

SURFSTITCH ("SGL") CLASS ACTIONS

TW McConnell Pty Ltd v Surfstitch Group Limited & Justin Peter Cameron
(Supreme Court of NSW Proceedings 2017/193375)

Nakali Pty Ltd v Surfstitch Group Limited
(Supreme Court of NSW Proceedings 2017/347082)

SETTLEMENT DISTRIBUTION SCHEME

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BACKGROUND

- A. This Settlement Distribution Scheme (**SDS**) establishes a procedure for verifying and distributing the sums to be paid by Gadens Lawyers pursuant to the settlement of the Supreme Court of New South Wales proceedings 2017/00193375 (**McConnell Proceeding**) and 2017/247082 (**Nakali Proceeding**)(collectively, the **SurfStitch Class Actions**) approved by the Court.
- B. This SDS does not become operative until the Effective Date as defined in the Settlement Agreement the subject of Court Approval.
- C. This SDS also provides for the distribution to CGMS of the DoCA Cash and Convertible Notes.
- D. This Settlement Distribution Scheme provides for the following major steps:
- (a) Gadens Lawyers will be appointed as Administrator of the Settlement Distribution Scheme.
 - (b) The Deed Administrators of the SGL DoCA will provide the Administrator of the Settlement Distribution Scheme the Trade Data for each CGM.
 - (c) The Administrator will send each Registrant a Notice of Trade Data and provide each Registrant with an opportunity to notify the Administrator of any amendments to the CGM's Trade Data.
 - (d) CGMs must return to the Administrator a properly executed CGM Declaration.
 - i. In the case of CGMs who are members of the Retention Subgroup, that CGM Declaration must include declarations regarding their reliance on the relevant representations made by SurfStitch.
 - ii. The Administrator will give each CGM a Notice of Estimated Distribution, give each CGM an opportunity to notify the Administrator of any objections to its estimated distribution, and provide for any objections to be referred to Independent Adjudicator for Review.
 - iii. Interest earned on the Settlement Sum will be applied, to the extent necessary, for payment of Administration Costs.
 - (e) Prior to any distribution to CGMs, the Administrator will deduct the:
 - i. Plaintiffs' Legal Costs, any Administration Costs from the CAS Pool; and
 - ii. Funding Commission (as approved by the Court) from the Settlement Distribution Fund,
 - (f) The Administrator will distribute to each CGM:
 - i. so much CGM's DoCA Proceeds left following the deductions in (e); and
 - ii. so much of the Chubb Cash left following the deductions in (e), according to the relationship their assessed loss bears to the assessed loss of all CGMs

- iii. all or part of the Residual Settlement Proceeds to CGMs according to the relationship their assessed loss bears to the assessed loss of all CGMs.
- (g) Any remaining undistributed component of the Residual Settlement Sum will be dealt with in accordance with further orders of the Court after hearing from all interested parties.

OPERATIVE PROVISIONS:

1. Definitions and Interpretation

- 1.1. The definitions and rules for interpretation set out in the Settlement Agreement apply to this Settlement Distribution Scheme unless the otherwise defined below (clause references are references to the clauses of this document unless otherwise specified):

Act means the *Civil Procedure Act 2005* (NSW) or CPA.

Administration Costs mean the Court-approved actual or estimated costs and disbursements:

- (a) incurred by the Plaintiff of and incidental to the application for the Approval Order, to the extent that they are not included within the Plaintiffs' Legal Costs; and
- (b) of the Administrator calculated at the rates set out in Schedule A and approved by the Court in connection with the administration of this Settlement Distribution Scheme, including (without limitation) assessing CGMs' claims, administering the Settlement Distribution Scheme, counsel's fees and any reimbursements paid to CGMs in accordance with cl. 10.

Administrator means Glenn McGowan, a partner of Gadens Lawyers acting as the Court appointed administrator of this Settlement Distribution Scheme.

Administrator Staff means the persons delegated by the Administrator to perform the functions necessary or convenient for the efficient implementation of the Settlement Distribution Scheme, and includes Gadens Lawyers and /or any expert consultant(s) or firm of consultant(s) in respect of those administrator staff.

Aggrieved CGM means a CGM whose estimated distribution will, by reason of an Amended Notice of Estimated Distribution issued to other CGMs, be reduced by more than ten (10) per cent.

Agreement means the Settlement Agreement dated 24 September 2019 subject of the Approval Order.

Approval Order has the same meaning as in the Settlement Agreement, being an order or orders of the Court pursuant to section 173 of the Act approving the Settlement (to the extent such approval is necessary) in accordance with the Settlement Agreement.

Assessment means the value of a CGM's Claim calculated in accordance with cl 6.2

Assessment Methodology means the Loss Assessment Formula applied to each CGM's Trade Data in the manner described in cl 6.2.

Australian Bank means an authorised deposit taking institution within the meaning of s 5 of the *Banking Act 1959*.

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales.

Cameron means Justin Peter Cameron,.

CAS Pool means the Chubb Cash and the DoCA Cash.

CGM means a Class Member who or which:

- (a) has, by 4.00 pm AEDT on 11 December 2019, registered with either Gadens Lawyers or Johnson Winter and Slattery and issued a Written Direction to the Deed Administrators in the manner set out in the orders made in the Proceedings on 12 November 2019; or
- (b) is a Late Registrant who is deemed to be a CGM by the operation of cl 4 of this Settlement Distribution Scheme;

and who has, in the case of:

- (i) CGMs who are not Verified CGMs, made or delivered to the Administrator a valid CGM Declaration in accordance with cl. 5.6; or
- (ii) Verified CGMs, provided to the Administrator written confirmation in accordance with cl 5.6.

CGM Declaration means a Statutory Declaration issued to a CGM (other than a Verified CGM) under cl 5.2.

Chubb means Chubb Insurance Australia Pty Limited ACN 001 642 020.

Chubb Payment means the amount of six million five hundred thousand dollars (\$6,500,000.00) inclusive of GST, being the total amount which Chubb has agreed to pay pursuant to the Settlement Agreement.

CGM Convertible Notes means the Convertible Notes transferred to the Administrator pursuant to cl. 4.1 of the Settlement Deed.

Convertible Notes means the convertible notes to be issued to “Creditors” as defined in the SHPL DoCA.

CGM Claim means the claim of a Continuing Group Member on the Chubb Cash.

CGM Database means a database constructed by or on behalf of Gadens Lawyers to contain the Trade Data for each CGM and any information required to identify the CGM, including names, addresses and telephone numbers.

CGM Shareholder Notes means the convertible notes available to a CGM because they are a “SGL Shareholder” within the meaning of the SHPL DoCA.

Claim means the quantum of each person’s total loss calculated in accordance with the Assessment Methodology.

Class Action Settlement Sum means the amount of the Chubb Payment, and any interest on the Chubb Payment, upon the Approval Order being made.

Class Member means Group Members, but does not include Opt Out Group Members.

Convertible Note Deed Poll means Schedule 2 to the SHPL DoCA dated 18 April 2018.

Court means the Supreme Court of New South Wales.

CPA means *the Civil Procedure Act 2005 (NSW)*.

Creditor Claims has the same meaning as in the Settlement Agreement.

Director means Cameron in his capacity as a director of SGL and SHPL.

Director’s Related Entities and Persons means any person or entity related to Cameron who may have a direct or indirect interest in any shares of SGL or SHPL.

Deed Administrators means John Richard Park and Joseph Ronald Hansell in their capacity as joint and several administrators of SGL and SHPL and subsequently joint and several deed administrators of the SGL DOCA and SHPL DOCA.

DoCAs means the SGL DoCA and SHPL DoCA.

DoCA Cash means any cash to which the CGMs become entitled from the Deed Fund established in the SGL DoCA, and which the Deed Administrators are required to pay to the CAS Pool pursuant to cl. 4.1 of the Settlement Agreement.

DoCA Participant means a CGM that is also an Admitted Subordinate Claimant within the meaning of the SGL DoCA.

Final Class Action Assessment means:

- (a) an Assessment of the amount that a CGM is likely to or will recover from the Chubb Payment, contained in a Notice of Estimated Distribution or an Amended Notice of Estimated Distribution which is taken to have been accepted by a CGM under cl 6.5 or cl 8.3; and
- (b) an Assessment contained in a Review Determination under cl. 8.3(d)

Final Cash Distribution Amount means an amount calculated in accordance with cl.10.5(a).

Final Convertible Note Entitlement means the final number of Convertible Notes to which the CGM DoCA Participant becomes entitled following the Deductions, as calculated in accordance with the Assessment Methodology.

Final DoCA Cash Entitlement means the final quantum of DoCA Cash to which the CGM DoCA Participant becomes entitled following the Deductions, as calculated in accordance with the Assessment Methodology.

Funding Agreements means the current funding agreements between ILP and any individual Registrant, and Vannin and any individual Registrant relating to the Proceedings.

Funders means ILP and Vannin.

Funder's Remuneration means the funding commission payable to ILP and Vannin pursuant to the orders sought in the plaintiffs' amended notice of motion filed 21 November 2019 (as approved by the Court).

Group Member means a person on whose behalf the Plaintiffs commenced the Proceedings, as described in the Plaintiffs' respective Amended Commercial List Statements filed in the Proceedings.

ILP means International Litigation Partners No 17 Pte Ltd.

Independent Adjudicator means a barrister of the New South Wales Bar or Victorian Bar having at least 5 years' post-admission experience nominated by the Administrator, who is empowered under this Settlement Distribution Scheme to conduct any Review.

Initial Convertible Notes Entitlement means, for each DoCA Participant, the number of Convertible Notes that the Deed Administrators determined that DoCA Participant was entitled in the SHPL DoCA,.

Initial DoCA Cash Entitlement means for each DoCA Participant the distribution of cash that the Deed Administrators determined that DoCA Participant was entitled in the SHGL DoCA.

Interest means interest earned on the monies held in the Settlement Distribution Account, and any interest which accrues on the CAS Pool while held in the Escrow Account and which is transferred to the Settlement Distribution Account.

Late Registrant means a Class Member who or which has submitted a purported registration in the manner contemplated by the orders made in the Proceedings on 12 November 2019, save that the purported registration was received by Gadens Lawyers or Johnson Winter and Slattery after 4.00 pm AEDT on 11 December 2019.

Loss Assessment Formula means the formula by which losses are calculated as contained in Confidential Schedule B to this Settlement Distribution Scheme.

McConnell Proceeding means the representative proceeding commenced by TW McConnell Pty Ltd against SGL, Cameron and Chubb in the Court, bearing proceeding number NSWSC 2017/193375.

Nakali Proceeding means the representative proceeding commenced by Nakali Pty Ltd against SGL and Chubb in the Court, bearing proceeding number NSWSC 2017/347082.

Notice of Estimated Distribution means the notice required by cl 6.3 of this Settlement Distribution Scheme to be sent by the Administrator to each CGM setting out the Assessment of the value of that CGM's Claim (and, where the context permits, includes any Amended Notice of Estimated Distribution under cl 6.4).

Notice of Suspended Distribution means the notice required to be sent by the Administrator to each CGM whose Final Distribution Amount remains undistributed in accordance with cll 10.10 and 10.11 of this Settlement Distribution Scheme.

Notice of Trade Data means the notice required by cl 5.4 of this Settlement Distribution Scheme to be sent by the Administrator to each Registrant.

Opt-Out Group Member means a Group Member who opts-out of the Proceedings.

Plaintiffs means TW McConnell Pty Ltd ACN 000 217 890 as Trustee for the McConnell Superannuation Fund and Nakali Pty Limited ACN 062 473 830.

Plaintiffs' Legal Costs means the Plaintiffs' reasonable legal costs and disbursements on a solicitor and own client basis (as approved by the Court) incurred on its own behalf and on behalf of all Class Members in the Proceeding.

Proceedings means the McConnell Proceeding and Nakali Proceeding.

Reimbursable Costs means the an amount for the Plaintiffs' and Funders' costs of the Proceedings payable pursuant to the Plaintiffs' amended notice of motion filed on 21 November 2019.

Relevant Period means the period from 27 August 2015 to 9 June 2016 inclusive

Residual Settlement Proceeds means the amount of the CAS Pool remaining after deduction of the Plaintiffs' Legal Costs, the Funding Commission, and any Administration Costs in accordance with clause 10.1.

Review means the procedure provided in cl. 7 for the review of a Notice of Estimated Distribution at a CGM's request.

Review Determination means a written determination of Independent Adjudicator providing notice to the CGM and the Administrator of the calculation and the result of a Review under cl 8.3(d) or cl 8.7.

Settlement Approval Date means the date on which the Approval Order is made in the Proceedings.

Settlement Agreement means the settlement deed dated 24 September 2019 between the Plaintiffs, ILP, Vannin, SGL, Cameron, Chubb and the Deed Administrators.

Settlement Distribution Account(s) means an interest bearing account opened by Gadens Lawyers in accordance with cl 6.2 of the Settlement Agreement and cl. 3 of this Settlement Distribution Scheme.

Settlement Distribution Fund means the:

- (a) DoCA Cash;
- (b) CGM Convertible Notes; and
- (c) Chubb Cash.

Settlement Distribution Scheme means the terms of this settlement distribution scheme as approved by the Court, including any Schedules.

SGL means SurfStitch Group Limited (subject to deed of company arrangement) ACN 602 288 004.

SGL DOCA means the SGL Deed of Company Arrangement dated 18 April 2018.

SHPL means SurfStitch Holdings Pty Limited (subject to deed of company arrangement) ACN 601 114 603.

SHPL DOCA means the SHPL Deed of Company Arrangement dated 18 April 2018.

Statutory Declaration means a statutory declaration in accordance with the *Statutory Declarations Act 1959* (Cth) or, for CGMs who reside outside the Commonwealth of Australia, an equivalent declaration under the law of their home jurisdiction.

Successful Review means a Review conducted in accordance with cl 7 that results in a Final Assessment for a CGM which is more than five (5) per cent greater than:

- (a) the Assessment contained in that CGM's Noticed of Estimated Distribution (if no Amended Notice of Estimated Distribution has been issued to that CGM); or
- (b) the Assessment contained in that CGM's Amended Notice of Estimated Distribution (if an Amended Notice of Estimated Distribution has been issued to that CGM).

SurfStitch Shares means the ordinary shares of SurfStitch.

Total Convertible Notes means the total Convertible Notes transferred by the Deed Administrators to the Administrator pursuant to cl 4.1(b) of the Settlement Agreement.

Total DoCA Cash means the total cash transferred by the Deed Administrators to the Administrator pursuant to cl 4.1(a) of the Settlement Agreement.

Trade Data means the following information for each CGM:

- (a) name;
- (b) address;
- (c) email address (if applicable);
- (d) for each of the CGM's holdings:
 - (i) the number of SurfStitch Shares held as at the opening of trading on the Australian Securities Exchange on 27 August 2017;
 - (ii) the number of SurfStitch Shares held as at the opening of trading on the Australian Securities Exchange on 23 October 2017 and
 - (iii) the transaction dates and number of securities acquired or disposed of for each acquisition and disposal of SurfStitch Shares in the Relevant Period.

Verification Request means a verification request issued by the Administrator to a CGM under cl. 5.9.

Verified CGM means a CGM who or which, in response to a Verification Request, has

provided a Statutory Declaration confirming their Trade Data.

Written Direction has the meaning in clause 5.1(b) of the Settlement Agreement, and includes the *Group Member Registration and DOCA Authorisation Form* (Annexure A to the Plaintiffs' amended notice of filed 12 November 2019).

- 1.2. Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:
- (a) the singular includes the plural, and the converse also applies;
 - (b) a gender includes all genders;
 - (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
 - (e) a reference to dollars and \$ is to Australian currency; and
 - (f) a reference to any thing done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Settlement Deed or this Settlement Distribution Scheme.

2. Scheme Administrator

- 2.1. The Settlement Distribution Fund shall be administered and applied by Glenn McGowan of Gadens Lawyers as Administrator.
- 2.2. The Administrator will, subject to and in accordance with this Settlement Distribution Scheme:
- (a) hold the Settlement Distribution Fund on trust until the Settlement Distribution Fund is distributed; and
 - (b) distribute the Settlement Distribution Fund (including any interest accrued) as expeditiously as possible in accordance with this Settlement Distribution Scheme.
- 2.3. The Administrator in discharging any function or exercising any discretion conferred by this Settlement Distribution Scheme shall do so as lawyers required by the Court to administer this Scheme fairly according to its terms, as a duty owed to the Court in priority to any obligation to any individual Class Member, CGM or the Plaintiffs.
- 2.4. Notwithstanding anything elsewhere contained in this Settlement Distribution Scheme, the Administrator may at any time and in its sole discretion correct any error, slip or omission occurring in the course of its administration of the Settlement Distribution Scheme.

- 2.5. Where a CGM is a CGM by virtue of a registration submitted on their behalf by a trustee, investment manager, responsible entity or agent, the Administrator may rely on any information, instruction or declarations provided by that trustee, investment manager, responsible entity or agent as if it had been provided by the CGM itself.
- 2.6. The Administrator and the Administrator Staff in discharging any function or exercising any power or discretion conferred by this Scheme shall not be liable for any loss to Class Members or CGMs arising by reason of any mistake or omission made in good faith or of any other matter or thing except wilful and individual fraud and wrongdoing on the part of the Administrator or the Administrator Staff who are sought to be made liable.
- 2.7. Nothing in clause 2.1:
- (a) constitutes Gadens Lawyers as a solicitor retained by or professionally obligated to a CGM who has not retained Gadens Lawyers as the CGM's solicitor; or
 - (b) prevents Gadens Lawyers from continuing, or accepting a new engagement, as the solicitor for an individual CGM and advising that CGM as to its rights under the Settlement Distribution Scheme.

3. Account Establishment

3.1. On the Approval Order being made:

- (a) the Administrator will open two interest bearing trust accounts with an Australian Bank for the benefit of CGMs which will comprise separately:
 - (i) the Chubb Payment, once Chubb makes the Chubb Payment in accordance with cl. 3.1 (a) of the Settlement Agreement; and
 - (ii) payment from the Deed Administrators of the DoCA Cash in accordance with cl. 4.1(a) of the Settlement Agreement.

(Settlement Distribution Accounts)

- (b) The Administrator will retain the amounts in the Settlement Distribution Accounts separately, until the later of the following dates:
 - (i) seven (7) business days after any appeal period in respect of the Approval Order (whether under the rules of the Court or the High Court) expires without an appeal being commenced; or
 - (ii) in circumstances where an appeal in respect of the Approval Order is commenced, seven (7) business days after that appeal is finally determined (including any determination in respect of that appeal by the High Court), the result of which is that the Approval Order is made or confirmed; and
 - (iii) completion of assessment by the Administrator in accordance with this Settlement Distribution Scheme.

4. Settlement Distribution Fund and Settlement Sum, Late Registrations and Non Registrants

4.1. If the Approval Order is made:

- (a) no later than seven (7) days following the making of the Approval Order, or Chubb being provided with the necessary account details, whichever is the later, Chubb will pay, or cause to be paid, the Chubb Payment, into the CAS Pool in accordance with cl. 3.1(a) of the Settlement Agreement;
- (b) following receipt of the CGMs' Written Direction(s) and completion of the adjudication of the Creditor Claims in accordance with cl. 4.1 of the Settlement Agreement, the Deed Administrators shall:
 - (i) in respect of the DoCA Cash - pay the DoCA Cash to the Administrator (or as he directs) to form part of the CAS Pool;
 - (ii) in respect of the CGM Convertible Notes, allocate the CGM Convertible Notes to the Administrator (or as he directs);
 - (iii) in the case of the CGM Shareholder Notes, allocate to the solicitors for the Plaintiffs so many of the CGM Shareholder Notes as represent the Funders' share as determined by the Court, or if the Court declines to make the orders sought in paragraph 21 of the Plaintiffs amended notice of motion filed on 21 November 2019, the entitlement of ILP or Vannin under the agreement signed by the group member with the relevant funder; and
 - (iv) provide to the Administrators, within an itemised schedule, the Deed Administrators' written assessment of the value of the Initial DoCA Cash Entitlement and of the Initial Convertible Note Entitlement that each DoCA Participant would be entitled to, but for the transfer of the DoCA Cash and Convertible Notes to the Administrator, pursuant to this Settlement Distribution Scheme; and
 - (v) provide to the Administrator the duly executed transfer of Convertible Notes to the Administrator in accordance with the Convertible Note Deed Poll.
- (c) in effecting compliance with cl. 3.1(b) above, the Administrator will quarantine the DoCA Cash from the Chubb Payment, until assessment under this Settlement Distribution Scheme is complete under clause 10.

4.2. If the Court makes an order entitling a Late Registrant to participate in the distribution of the Settlement Distribution Fund, the Late Registrant shall be deemed to be a CGM for the purpose of this Settlement Distribution Scheme.

4.3. Any Class Member who is not a CGM (including any Late Registrant in respect of whom the Court does not make an order of the kind referred to in cl 4.1) will remain a Group

Member for all purposes but:

- (a) shall not be entitled to receive a distribution from the Settlement Distribution Fund; and
- (b) shall not be entitled to receive any notices under this Settlement Distribution Scheme.

5. Provision and confirmation of Trade Data

- 5.1. As soon as practicable after the Approval Order, the Administrator shall create and maintain a CGM Database comprising the Trade Data.
- 5.2. At all times, the Administrator must use reasonable endeavours to ensure the accuracy of the CGM Database, including, to the extent necessary, updating it for any amended or corrected Trade Data provided under cl 5.6(d), requesting further information or documents from a CGM or requesting further information or documents from SurfStitch, the Deed Administrators or other third parties.
- 5.3. As soon as practicable after the Approval Date:
- (a) the Administrator shall provide a list of the CGMs to the Deed Administrators and/or Link Market Services (as the shareholder registry for SGL); and
 - (b) the Deed Administrators and/or Link Market Services (as the shareholder registry for SGL) shall provide to the Administrator the Trading Data held in respect of the CGMs.
- 5.4. As soon as practicable after the Deed Administrators and/or Link Market Services has provided the Trade Data in accordance with cl.5.3, the Administrator will deliver:
- (a) to each CGM (other than a Verified CGM) a Notice of Trade Data and an unexecuted CGM Declaration; and
 - (b) to each Verified CGM a Notice of Trade Data.
- 5.5. The Notice of Trade Data and (if applicable) the unexecuted CGM Declaration delivered to a CGM will list the Trade Data pertaining to that CGM as held by the Administrator in the CGM Database.
- 5.6. Each CGM wishing to receive a distribution from the Settlement Distribution Fund must provide to the Administrator, within 28 days of the date of the Notice of Trade Data:
- (a) in the case of a Verified CGM, confirmation in writing; and
 - (b) in the case of a CGM other than a Verified CGM, an executed CGM Declaration,
- which:
- (i) confirms that, to the best of the CGM's knowledge, no other person has sought or will seek to receive a distribution on the basis of the same acquisitions of SurfStitch Shares as those listed in the Notice of Trade Data and which either:

- (A) declares that the Trade Data in the Notice of Trade Data is true and correct; or
 - (B) provides amended or corrected Trade Data and declares that such amended or corrected Trade Data is true and correct; and
- (ii) in the case of a CGM Declaration issued to a CGM who the Administrator determines may satisfy the definition of Retention Subgroup Members in paragraph [78] of the Amended Commercial List Statement (**ACLS**) filed in the McConnell Proceeding, provision for the CGM to declare whether or not the CGM:
- (A) retained shares that they or it purchased prior to 23 October 2015 (**Pre-Period Shares**) in reliance on the assumption regarding SurfStitch's compliance with its compliance obligations in paragraph [79] of the ACLS; or
 - (B) retained Pre-Period Shares in reliance on the representations set out in paragraph [80] of the ACLS; and
 - (C) But for the October Contravening Conduct, would have disposed of their Pre-Period Shares before 10 November 2015

5.7 Any CGM that does not make and deliver to the Administrator a valid CGM Declaration or, as the case may be, provide written confirmation to the Administrator, in accordance with cl 5.6:

- (a) shall not be entitled to receive a distribution from the Settlement Distribution Fund; and
- (b) the Administrator shall not be required to provide to any such CGM any further notices under this Settlement Distribution Scheme.

5.8 Subject to cl 5.7, for the purpose of the administration of this Settlement Distribution Scheme, Trade Data confirmed by a CGM Declaration or (in the case of a Verified CGM) written confirmation may be relied upon as accurate by the Administrator, in its absolute discretion, when administering this Settlement Distribution Scheme.

5.9 Notwithstanding cl 5.7, if in the Administrator's opinion, a CGM Declaration or (in the case of a Verified CGM) written confirmation:

- (a) contains insufficient information to substantiate the claim made by a CGM or is not a valid CGM Declaration, the Administrator may in its absolute discretion by written notice require the CGM to provide and verify by a Statutory Declaration such further information as the Administrator may require (**Verification Request**). If the CGM does not provide the further information within 14 days of such a request being made, the Administrator may determine, in its absolute discretion, that the CGM shall not be entitled to receive a

distribution from the Settlement Distribution Fund and, save for notice of that determination, the Administrator shall not be required to provide to any such CGM any further notices under this Settlement Distribution Scheme; or

- (b) contains sufficient information notwithstanding that some information may not be included, the Administrator may in its absolute discretion accept the Trade Data as complete.

6. Notice of Assessment and Estimated Distribution

- 6.1. As soon as practicable after the confirmation of the Trade Data as provided for in cl 5, the Administrator shall make an Assessment of each CGM's claim using the Trade Data.
- 6.2. The Assessment for each CGM's Claim shall be calculated by applying the Loss Assessment Formula to that CGM's Trade Data in the manner described in Confidential Schedule B to this Settlement Distribution Scheme (**Assessment Methodology**);
- 6.3. As soon as practicable after making an Assessment of each CGM's Claim, the Administrator shall send a Notice of Assessment and Estimated Distribution to each CGM notifying them of:
 - (a) the Trade Data relating to that CGM;
 - (b) the Assessment of that CGM's claim calculated in accordance with cl 62;
 - (c) the Administrator's reasonable estimate of the CGM's expected distribution under this Settlement Distribution Scheme, including any DoCA Cash and Convertible Notes;
 - (d) the terms of cll 6.4 and 6.5 below;
 - (e) the availability and terms of the Review procedure in cl 7 below;
 - (f) any other information that the Administrator considers would assist CGMs in determining whether to seek a Review; and
 - (g) in the case of a CGM referred to in cl 5.8, the terms and effect of that clause.
- 6.4. If, within 28 days of the date of the Notice of Estimated Distribution, a CGM notifies the Administrator of any error, slip or omission in the Notice of Estimated Distribution, the Administrator may, in its absolute discretion, correct the CGM Database and issue to that CGM, and any Aggrieved CGM affected by the correction, an Amended Notice of Estimated Distribution.
- 6.5. Unless the CGM, within 28 days of the date of the Notice of Estimated Distribution, delivers to the Administrator a written request for a Review together with copies of all documents on which the CGM relies for the purposes of the Review, including any statement of reasons for seeking the Review, the accuracy of a Notice of Estimated Distribution shall be deemed to be accepted

by a CGM for all purposes of and incidental to the Settlement.

7. Review and Disputes

7.1. If a CGM requests a Review, or disputes a Notice of Estimated Distribution, the Administrator shall review the request and copies of documents on which the CGM relies for the purposes of the Review and:

- (a) if satisfied that the request discloses an error, slip or omission by the Administrator or any other administrative or clerical error, correct the notice to which the request relates; or
- (b) in all other cases, refer the request to the Independent Adjudicator.

7.2. If referral to the Independent Adjudicator is necessary, the Administrator will within 3 days after the date of referral:

- (a) notify the CGM and Deed Administrators of the referral; and
- (b) deliver to the Independent Adjudicator:
 - (i) the CGM Claim;
 - (ii) the Notice of Assessment and Estimated Distribution;
 - (iii) the written request for review, including the supporting material provided by the CGM with the said request.

8. **Independent Adjudication** A referral of a dispute to the Independent Adjudicator does not bar the parties to the disputed claim from negotiating for an agreed resolution to the dispute between them privately.

8.2. Upon receipt of a Review referral, the Independent Adjudicator may by written notice direct the CGM to submit such further documentation in support of the Review as the Independent Adjudicator may consider appropriate. Such documentation must be submitted within 14 days of the date of any such written notice, failing which the request for Review shall be deemed never to have been made and the accuracy of the Notice of Estimated Distribution shall be deemed to be accepted by the CGM.

8.3. The Independent Adjudicator shall, within 14 days after:

- (a) the receipt by the Administrator of the request for the Review; or
- (b) receipt by the Independent Adjudicator of documentation provided in response to a written direction under cl 8.2,

whichever is the later:

- (c) make an Assessment of the CGM's claim in accordance with the Assessment Methodology prescribed in cl 6.2; and
- (d) give a short written notice of the result of the Review to the CGM and the Administrator (not exceeding 5 pages) (**Review Determination**).

- 8.4. Where the Independent Adjudicator permits or directs any step to be taken by a party to a dispute the Adjudicator shall stipulate a reasonable deadline for compliance by the party, and failing compliance shall proceed to make his or her adjudication by reference to the evidentiary and other material already available.
- 8.5. A Review Determination is final and binding and no appeal from the determination shall lie to any court or tribunal.
- 8.6. A CGM requesting a Review shall pay the costs of the Review by the Administrator and Independent Adjudicator (or any part thereof) on an hourly basis.
- 8.7. The Independent Adjudicator may, by written notice, require a CGM to pay to the Administrator an amount the Independent Adjudicator reasonably estimates will represent the cost of the Review, which amount will be held by the Administrator on trust for the purposes of paying the costs of the Review upon presentation of a tax invoice by the Independent Adjudicator. If this amount is not provided as required within 10 days of the date that the written notice requiring payment into trust was sent to the CGM requesting the Review, the Independent Adjudicator:
- (a) shall issue a Review Determination confirming the CGM's Notice of Estimated Distribution; and
 - (b) note that no payment has been made into trust as required.
- 8.8. If no further documentation is requested by the Independent Adjudicator under cl 8.2 in respect of a CGM's request for Review, and that CGM's request results in a Successful Review, the CGM will be reimbursed from the Settlement Distribution Fund for any costs of the Successful Review paid by the CGM in accordance with cl 8.6. The reimbursed costs of the Successful Review will be deemed to be Administration Costs.
- 8.9. If any costs of a Review (other than a Successful Review for which the CGM is entitled to reimbursement under cl 8.8) have not been paid by a CGM before any distribution to that CGM, the Administrator shall deduct those costs from any sum which otherwise would be distributed to the CGM who sought the Review in priority to all other entitlements. That CGM shall remain liable for any costs not recovered by a deduction pursuant to this clause and the Administrator, in administering the Settlement Distribution Scheme, may apply to the Court for an order requiring the CGM to pay those costs.
- 8.10. The Independent Adjudicator assigned will be appointed at the Court's discretion at the time the Approval Order is made

9. Application of Interest

- 9.1. Interest incurred on the amounts comprising the CAS Pool held in the Settlement Distribution Account will be applied, in the first instance, to payment of the Administration Costs.
- 9.2. Any additional Administration Costs shall be paid to the Administrator out of the CAS Pool before any final distribution of the Settlement Distribution Fund in accordance with cl 10.
- 9.3. Any Interest which is not otherwise required for the payment of Administration Costs, will form part of Settlement Distribution Fund and be available for distribution to CGMs in accordance with the Assessment Methodology.

10. Distribution

- 10.1. Prior to any distribution from the Settlement Distribution Fund to CGMs, the gross amounts comprising the Settlement Distribution Fund shall be treated as a common fund and the following payments shall be made from the Settlement Distribution Fund:
 - (a) the Funder's Remuneration payable to the Funders (as approved by the Court).
 - (b) from the CAS Pool:
 - (i) an amount or amounts to Gadens Lawyers, Johnson Winter & Slattery and Squire Patton Boggs respectively for Reimbursable Costs (as approved by the Court, pending any reimbursement due from each of them to the Funders on behalf of the Plaintiffs).
 - (ii) an amount to the Administrator for Administration Costs incurred by the Administrator to the extent not already paid under cl 9.3; and

(together, the **Deductions**).
- 10.2. For clarity, the Deductions in clause 10.1 shall be deducted from each CGM as follows:
 - (a) from each CGM's recovery from the Chubb Payment, in the proportion which the CGM's Final Class Action Assessment bears to the aggregate of the Final Class Action Assessment of all CGMs;
 - (b) from each DoCA Participant's:
 - (i) Initial DoCA Cash Entitlement, in the proportion which the CGM's Initial DoCA Cash Entitlement bears to the Total DoCA Cash of all CGMs; and
 - (ii) Initial Convertible Note Entitlement, in the proportion which the CGM's Initial Convertible Note Entitlement bears to the Total Convertible Notes.
- 10.3. Once the payments referred to in cl 10.1 are made, the proceeds in the Settlement Distribution Fund, referred to as the Residual Settlement Proceeds, shall then be distributed in accordance with this cl 10.

10.4. The Residual Settlement Proceeds will:

- (a) exclude any distributions to the Director or the Director's Related Entities or Persons on account of any direct or indirect interest any such entities or persons may have in any shares in SGL or SHPL which may form part of the claims in the Proceedings; and
- (b) be distributed by the Administrator transferring to each CGM:
 - (i) in the case of each DoCA Participant – so much of:
 - (A) that proportion of the Distributable DoCA Cash which that DoCA Participant's Initial DoCA Cash Entitlement bore to the Total DoCA Cash Entitlement for all CGM DoCA Participants;
 - (B) that proportion of the Distributable Convertible Notes which that DoCA Participant's Initial Convertible Note Entitlement bore to the Total Convertible Notes for all CGM DoCA Participants.
 - (ii) in the case of each CGMs – that proportion of the Chubb Payment then remaining in the Residual Settlement Proceeds, which that CGM's Final Class Action Assessment bears to the aggregate of the Final Class Actions Assessments for all CGMs.

10.5 Each CGM's distribution:

- (a) which represents the aggregate of the amounts calculated in accordance with clause 10.4 (b)(i)(A) and cl. 10.4(b)(ii), constitutes the CGM's Final Cash Distribution Amount;
- (b) which is the distribution of the CGM Convertible Notes calculated in accordance with cl. 10.4(b)(i)(B) above, is the CGM's Final Convertible Note Distribution.

10.6. Subject to cl 10.1 and 10.4(a) no distribution shall be made from the Settlement Distribution Fund until the Final Class Action Assessment of every CGM has been determined and the Deductions have been paid in full.

10.7. The distribution of Final Cash Distribution Amounts to CGMs will be attempted by electronic funds transfer except where:

- (a) a CGM demonstrates that distribution by electronic funds transfer is impracticable for that CGM; or
- (b) the Administrator, in its absolute discretion, considers that another method would be more conducive to effecting a timely distribution to any CGM or group of CGMs.

10.8. Following the first attempted distribution of Final Cash Distribution Amounts by electronic funds transfer, any further distributions may, at the discretion of the Administrator, be made by issuing cheques.

10.9. If any CGM's Final Cash Distribution Amount, or part thereof, remains in the Settlement

Distribution Fund 120 days after:

- (a) all cheques comprising CGMs' Final Distribution Amounts have been sent to CGMs; or
- (b) in the event that no cheques are issued, the earliest date by which the electronic transfer of a Final Distribution Amount to every CGM has been attempted;

the Administrator will issue a Notice of Suspended Distribution to each CGM whose Final Distribution Amount, or part thereof, remains in the Settlement Distribution Fund.

10.10. The Notice of Suspended Cash Distribution will notify the relevant CGM that:

- (a) any cheques comprising all or part of that CGM's Final Cash Distribution Amount will be cancelled if they remain unrepresented 28 days after the date of the Notice of Suspended Distribution;
- (b) if it has not been distributed within 28 days of the date of the Notice of Suspended Cash Distribution, the undistributed amount comprising all or part of that CGM's Final Cash Distribution Amount will remain in the Settlement Distribution Fund, and will not be distributed without further order of the Court.

10.11. Any cheque corresponding to a Final Cash Distribution Amount, or part thereof, which remains unrepresented will be cancelled by the Administrator 28 days after the date of any Notice of Suspended Distribution issued in respect of that Final Distribution Amount.

10.12. If any Final Cash Distribution Amount, or part thereof, remains in the Settlement Distribution Fund 28 days after a Notice of Suspended Distribution has been issued in respect of that Final Distribution Amount (**Remaining Funds**), and the aggregate of any such amounts is:

- (a) greater than \$10,000, then the Administrator will distribute those funds to each CGMs who have previously received a Final Cash Distribution Amount that proportion of the Remaining Funds which that CGM's Final Cash Distribution Amount bore to the aggregate of all CGMs' Final Cash Distribution Amounts; and
- (b) less than \$10,000, then the Administrator will donate those funds to the Australian Institute of Company Directors for use in the education of company directors as to their duties.

10.13. The Administrator will transfer the Final Convertible Note Distributions to CGMs in accordance with the terms of the Convertible Note Deed Poll dated 18 April 2019 that appears as Schedule 2 to the SHPL DoCA, in the form of a Master Transfer, in so far as the Convertible Note Deed Poll permits.

11. Immunity from Claims

11.6. The completion of distributions made pursuant to cl 10 (including distributions made by cheques that remain unrepresented for 120 days) shall satisfy any and all rights, claims or entitlements of

all Class Members, CGMs and CGMs in or arising out of the Proceedings.

12. Supervision by the Court

- 12.6. The Administrator may refer any issues arising in relation to the Settlement Distribution Scheme or the administration of the Settlement Distribution Scheme to the Court for determination.
- 12.7. On the application of the Administrator, the Court may vary or amend the terms of the Settlement Distribution Scheme.
- 12.8. Any costs incurred by the Administrator in any such reference to the Court, or in any application made by the Administrator, shall be deemed to be Administration Costs, unless the Court otherwise orders.

13. Notice

- 13.6. Any notice to be given pursuant to the Settlement Distribution Scheme shall be deemed given and received for all purposes associated with this Settlement Distribution Scheme if it is:
- (a) addressed to the person to whom it is to be given; and
 - (b) either:
 - (i) sent by email to that person's email address (being, in respect of a Class Member, the email address included with the Trade Data or CGM Declaration submitted by that person) and a server through which it is transmitted produces a report that states that the email has been delivered to the inbox of that person; or
 - (ii) delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Class Member, the current postal address recorded in the Administrator's Class Member records, as obtained from the Class Member's Retainer or Funding Agreement, Trade Data, CGM Declaration or directly from the Class Member).
- 13.7. A notice that complies with this cl 13 will be deemed to have been given and received:
- (a) if it was sent by email, at the time it was sent;
 - (b) if it was sent by mail to an addressee in Australia, two clear business days after being sent; or
 - (c) if it was sent by mail to an addressee overseas, five clear business days after being sent.
- 13.8. Where a Class Member is not a natural person and where one person has been nominated as the contact in respect of several Class Members, it is sufficient for the purpose of giving notice that any of the provisions of cl 13.1 are complied with in relation to that nominated person.

- 13.9. The Administrator's address and email address shall be as set out below unless and until the Administrator notifies the sender otherwise:

Glenn McGowan QC
Partner and Chief Counsel
Gadens Lawyers
GPO Box 48
Melbourne VIC 3000
C/- Glenn McGowan
Tel: (03) 9252 2555
Fax: (03) 9258 2500
Email: vic-surfstitch@gadens.com

14. General

- 14.6. The amounts standing from time to time in the CAS Pool/Settlement Distribution Fund shall be held:
- (a) after the Approval Date, by Gadens Lawyers in accordance with cl. 3.1 upon trust for the persons entitled to payments from the respective accounts; and
 - (b) all taxes, duties, levies, charges and other imposts payable in respect of the funds in the said accounts shall be paid from the said funds in priority to any distribution to the persons beneficially entitled to the funds.

15. Time

- 15.6. The time for doing any act or thing under the Settlement Distribution Scheme may be extended by the Administrator in its absolute discretion.
- 15.7. The time for doing any act or thing under the Settlement Distribution Scheme may be extended by order of the Court.

Schedule A

Person / Position	Hourly Rate (ex GST)
Partner	\$700 to \$800
Special Counsel	\$520 to \$700
Senior Associate	\$400 to \$495
Associate	\$350 - \$395
Law Graduate/ Lawyer	\$260 - \$370
Paralegal / Law Clerk	\$165 - \$320
Litigation Technology Consultant	\$250.00