is required to indemnify Mr Skimming under the relevant policy of insurance.

The plaintiff alleges that EL Mining Solutions Pty Ltd:

- (a) breached a duty of care owed to the plaintiff and group members in that its design and/or configuration of the tractor and slasher permitted a PTO drive shaft spinning at high speed to come into contact with the slasher;
- (b) alternatively, supplied the tractor and slasher with a safety defect within the meaning of the Australian Consumer Law,

causing the plaintiff and group members to suffer loss and damage.

EL Mining Solutions Pty Ltd makes allegations against Harley Industrial Pty Ltd in relation to the supply of the chain fitted to the slasher which is alleged to have failed while the tractor and slasher was in operation, resulting in the Scotsburn Fire. The plaintiff makes no allegations against Harley Industrial Pty Ltd.

The full allegations and responses of the parties are set out in a statement of claim and defences which may be accessed at the website <http://maddenslawyers.com.au>.

## **5. Proposed settlement**

The plaintiff and the second defendant, Ms Johns have agreed to a settlement of the claims made between those parties, under which the plaintiff will discontinue his claims against Ms Johns, with each party bearing their own legal costs incurred in the proceeding. The terms of the settlement of the proceeding are set out in a Deed of Settlement that has been signed on behalf of the plaintiff and Ms Johns (**Deed**).

**The settlement between the plaintiff and Ms Johns does not relate to the claims made against the other parties, and the class action continues as against the other defendants, and Harley Industrial Pty Ltd.**

The settlement with Ms Johns cannot take effect without Court approval. The Court will consider whether or not to approve the settlement on **1 November 2019**.

If you are a group member in the proceeding and the settlement is approved, you will be bound by the settlement and you will not be able to bring any case against Ms Johns for any loss suffered as a result of the Scotsburn Fire.

## **6. Legal costs**

You are not liable for any legal fees as a result of the proposed settlement with Ms Johns under the terms of the Deed.

## **7. What You Must Do**

There are only two options which you must consider.

**Option A**     ***If you support the settlement*** then you do not need to do anything. If the settlement

is approved, you will be bound by the settlement and unable to bring any further legal proceedings in relation to the Scotsburn Fire.

**Option B**     ***If you oppose the settlement and wish to object*** then you must complete the "Notice of Objection to Proposed Settlement" which is Annexure 1 to this Notice. You must return the Notice to Maddens Lawyers or the Supreme Court registry before **4pm on 27 September 2019**, and are entitled but not required to come to Court to argue your objection. You may need to advise the Court whether you are willing to replace Mr Schmid as the lead plaintiff to continue the class action against Ms Johns.

**Please note:** even if you take this Option B and object to the proposed settlement and the Court nonetheless approves the settlement, you will still be bound by the settlement.

If you are not sure what to do, you should contact Maddens Lawyers or seek independent legal advice. You must act quickly because the deadline for objections is **4pm on 27 September 2019**.

## **8. When your objection will be considered**

The Court has ordered that any objections to the proposed settlement (from group members who take Option B above) will be heard by the Court at the Supreme Court, Melbourne Victoria at **10:30am on 1 November 2019**, court room to be advised.

If there are no objections, or the objections are overruled, then the proposed settlement will be given final approval by the Court. It will then take effect and the proceeding will be considered finalised as against Ms Johns.

## **9. Addresses for questions**

If you have any questions about the settlement or this notice, you can contact Maddens Lawyers at any time, or seek your own independent legal advice.

### **Contact details for Maddens Lawyers**

Att: Joel Kavanagh  
Scotsburn Fire Class Action  
Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Telephone: (03) 5560 2000  
Email: [jmk@maddenslawyers.com.au](mailto:jmk@maddenslawyers.com.au)

### **Contact details for the Supreme Court of Victoria**

Note: Questions you have concerning the matters contained in this notice should **not** be directed to the Court.

Att: Deputy Registrar – Common Law  
Supreme Court  
Ground Floor, 436 Lonsdale Street, Melbourne 3000  
Telephone: 03 9603 9300  
Email: [cldclassactions@supremecourt.vic.gov.au](mailto:cldclassactions@supremecourt.vic.gov.au)

**Annexure B**

**Schmid v Skimming, Johns & Ors S CI 2016 05027**

*Scotsburn Fire Class Action*

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

The person identified below:

1. was affected by the Scotsburn Fire; and
2. is a group member in this class action; and
3. wishes to object to the proposed settlement of the class action in relation to the claim against Ms Maureen Lynette Johns.

The group member's contact details are as follows:

Name of group member:

Telephone number:

Postal address:

Email address:

Signed:

If nominating a contact person who is not the named group member, please state the contact's name and relationship to the group member:

The group member has read the "Notes for Objectors" below: Yes / No (circle one)

**Notes for Objectors:** Orders 4-7 of the Court's Orders made on **29 August 2019** require that Objectors deliver to Maddens Lawyers or the Supreme Court registry, by **4.00 pm** on **27 September 2019**, any written submissions (not exceeding 2 pages in length) and any affidavit evidence the Objector wishes to rely on in support of their objection to the proposed settlement.