

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2020 01535

BETWEEN:

NERITA SOMERS & ORS
(according to the attached Schedule)

Plaintiffs

-and-

BOX HILL INSTITUTE & ANOR
(according to the attached Schedule)

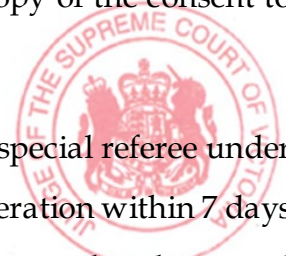
Defendants

ORDER

JUDGE: The Honourable Justice John Dixon
DATE MADE: 16 September 2022
ORIGINATING PROCESS: Writ filed 26 March 2020
HOW OBTAINED: At case management conference
ATTENDANCE: M W Guo of counsel for the Plaintiffs
M J Hooper of counsel for the First Defendant
OTHER MATTERS: This order is made pursuant to rr 50.01 and 50.02 of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*.

THE COURT ORDERS THAT:

1. The questions in Annexure A (**Referral Questions**) be referred to a special referee.
2. Cate Dealehr of the Australian Legal Costing Group is nominated as the special referee.
3. The special referee may indicate the acceptance of the nomination by filing with the Court Registry, within 7 days of the date of this order, a written consent to act. The special referee must thereupon deliver to each of the parties a copy of the consent to act and a statement of proposed remuneration for so acting.
4. Subject to the filing by the nominee of a written consent to act as special referee under this order, and provided no party objects to the proposed remuneration within 7 days after the date of the filing of the consent to act, the nominee is appointed as the special




referee under this order such appointment to be effective on the date of the filing of the consent to act.

5. The special referee must make a report in writing to the Court on each of the Referral Questions (**Report**). The Report must state the opinion of the special referee upon each of the questions (the **Opinion**), giving reasons for this Opinion. The reasons must set out the path of reasoning supporting the Opinion and identify the methodology employed to reach the Opinion. The Report must be emailed to the chambers of the Honourable Justice John Dixon and each of the parties by **no later than Monday 14 November 2022 at 4pm**.
6. Subject to any further order of the Court, the remuneration of the special referee shall be paid from the settlement sum.
7. At the time of giving the Report pursuant to this order the special referee must deliver to each of the parties a signed memorandum setting out the remuneration claimed including any disbursements and file a copy with the Court.
8. Each of the parties and the special referee have liberty to apply.

DATE AUTHENTICATED: 16 September 2022




The Honourable Justice John Dixon

SCHEDULE OF PARTIES

S ECI 2020 01535

BETWEEN:

NERITA SOMERS

First Plaintiff

ADEL HASSANEIN

Second Plaintiff

MATTHEW LAMONT

Third Plaintiff

FELIX OULDANOV

Fourth Plaintiff

-and-

BOX HILL INSTITUTE

First Defendant

GOBEL AVIATION PTY LTD

Second Defendant



ANNEXURE A - CONDUCT OF THE REFERENCE

Cate Deahler of Australian Legal Costing Group is appointed as a special referee (**Costs Referee**) to inquire into and report to the Court (**Report**) stating, with reasons, the Costs Referee's opinion on the following matters:

- (a) whether the plaintiffs' claim for legal costs and disbursements for work done up to and including the hearing of the settlement approval application, including costs anticipated but yet to be incurred as at the date of the Report, in the sum of \$4,494,336.26 for professional fees incurred, the sum of \$676,993.77 for disbursements incurred, the sum of \$164,441.20 for anticipated professional fees to be incurred, and \$118,706.74 for anticipated professional fees to be incurred are fair, reasonable and proportionate;
- (b) what lump sum amount of the plaintiffs' legal costs and disbursements up to and including settlement approval, should the court approve as fair, reasonable and proportionate, which amount will be deducted from the settlement sum, and used to pay the legal costs of the plaintiffs and group members incurred in conducting the class action;
- (c) whether the plaintiffs' claim for the estimated future legal costs and disbursements for work to be done in the administration of the settlement scheme, assessed at \$4,826,227.73 is fair, reasonable and proportionate;
- (d) what methodology should be employed to assess as fair, reasonable and proportionate the plaintiffs' claim for the future costs of settlement administration, to be ultimately paid from the settlement sum, once incurred and approved;
- (e) in respect of your opinion given in answer to the preceding sub-paragraphs, please provide your opinion in respect of the following specific matters, where appropriate separately for each opinion:
 - (i) Have costs in respect of each legal practitioner been claimed by reference to any costs agreements compliant with the *Legal Profession Uniform Law (LPUL)*;
 - (ii) If not, on what basis have you assessed costs;
 - (iii) Where time cost charging is used, have each of the practitioners maintained and produced proper records for time cost charging;
 - (iv) Where time cost charging is used, has a proper methodology been adopted to assess whether the claim is fair, reasonable and proportionate in respect of the verification of the identified task, the time charged, the cost rate applied, and the allocation of the task to that lawyer, practitioner or employee/operator;
 - (v) If not, how, and for what reason, should allowances be made when assessing whether the claim is fair, reasonable and proportionate;

- (vi) Was any work properly to be assessed as non-recoverable under subparagraphs (a) and (b)?
- (vii) If yes, what methodology ought to be adopted in respect of non-recoverable work to assess the fair, reasonable and proportionate claim, and if that methodology involves discounting, by what percentage should claims be discounted and by what reasoning is the identified discount rate assessed?
- (viii) Was the methodology of delegation of tasks to the appropriately experienced operator apposite, such that the cost of work was reasonable and proportionate to the task;
- (ix) Where sampling techniques were, or ought reasonably be, used, by what methodology should samples be identified and assessed?
- (x) Was the work claimed properly substantiated? What in your opinion is the proper methodology for substantiation procedures, and why?
- (xi) If not, by what methodology and for what reason should any allowance or discounted claim be assessed? If that methodology involves discounting, by what percentage should claims be discounted and by what reasoning is the identified discount rate assessed?
- (xii) Is any loading for skill, care and responsibility as may be permitted under the Rules and the Scale justified? If so, please identify the considerations and the reasoning relevant to the assessment of the appropriate loading. If a loading is appropriate, should it, and for what reason, be applied to all items of work claimed. In other words, are there different considerations where work is performed subject to review by others who take responsibility for it i.e. counsel or experts, or once agreement in principle is reached. Is settlement administration work of the same nature as trial preparation work for these purposes.
- (xiii) For the purposes of assessment of such a loading, by what criteria ought the complexity of the proceeding or the difficulty of the work undertaken be assessed?
- (xiv) Was the contractual entitlement to an uplift fee properly applied? If not, what are the implications for the assessment?
- (xv) What, in respect of disbursements, is your response to the above questions?
- (xvi) By what process should claims for reimbursement of settlement administration costs, once incurred, be assessed as fair, reasonable and proportionate?
- (xvii) Any other matter that the Costs Referee considers relevant to the Reference.

