

Parliamentary Joint Committee on Corporations and Financial Services

Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021

Answer to Question on Notice

In evidence to the Committee's public hearing, Andrew Saker from Omni Bridgeway made reference to analysis prepared by PWC on the implications of a 70 per cent statutory minimum return to group members.

This analysis concludes that cases with a settlement value below \$25 million would generally be unviable with this minimum return in place. In addition, PWC finds that while cases with a settlement value between \$25 and \$50 million would generally cover direct legal costs they may not generate a sustainable return to the funder.

As requested by the Committee, we provide some examples, below, of class actions funded by Omni Bridgeway Limited that fall within these settlement ranges. Due to confidentiality obligations in relation to the settlement in some actions, we have only been able to provide a general description of those cases.

Omni Bridgeway also makes the overarching point that settlement value is not known at the time a decision is made to fund a case. While funders clearly seek to make an assessment of the characteristics of a case prior to making a funding decision, this is necessarily made on the basis of limited information and not knowing the many contingencies that occur in the context of complex commercial litigation. For this reason, the 'chilling' impact on future funding decision is likely to be further increased by the imposition of this legislative price control.

Actions that settled for less than \$25 million

- Two class actions brought on behalf of claimants who suffered considerable losses in relation to high risk financial products due to negligence, breaches of duty and other claims.
- Two actions brought on behalf of thousands of retiree investors against financial advisers who recommended they invest in high risk investments that failed.
- *Richard Bradgate as Trustee of the Bradgate Superannuation Fund v Ashley Services Group Ltd*: Investor action against recruitment company Ashley Services that included claims relating to misleading statements and material omissions made in Ashley's prospectuses issued prior to its listing. The claimants included 'Mums and Dads' investors who lost parts of their superannuation. The action settled for \$14.6 million.

Actions that settled in the range between \$25 million and \$50 million

- *Hudson v Commonwealth*: Environmental contamination class action against the Commonwealth of Australia (Department of Defence) relating to chemical contamination at Army Aviation Centre at Oakey in Queensland which resulted in diminution in property and business values. The action settled for \$34 million.
- *Kuterba v Sirtex Medical Ltd*: Shareholder class action against biotechnology company Sirtex Medical which included alleged contraventions of its continuous disclosure obligations and misleading or deceptive conduct. The action settled for \$40 million.