

IMPORTANT NOTICE

CLASS ACTION REGARDING THE FIRE ON 17 OCTOBER 2013 AT MOUNT VICTORIA NSW

On 15 December 2015, Laurence Kelvin Eades (“the **Plaintiff**”) commenced this representative proceeding or “class action” in the Supreme Court of New South Wales against Endeavour Energy (ABN 59 253 130 878) (“**Endeavour Energy**”), Asplundh Tree Expert (Australia) Pty Ltd (ABN 83 055 140 424) (“**Asplundh**”) and Pinnacle Career Development Pty Ltd (ABN 73 115 138 326) (“**Pinnacle**”).

This class action is brought by the Plaintiff on his own behalf, and on behalf of all persons who suffered any of the following:

- (a) personal injury (whether physical or psychiatric);
- (b) loss of or damage to property; and
- (c) economic loss not resulting from loss of or damage to property;

as a result of a fire at Mount York Road in Mount Victoria which commenced on 17 October 2013 (“the **Mount Victoria fire**”). Persons fitting that description are defined in this class action as “**group members**”. The group members also include any “legal personal representatives” of the estates of any deceased person who would otherwise have qualified as a group member under (b) or (c) above.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this class action is brought and who may be affected by it.

If you think you may be a group member 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 a class action?

This class action is brought by the Plaintiff on his own behalf and on behalf of group members against Endeavour Energy, Asplundh and Pinnacle (“the Defendants”), where the group members have similar claims against the Defendants in relation to the Mount Victoria fire.

Group members are bound by any judgment or settlement entered into in the class action unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful or settles, group members may be eligible for a share of any Court-awarded damages or settlement monies;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Defendants in separate legal proceedings unless they have opted out.

2. What is the Mount Victoria fire class action?

The Plaintiff alleges that:

- (a) Endeavour Energy and its contractors, Asplundh and Pinnacle each owed a duty of care to the Plaintiff and the group members;
- (b) each of the Defendants breached its duty;
- (c) the breaches of duty caused the Mount Victoria fire; and
- (d) the Mount Victoria fire caused the Plaintiff and group members to suffer loss and damage.

These allegations arise from Endeavour Energy’s obligations as the operator of the power line on Mount York Road, Mount Victoria at the date of the Mount Victoria fire on 17 October 2013, and Pinnacle and Asplundh’s obligations owed pursuant to contracts with Endeavour Energy.

The Plaintiff’s claims are made on his own behalf and on behalf of group members. The allegations are detailed

in the Amended Statement of Claim dated 1 July 2016 (“the **Amended Statement of Claim**”). The Defendants each reject the allegations and are defending the class action on various grounds, detailed in their respective Defences.

3. Are you a Group Member?

You are a group member in the class action if:

- (a) you suffered personal injury (whether physical injury or psychiatric harm) as a result of the Mount Victoria fire;
- (b) you suffered loss of or damage to property as a result of the Mount Victoria fire;
- (c) you resided in, or had real personal property in the Mount Victoria area and suffered economic loss, which was not consequent upon personal injury or loss or damage to property;
- (d) you are the legal personal representative of the estates of any deceased persons in (b) and/or (c) above who were group members as at the commencement of this proceeding but have since died.

4. What is Opt Out?

The Plaintiff in a class action does not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be group members by opting out of the proceeding.

If you **do not** wish to be a group member and decide to opt out of the proceeding then you may wish to commence your own proceeding. It is important that you seek independent legal advice in this respect.

If you opt out then you will not be affected by any orders made in the representative proceeding. You will not be bound by or entitled to share in the burden or benefit of any order, judgment or settlement in the representative proceeding, and you will be at liberty to bring your own claim against the Defendants, provided that you issue Court proceedings within the time limit applicable to your claim. For claims for personal injury, the primary limitation period may expire as early as **17 October 2016**.

If you wish to bring your own claim against the Defendants, you should seek your own legal advice about your claim and the applicable time limit **before** opting out.

An explanation of how group members are able to “opt out” is found in, ‘Option B’, below.

5. What Group Members Should Do

If you fit the definition of a “group member” in this representative proceeding or “class action” you must choose one of the following three options:

Option A – Doing Something

If you wish to remain a group member and make a claim for loss or damage you claim to have suffered as a result of the Mount Victoria fire, you should contact Maddens Lawyers as follows:

Postal: Mr Brendan Pendergast
Maddens Lawyers
PO BOX 320
Warrnambool VIC 3280

Email: blm@maddenslawyers.com.au
Phone: 1800 815 228

Option B – “Opting out”

If you do not wish to be a group member, then you must complete the Form A “**Notice of Opting Out**” found at www.maddenslawyers.com.au. If you “opt out” then you will cease to be a group member.

If you wish to “opt out” you must do so by sending your Form A notice to the Supreme Court **before the Closure Date of 16 September 2016**.

You must send your “Opt Out Notice” to the Registry so that it arrives **before** that deadline. You must also provide a copy of your “Opt Out Notice” to the Plaintiff’s solicitor.

Postal: Mr Brendan Pendergast
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Option C – Do nothing

If you do nothing (i.e. you do not complete an opt out notice and do not contact Maddens Lawyers), you will remain a group member and remain bound by any order, judgment or settlement in the class action, but unless you identify yourself as a “group member” no one may be aware of that fact such that you may not be able to share in any possible benefit flowing from the class action. You may also have to satisfy certain conditions before your entitlement arises.

It is very important that you act promptly in deciding what you want to do. If you are not sure whether you are a group member, or you want further information or advice, you can contact Maddens Lawyers on 1800 815 228 or email blm@maddenslawyers.com.au.

6. Will You be Liable for Costs?

Group members will **not become liable** for any legal costs simply by remaining or registering as group members.

However, if the class action is successful and there is a judgment or settlement that results in compensation becoming payable to group members, then:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Maddens Lawyers or other solicitors to do that work for you. You may be liable for costs associated with the determination of issues concerned only with your claim;
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the representative proceeding, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the Plaintiff in running the representative proceeding but which are not able to be recovered from the Defendants. The Plaintiff will ask the Court to make such an Order if the occasion arises; and
- (c) representative proceedings are often settled out of Court. If this occurs in this representative proceeding, you may be able to claim from the settlement amount without retaining a lawyer.

7. Where Can You Obtain Copies of Relevant Documents?

Copies of relevant documents, including the Amended Statement of Claim, the Defences of Endeavour Energy, Asplundh and Pinnacle, and the Form A “Notice of Opting Out” may be obtained by:

- (a) downloading them from maddenslawyers.com.au;
- (b) telephoning Maddens Lawyers on 1800 815 228 and requesting a copy to be posted;
- (c) inspecting them by visiting the Registry of the Supreme Court in Sydney at Level 5, Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW.

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact the Plaintiff’s solicitors Maddens Lawyers on 1800 815 228, or seek your own legal advice. You should not delay in making your decision, as the deadline for opting out is **16 September 2016**.

This Notice is published pursuant to Orders made by the Supreme Court on 29 July 2016.