



# FEDERAL COURT OF AUSTRALIA

## NOTICE AS TO PROPOSED SETTLEMENT OF THE SWANN INSURANCE CLASS ACTION

### A. Important information

1. This is being sent to you because it is likely you are a group member in the class action against Swann Insurance (Aust) Pty Ltd (ACN 000 886 680) (**Swann**) and Insurance Australia Limited (ACN 000 016 722) (**IAL**). The action arises out of the sale of particular “add-on” insurance products issued by Swann (**Add-On Insurance Products**) which were presented and sold in motor vehicle dealerships to persons (including businesses) who purchased motor vehicles and motor cycles between 1 January 2008 and 1 August 2017 inclusive (**Swann Insurance Class Action**).
2. The solicitors acting for the Applicant are Johnson Winter & Slattery (**JWS**), and a company called Balance Legal Capital I UK Ltd (**Balance**) has funded the case.
3. As you may have heard or read, settlement terms have been agreed. But because this is a class action, a judge of the Federal Court must decide whether it is a fair and reasonable settlement for the group members. The judge will have a hearing to decide whether the settlement is fair and reasonable, and whether to approve the settlement, at 10.15am on 17 December 2020.
4. This notice is approved by the Court and explains some things about the settlement to allow you to work out whether you agree or disagree with it. If you have any questions in relation to the information below, **do not contact Swann or IAL**. Contact details that you can use to obtain further information can be found in section F, under the heading “Where can you get further information?”

### B. What is the settlement?

5. Under the proposed settlement of the Swann Insurance Class Action:
  - (a) Swann and IAL will pay **\$138 million** (without admitting liability) to settle all claims made by group members in the Swann Insurance Class Action for compensation for loss or damage;
  - (b) before any of this money goes to the group members, there will be deductions from the settlement, which the Applicant’s lawyers currently estimate will be:
    - (i) \$10 million for the costs and expenses Balance has incurred and is estimated to incur in funding the class action, primarily comprised of fees paid to the solicitors, barristers and expert witnesses that were involved in the case (which will be reimbursed to Balance). The Court may approve a lesser amount;
    - (ii) \$34.5 million (25% of \$138 million) to Balance as compensation for its role in funding the litigation, if the Court approves that amount being paid to Balance. The Court may approve a lesser amount. The settlement is not conditional on an amount being paid to Balance;
    - (iii) \$3.3 million to the Settlement Administrators George Georges and John Lindholm of KPMG (for the estimated costs incurred by the Settlement Administrators in administering the Settlement Distribution Scheme). The



Court may approve a lesser amount;

- (iv) \$53,000 to the Applicant, Mr Jones Asirifi-Otchere (for his time and expense in representing group members) and sample group members and witnesses (for their expenses and time spent assisting in the litigation). The Court may approve a lesser amount.

- (c) What is left (which is estimated by the Applicant's lawyers to be about \$90.147 million) is to be paid to group members, according to a formula.

- 6. Balance is seeking an order, as part of the settlement put forward by the Applicant, for payment of \$34.5 million as compensation for its role in funding the litigation and an order for reimbursement of the costs and expenses it has incurred and is estimated to incur in funding the class action (estimated to be \$10 million). The settlement is not conditional on an amount being paid to Balance. At the hearing on 17 December 2020, the Court will hear argument about whether it has the power to approve the compensation payment sought of \$34.5 million, and if so, the amount that should be approved in the Court's discretion. It will also hear argument about the amount of reimbursement sought by Balance for costs and expenses. The Court has appointed an independent barrister to make submissions about these payments, including to argue against the making of the orders for payment to Balance if he or she considers it appropriate to do so.

### **C. Are you eligible to participate in the settlement?**

- 7. This notice is being sent to all persons whom the Applicant's solicitors can identify, who may be group members and who have not opted out of the Class Action. **If you have validly opted out of the Class Action, this notice has been sent to you by mistake. All opt out notices lodged before 2 September 2020 are valid, unless the Court has ordered otherwise. You are not eligible to participate in the settlement and may disregard this notice.**
- 8. You may be a group member and eligible to participate in the settlement if, during the period 1 January 2008 to 1 August 2017 inclusive (the **Relevant Period**) you purchased one or more of the following Swann Add-on Insurance Products at or around the time you purchased a motor vehicle or motor cycle from a dealer: Loan Protection Insurance; Walkaway Insurance; Protection Plus Insurance; Gapcover Insurance, which was also known as Purchase Price Protection Insurance; Motor Vehicle Mechanical Breakdown Insurance, which was also known as "WarrantyASSIST" Insurance or Motor Vehicle Extended Warranty Insurance; or Tyre and Rim Insurance.
- 9. If you are unsure whether you are a group member, please make contact using the details at the end of this notice, or seek legal advice. **You should not contact Swann or IAL directly.**

### **D. How much will you receive under the settlement?**

- 10. If the settlement is approved on the basis of the proposed Settlement Distribution Scheme, you will receive an amount calculated in accordance with a formula which will be published on the class action website ([www.swannclassaction.com.au](http://www.swannclassaction.com.au)) by 1 December 2020.
- 11. The precise amount that will be payable to each individual group member is not yet known and cannot yet be accurately estimated. Among other things, it will be affected by a number of factors, including:
  - (a) how many group members register to receive a settlement payment;
  - (b) the amount of any funding commission approved by the Court;



- (c) the amount of the applicant's legal costs and disbursements approved by the Court (and the amount to be reimbursed to Balance);
  - (d) the amount of the costs of the Settlement Administrators;
  - (e) when you purchased your relevant Add-On Insurance Product(s), because it affects when interest on your claim runs from and also because, if you bought insurance before 9 April 2013, some of the claims in the class action cannot be brought by you because of limitation periods; and
  - (f) whether you have received any payment from Swann by way of refund or remediation, or made a claim on the relevant Add-On Insurance Product(s), which will reduce any settlement entitlement you have.
12. However, the Applicant's solicitors presently estimate that, if you bought add-on insurance after 9 April 2013, and if group members representing 60% of the value of claims register to receive a settlement payment, you would on average receive a settlement of about 39% of the premiums you paid (net of any refunds received or claims made) excluding GST and stamp duty (e.g. if you paid \$3,000 in premiums (before GST and stamp duty), you would on average receive about \$1,165). If the proposed deductions for legal costs, payments to Balance and payments to the Settlement Administrators are not approved in the amounts sought but in lower amounts, or if fewer group members register to receive a settlement payment, the amount you would receive would be increased. For example, if the other assumptions stay the same, but group members representing 30% of the value of claims register to receive a settlement payment, you would on average receive a settlement of about 78% of the premiums you paid (net of any refunds received or claims made) excluding GST and stamp duty. (For example, if you paid \$3,000 in premiums (before GST and stamp duty), you would on average receive about \$2,330.)
13. If the settlement is approved, you will be sent another notice by the Settlement Administrators and invited to register. If you do not register when requested to do so by the Settlement Administrators, you will not be eligible to participate in the settlement. An estimate of the likely range of settlement payments will be sent to you in that notice. If the Court approves the settlement, you will be bound by the settlement and will no longer have the right to pursue any claims against Swann and IAL of the kind made in the Swann Insurance Class Action (even if you have not registered to participate in the settlement).
14. Please note:
- (a) Group members will not receive the full value of their claims under the settlement (as it is a compromise, and has to take into account the risk the class action might lose, as well as the benefit to group members in receiving money now rather than later);
  - (b) If you are unsure whether you are a group member, please contact JWS using the details at the end of this notice;
  - (c) As to legal costs, the Court has put in place a process by which the reasonableness of those legal costs will be reviewed by a third party expert.
15. If the settlement is approved, you will no longer be able to bring the claims made in the Swann Insurance Class Action against Swann and IAL.

## **E. Your Options**

If you <u>support</u> the proposed settlement	<ul style="list-style-type: none"> <li>You do not have to do anything, and you will get the money payable to you once it has been finally calculated and you have registered.</li> </ul>
If you <u>disagree with</u> the proposed settlement (or any aspect of how it is proposed to be distributed, including the amounts proposed to be paid to the funder, Balance, and deductions for legal costs and other fees)	<ul style="list-style-type: none"> <li>You should tell the Judge and the parties why.</li> <li>This is best done by sending written material for the Court to consider well before the hearing. This should be done by sending the Notice of Objection to <a href="mailto:swannclassaction@jws.com.au">swannclassaction@jws.com.au</a>, which you should do by no later than 7 December 2020.</li> <li>You can also tell the Court your concerns at the hearing. Arrangements will be made to allow you do this if you want. Due to the coronavirus pandemic, a hearing will probably not happen in a courtroom where people come along in person. If you want to speak, this will likely involve providing you with a video link or telephone link. If you want to speak to the Judge about the settlement at the hearing this can be arranged by you sending an email to <a href="mailto:nswdr@fedcourt.gov.au">nswdr@fedcourt.gov.au</a>.</li> </ul> <p>Please note, even if you object, you will still receive money from the settlement if it goes ahead, you are eligible to do so and you register in accordance with the registration instructions when they are sent to you.</p>

#### F. Where can you get further information?

16. If you want any more information or documents, you should download documents from [www.swannclassaction.com.au](http://www.swannclassaction.com.au). The documents available on that website include the Applicant's Second Further Amended Statement of Claim, which contains detailed allegations made by the Applicant in the class action. **You should not contact the Court, Swann or IAL for any general enquiries about the Swann Insurance Class Action or settlement.**
17. You can also request information from [swannclassaction@jws.com.au](mailto:swannclassaction@jws.com.au) or by calling (02) 8001 6224.
18. The Settlement Distribution Scheme, which includes detail of the formula which will determine how group members' entitlements will be calculated, will be published on [www.swannclassaction.com.au](http://www.swannclassaction.com.au) no later than 1 December 2020.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact JWS or seek your own legal advice. We cannot provide you with a precise estimate of the amount payable to you at this stage, so please do not contact us to request this information.

Please bear in mind that while you should contact JWS for further information as necessary, if you do not require further assistance, it is in the interests of all group members that you do not contact JWS to keep any further costs to a minimum.



## Notice of Objection to Proposed Settlement of the Swann Insurance Class Action

**IMPORTANT:** By returning this form, you are giving notice that you object to the proposed settlement of the Swann Insurance Class Action.

If you object to the proposed settlement of the Swann Insurance Class Action, you must complete this form and send it together with your written reasons for objecting to the proposed settlement, to [swannclassaction@jws.com.au](mailto:swannclassaction@jws.com.au) by no later than **7 December 2020**.

Name of Group Member:	
Name of person completing this form (may be same as above if you are filling out this form on your own behalf):	
Authority of person completing this form (e.g. Group Member, solicitor for Group Member, Director of Group Member if a company):	
Telephone number:	
Postal address:	
Email address:	
Reason for objection to proposed settlement or to the orders for compensation and reimbursement sought by the funder, Balance:	<p><i>If you require more room to explain the reasons for your objection, you can attach further pages to this notice.</i></p>

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_