

**SUPREME COURT OF NEW SOUTH WALES**

**NOTICE OF PROPOSED SETTLEMENT**

**JASON HEGEMANN**  
**v**  
**JOSEPH TANNOUS & ORS**

(2021/00358501)

**REPRESENTATIVE PROCEEDING REGARDING THE FIRE ON  
4 DECEMBER 2019 AT PALMERS OAKY**

Mr Jason Hegemann (the **Plaintiff**) has brought a case in the Supreme Court of New South Wales against Joseph Tannous, Moussa Tannous, Charbel Tannous and Kwik Flo Pty Ltd (the **Defendants**) about the fire that commenced at in Palmers Oaky, NSW, on 4 December 2019 (**Palmers Oaky Fire**).

The case is called a “representative proceeding” because the Plaintiff is bringing the case for anyone who suffered personal injury (whether physical or psychiatric) and/or loss or damage to property as a result of the Palmers Oaky Fire. All those people are the “**group members**” in the representative proceeding.

The Plaintiff and Defendants have agreed to settle the case. That settlement must be approved by the Supreme Court before it can take effect.

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

**This notice explains ways in which the proposed settlement of the class action is likely to affect group members’ legal rights, especially their rights to claim compensation from the Defendants. If you think you may be a group member you should read this notice carefully. 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 can contact Maddens Lawyers on 1800 815 228 or seek your own legal advice.

**1. What is a representative proceeding?**

A representative proceeding is known commonly as a “class action”. It is a legal action brought by the Plaintiff on his own behalf and on behalf of a group of other people (group members) against the Defendants where the Plaintiff and group members have similar claims against the Defendants.

Group members are bound by any judgment in or settlement of the representative proceeding unless they choose to not participate by “opting out” of the proceeding. Being “bound” means that:

- a) if the representative proceeding is successful or settles, group members may be eligible for a share of any damages awarded by the court or settlement monies;
- b) if the representative proceeding is unsuccessful, group members are bound by that result; and
- c) regardless of the outcome of the representative proceeding, 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 Palmers Oaky Fire Class Action about?**

On 4 December 2019, a fire started at Palmers Oaky, NSW on a property at 1620 Upper Turon Road (also known as ‘Eldracam Springs’), which spread outside the boundaries of that property and affected a number of properties, including the Plaintiff’s property.

The Plaintiff alleges that the fire commenced when a welder was being used for fencing works. He alleges that sparks were discharged from the welder which landed in nearby dry grasses resulting in the ignition of the fire, which then spread out of control.

The Plaintiff alleges each of the Defendants owed a duty of care to take reasonable precautions to prevent the ignition of a fire and the spread of it on and beyond their property. He alleges that the Defendants breached this duty of care by failing to take reasonable precautions, which resulted in loss and damage to the Plaintiff and group members.

The Defendants are defending the Plaintiff’s allegations. The Plaintiff’s allegations are detailed in the Statement of Claim filed 17 December 2021, a copy of which is available for inspection on Maddens Lawyers website ([www.maddenslawyers.com.au](http://www.maddenslawyers.com.au)).

## **3. Are you a group member?**

You are a group member if you:

- a) suffered personal injury (whether physical injury or psychiatric injury) as a result of the Palmers Oaky Fire; and/or
- b) suffered loss of or damage to property as a result of the Palmers Oaky Fire; or
- c) are the legal personal representative of the estate of any deceased person who came within paragraphs (a) or (b) at the time of the Palmers Oaky Fire.

## **4. Proposed settlement of the Palmers Oaky Fire Class Action**

The Plaintiff and Defendants have agreed to settle the Palmers Oaky Fire Class Action. The terms of the settlement are set out in a confidential Deed of Settlement (**Settlement Deed**).

If you are a group member, a copy of the Settlement Deed that sets out the terms of the settlement is available from Maddens Lawyers if you wish to inspect a copy. Please be aware that the Deed is confidential, and you may not disclose it to third parties other than an identified, permitted list of individuals set out in the Deed which includes your legal advisors.

The terms of the Settlement Deed are, in summary:

- a) in consideration of payment of the settlement sum of \$4.5m by the Defendants, the Plaintiff and group members release the Defendants from any claims made in the Palmers Oaky Fire Class Action or arising out of the Palmers Oaky Fire;
- b) the settlement sum will be paid in three tranches, on 31 October 2023, 17 April 2024 and 17 October 2024;
- c) the Defendants do not admit any responsibility for or liability in relation to the events leading to the Palmers Oaky Fire.

It is important that you are aware that a result of the proposed settlement is that if you are a group member you will be bound by the settlement and not be able to commence your own proceedings against the Defendants or otherwise make any claim against it or them arising out of the Palmers Oaky Fire at a later date.

Because of the Supreme Court's rules for class actions, the Settlement Deed between the Plaintiff and the Defendants cannot take effect unless and until it is approved by the Court.

It is the opinion of those advising the Plaintiff that the proposed settlement is fair and reasonable and in the interests of group members, having regard to the fact that the Defendants were not insured against the liability that the Plaintiff alleges and their capacity to satisfy judgment, had the case run to a hearing.

## **5. How will the settlement sum be distributed?**

The settlement sum will be used to make four (4) kinds of payments, according to a procedure called the Settlement Distribution Scheme that the Court will be asked to approve.

First, the Court will check and approve the amount of legal costs incurred by the Plaintiff in bringing this case to be deducted from the settlement sum.

Second, the settlement sum will be the fund from which the legal costs of administering the settlement will be paid.

Third, a payment will be made to the Plaintiff for the time and personal burden of being the lead plaintiff, which role has benefited all group members. That payment is proposed to be \$30,000.

Fourth, the balance of the settlement sum will be shared between the Plaintiff and group members. The settlement sum is less than the total amount claimed by the Plaintiff and group members. This means that each group member's compensation sum must be adjusted to reflect the amount of the settlement. The Settlement Distribution Scheme includes a process for assessing individual claims according to various guidelines and information you have provided or will provide to us.

Payments for legal costs, administration costs, and to group members will be made in tranches after each of the three amounts making up the total settlement sum is paid by the Defendants.

If you are a group member, a copy of the Settlement Distribution Scheme can be obtained on the website of Maddens Lawyers at the following web address: <https://maddenslawyers.com.au/class-actions/2019-palmers-oaky-fire/>. Because it is confidential, access to this document is password protected. To obtain the password, you will need to contact Laura McLean of Maddens Lawyers on (03) 5560 2000.

A copy of the Settlement Distribution Scheme is also available for inspection at Maddens Lawyers if you wish to inspect a hard copy.

## **6. Will group members be liable for legal costs?**

The costs which the Plaintiff has incurred in running the class action for the benefit of all of the eligible group members will be paid out of the overall settlement sum received from the Defendants. There will not be any additional liability, in respect of those costs for group members.

The assessment procedures included in the Settlement Distribution Scheme are intended to minimise the overall costs of the process, and also to minimise the need for group members to engage separate lawyers to represent them. It is expected that most group members will not need to or want to engage separate lawyers. For those group members the costs of having their claims assessed will be paid as "administration costs" of the Scheme.

Group members will be entitled to engage separate lawyers to represent them in the claims assessment process, if they wish, but they will need to pay the costs charged by those lawyers.

## **7. What group members must do**

There are only two (2) 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 entitled to receive your share of the settlement sum in accordance with the Scheme.

**Option B**     *If you oppose the settlement and wish to object* then you must complete the 'Notice of Objection to Proposed Settlement' which is attached to this Notice. You must return the Notice to Maddens Lawyers before **5.00pm on Wednesday 22 November 2023**, and be ready to come to Court to argue your objection. Please note: even if you take this Option B and the Court approves

the settlement, you will still be entitled to receive your share of the settlement sum in accordance with the Scheme.

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 registrations (or objections) is **5.00pm on Wednesday 22 November 2023**.

#### **8. What will happen in the coming weeks?**

The Court has ordered that any objections to the proposed settlement (from group members who select Option B above) will be heard by the Court at the Supreme Court, 184 Phillip Street, Sydney NSW at **10.00am on 11 December 2023**.

If the proposed settlement is given final approval by the Court, it will then take effect. When it takes effect, group members who have registered claims with, and provided details of their losses to Maddens Lawyers by 22 November 2023 will have their claims assessed to determine their compensation entitlements.

#### **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**

Attn: Kathryn Emeny  
Palmers Oaky Fire Class Action  
Maddens Lawyers  
219 Koroit Street  
Warrnambool VIC 3280  
Telephone: (03) 5560 2000  
Email: [lam@maddenslawyers.com.au](mailto:lam@maddenslawyers.com.au)

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

**Note:** Questions should not be directed to the Court.

Law Courts Building, 184 Phillip Street, Sydney NSW 2000  
GPO Box 3, Sydney NSW 2001  
Telephone: 1300 679 272  
Email: [supremecourt.enquiries@courts.nsw.gov.au](mailto:supremecourt.enquiries@courts.nsw.gov.au)

**Annexure to Notice**

***Jason Peter Hegemann v Joseph Tannous & Ors (2021/00358501)***

*Palmers Oaky Bushfire Class Action*

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

The person identified below:

1. Was affected by the Palmers Oaky bushfire;
2. Is a group member in this class action;
3. Wishes to object to the proposed distribution of the Settlement Fund.

The group member's contact details are as follows:

Name:

Telephone number:

Postal address:

Email address:

Medicare No:

Signed:

(If not the named group member, please state the relationship to the group member)

The group member has also registered as a group member: Yes / No (circle one)

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

***Notes for Objectors:*** Order 8 of the Court's Orders made on 25 October 2023 require that Objectors deliver to Maddens Lawyers, by 5.00 pm on **22 November 2023**, 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.