



**ASIC**

Australian Securities & Investments Commission

# Westpoint compensation proceedings: Class action information

This document has been prepared to provide you with general information about ASIC's case. It is not legal advice about whether you should participate in ASIC's case. You should consider obtaining your own legal advice on this issue.

## The Court process

Court cases are usually commenced when one party (in the Federal Court they are called the 'Applicant') files documents with the Court that set out its claims (in this case ASIC has already filed these documents, called the 'Application' and the 'Statement of Claim').

Once a case has been started it is usually listed before a Judge for a directions hearing.

- The purpose of a directions hearing is to allow the Court to manage the case so that it will be ready for hearing as soon as possible. The Court does this by making directions (or orders) requiring the parties to do certain things. There are usually several (or more in complex matters) directions hearings before a matter is ready for hearing.

After an Applicant files documents to start a case the next step is usually for other party (called the 'Respondent') to file a document called a 'Defence'.

- The Defence sets out what the Respondent says in response to the claim. Sometimes the Applicant will then file a 'Reply' containing anything further that the Applicant wants to say about the claim.

The next stage of a court case usually involves each party examining relevant documents held by the other party. This is called 'discovery'.

- This process may take one to two months, but can take much longer depending the complexity of the matter and the number of documents involved.

After discovery, the parties are generally required to file their evidence. Evidence will usually consist of sworn statements (called 'affidavits') and sometimes reports prepared by experts.

- This process may take two to three months, but again can take much longer depending on the circumstances of the case.

As well as these matters, if there is any dispute between the parties about how the matter is being prepared, the Court may be called on to resolve it.

- This often involves a hearing before the Court (called an 'interlocutory hearing'). These disputes can delay the progress of a case.

Finally, once all the evidence has been filed, the matter is ready to be allocated a hearing date. The hearing date given depends on a number of matters including how long the hearing is expected to be, and when the Court has sufficient time to hear it. People who have sworn affidavits or given reports are often required to attend Court to answer questions about their evidence.

### **How class actions are different**

Class actions differ from other types of matters in that they are usually conducted in two stages.

The first stage involves the determination of issues which are common to all members of the class. If the Applicant is successful in the first stage, the case proceeds to determine the remaining issues that are particular to each member of the class.

- In the first stage the class members are usually not required to swear affidavits or appear in Court. However, they are usually required to do so in the second stage.

Class actions in the Federal Court are brought in the name of one person but also seek orders on behalf a group of people.

- Members of the class do not have to do anything before the case is started to be part of the proceedings. Rather, the Court usually makes an order requiring a notice to be given to all people in the class some time after the proceedings are started, but before the Court makes any findings. This notice gives those people the chance to opt out of the proceedings if they do not want to be part of the case.

Any class member who opts out will not benefit from any findings in the case. If a class member does not opt out, they will be bound by the findings of the Court in the case.

### **Costs in ASIC's class action**

Members of the class will not be required to pay anything out of their own funds towards the ASIC's costs or to meet any costs orders that the Court may make in favour of the Respondents.

However, it is possible that ASIC's costs could affect the amount investors receive.

- If the class action is successful ASIC will ask the Court to order the Respondent to pay an amount of compensation to the class members and ASIC's costs as well.
- If the Respondent has sufficient funds to pay both the compensation and the costs orders, ASIC will not seek any contribution from class members. However, if the Respondent does not have sufficient funds to pay both the compensation and ASIC's costs then it is possible that ASIC's costs could affect the amount that investors receive from the compensation.

ASIC appreciates that this uncertainty as to the costs position makes it more difficult for investors to decide whether to participate in these proceedings.

At this stage, we have decided that if there is a shortfall in funds we will seek no more than the payment of our costs on a pro-rata basis (i.e. if the Respondent only has enough assets to satisfy 75% of the compensation and costs awarded ASIC will not seek to recover the remaining 25% of its costs from the compensation awarded as it could be entitled to do).

Depending on all the circumstances, we may seek less than this. However, we cannot make this final decision until the issue arises as it involves balancing the need to preserve the substantial benefit of the proceedings for the investors against our obligations to spend public funds appropriately.

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