

Australian Class Actions – Settlement Approval

Summary

- **The Federal Court of Australia has announced that it intends make orders granting approval of the settlements for each of the Williamtown, Katherine and Oakey contamination class actions against the Commonwealth of Australia.**
- **The Williamtown and Oakey investments are part of Omni Bridgeway’s balance sheet portfolio and the Katherine investment is held in Funds 2 & 3.**
- **Aggregate consolidated income from the three investments is expected to be approximately A\$76.9m (including the reimbursement of project costs).**

Omni Bridgeway Limited (**Omni Bridgeway**) refers to its announcement of 27 February 2020 regarding the in-principle settlement of the Williamtown, Katherine, and Oakey contamination class actions (**PFAS Class Actions**). On Friday 5 June 2019, Justice Michael Lee of the Federal Court of Australia (**Court**) delivered ex-tempore reasons stating that he intends to approve the settlement of the PFAS Class Actions. His Honour said he intends to make formal orders approving the settlement in the coming days. Once the orders are made, the settlement will be unconditional, subject to any appeals.

Omni Bridgeway advises that the settlement of the PFAS Class Actions shall generate aggregate consolidated income of approximately \$76.9m (inclusive of reimbursement of project costs), resulting in the following metrics:

Williamtown investment (balance sheet portfolio):

	Cash Basis (\$m)	P&L basis after capitalized overheads (\$m)
Gross Income (excluding GST)	31.1	31.1
Profit	21.0	18.8
ROIC	2.06x	1.53x
IRR%	62%	51%

Oakey investment (balance sheet portfolio):

	Cash Basis (\$m)	P&L basis after capitalized overheads (\$m)
Gross Income (excluding GST)	15.8	15.8
Profit	8.3	7.2
ROIC	1.09x	0.84x
IRR%	55%	44%

As noted, the Williamtown and Oakey investments are part of Omni Bridgeway's balance sheet portfolio; accordingly, there are no external investors (non-controlling interests) in these investments.

Katherine investment (Funds 2 & 3 portfolio):

	Cash Basis (\$m)	P&L basis after capitalized overheads (\$m)
Gross Income (excluding GST)	30.0	30.0
Profit	22.6	21.7
ROIC	3.07x	2.62x
IRR%	205%	176%

The Katherine investment is part of Omni Bridgeway's Funds 2 & 3 portfolio and the return to Omni Bridgeway is subject to the return waterfall of those funds; such that the non-controlling interests will receive all of the distributable income from this investment which will reduce their future priority entitlements.

It should be noted that timing of the recognition of income from these investments will be determined in accordance with applicable accounting standards and is yet to be determined.

In the context of the Parliamentary Inquiry into litigation funding and, in particular, into the funding of class actions in Australia, Omni Bridgeway notes that to date it has limited its public commentary on the proposed settlement whilst it remained subject to Court approval. As such, much of the media commentary concerning Omni Bridgeway's likely returns from these investments has been based upon incomplete data, knowledge of which is key to understanding the role and risk taken by Omni Bridgeway in funding the PFAS Class Actions. Some facts about this matter are:

1. The funding commission payable to the Omni Bridgeway funding entities across these three contamination class action investments constitutes approximately 24% of the settlement amount. Omni Bridgeway reduced its contractual entitlements across the three class actions by approximately 30%. This voluntary concession was made prior to the Attorney-General's announcement of the commencement of a Parliamentary Inquiry, as a proactive measure to improve the returns to group members and is something which Omni Bridgeway has done in other class action settlements for the same reason.
2. From a capital at risk perspective (ignoring capitalised overhead) this represents an aggregate ROIC of 0.51. The duration of the investments been 4.5 years to date. Omni

Bridgeway provides services to group members which it does not separately charge for, and an uncapped commitment to pay the costs of the litigation, and to meet any adverse costs should the case be lost. In these matters those commitments were estimated to be in excess of A\$50 million.

- The Court said that the settlements achieved “can fairly be described as excellent”. Each of the three class actions settled for an amount either just under or just exceeding 100% of the likely best possible quantum recoverable should the class members’ claims succeed at trial.

Class Action Settlement Outcomes

	Settlement sum as a percentage of the likely best possible quantum recoverable
Williamstown	97%
Oakey	103%
Katherine	109%

- Whilst the costs of the litigation were large, the use of two law firms was a choice made by the clients. As Omni Bridgeway does not control the clients’ relationships with their lawyers, it was not possible to avoid this circumstance. However, Omni Bridgeway, together with the respective law firms, introduced measures to minimise the duplication of costs by involving the use of one senior counsel, and introducing various work sharing protocols.
- Objections represented approximately 3% of group members, and those objections related to the amount of the settlement, as well as the fees and costs of the lawyers and the commission to Omni Bridgeway. There were also submissions to the Court supporting the settlement. Whilst it is our desire to deliver a result that will please all group members, that is not always possible. However, with the Court’s oversight, the result that has been achieved is considered to be in the best interests of group members.

In addition, Omni Bridgeway notes that Justice Lee made the following observation in his ex-tempore reasons with regard to the role of litigation funding in Australian class actions:

“There is a live controversy about litigation funding. I do not propose to enter the arena of this policy debate. Save to make one important observation.

...

The reality of these cases however, is that without funding, the claims of group members would not have been litigated in an adversarial way, but rather the group members would likely have been placed in a situation of being supplicants requesting compensation in circumstances where they would have been the subject of a significant inequality of arms.

...

It seems to be a testament to the practical benefits of litigation funding that these claims have been able to be litigated in an efficient and effective way, and have produced a settlement.”

Omni Bridgeway background

Omni Bridgeway is a global leader in dispute resolution finance, with expertise in civil and common law legal and recovery systems, and operations spanning Asia, Australia, Canada, Europe, the Middle East, the UK and the US. Omni Bridgeway has built its reputation as a trusted provider of funding solutions and offers end-to-end dispute finance from case inception through to post-judgment enforcement and recovery.

Authorised by the Disclosure Committee**Company Secretary****Media/Further information:**

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