

# Axesstoday Class Action

## Frequently asked questions

### 1. What is the Axesstoday class action about?

On 20 August 2020 Hicksons filed a class action in the Federal Court of Australia on behalf of a significant proportion of bondholders who subscribed to the offer of simple corporate bonds by Axesstoday Limited (**AXL**) (either directly or through nominees or trustees) under the Offer Specific Prospectus and Base Prospectus dated 26 June 2018 (the **Bonds**).

Each of those bondholders has signed a litigation funding agreement with Therium Litigation Finance Atlas AFP IC (**Therium**) and a Retainer Agreement with Hicksons. The Representative applicant is Compumod Investments Pty Ltd as trustee of a staff superannuation fund (**Compumod**).

The proceedings were commenced against AXL and Pricewaterhouse Coopers Securities Limited (**PwCS**), seeking recovery of the shortfall on the Bonds and interest payments which were not made. PwCS was the accounting advisor in connection with the prospectus documentation, which is alleged to have contained significant shortcomings.

The applicant alleges, among other things, that AXL made misleading and deceptive statements in, and omitted information that was required to be disclosed in, its prospectus, contravening the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*. It is further alleged that in providing accounting advice in relation to the prospectus, PwCS was involved in those contraventions, in addition to itself engaging in misleading or deceptive conduct.

Significantly, the information which ought to have been contained in the prospectus is information concerning the likely potential effect of Australian Accounting Standard AASB9 on the financial statements of AXL and its ability to comply with its banking covenants.

### 2. Who is entitled to participate in the class action?

The class action was commenced on a closed class basis. That means that all investors in the Bonds are not automatically class members unless they sign up as applicants. The proceedings were commenced on the behalf of any person who:

- (a) subscribed to the Bonds (either directly or through nominees or trustees) issued by AXL under the Offer Specific Prospectus and Base Prospectus dated 26 June 2018;
- (b) suffered loss or damage by reason of their investment in the Bonds;
- (c) have entered into a litigation funding agreement, in respect of the proceedings, with Therium;
- (d) have entered into a retainer agreement, in respect of the proceedings, with Hicksons Lawyers.

3. **What is the role of the representative (lead applicant)?**

A feature of the class action process is that one investor, Compumod, has been selected to be the representative (the lead applicant in the proceedings) and will, in effect, represent all of the participants in the action on common issues of liability. Compumod will provide instructions to Hicksons regarding the conduct of the case and may give evidence during the proceedings. The Court will be required to make findings in relation to questions of fact and/or law that are common to all class members on the question of liability.

4. **What will it cost me to participate in the class action?**

Nothing.

5. **How is the class action funded?**

Therium will pay all of the litigation costs as described in the litigation funding agreement which each participant is required to sign. No contribution of any sort is required from any participant, win or lose. In the event a settlement is achieved or the proceedings are successful, Therium will recoup its litigation costs first, together with the fees described in point 6 below, from the proceeds of any settlement or judgment.

6. **Who is the funder?**

Therium was founded in the UK in 2009 and is now one of the most established litigation funders in the world. It has to date funded litigation claims worldwide to the value of approximately US\$36 billion. Therium is presently active on five continents in which it funds litigation and arbitration claims and has been active in the Australian market since 2016. Therium is currently funding a number of cases in Australia, including a variety of class actions.

In Chambers and Partners' litigation support directly for 2020, Therium is ranked as a Tier 1 litigation funder. In March 2019, Therium was top ranked as one of the two "Leading" litigation and arbitration funding firms in the UK by legal and business directory Leaders League. Therium was also ranked as "Excellent" in the 2019 US ranking.

7. **How much will the funder charge?**

If the class action is successful, Therium will be entitled to recover the litigation costs it has incurred together with a commission comprising 30% of the final judgment or settlement amount remaining after deduction of its litigation costs.

The amount of Therium's fees and costs will be subject to approval by the court in connection with any settlement or any distributions from a judgment in the action (the amount of any settlement will also be subject to approval by the court).

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8. **What will it cost you if the class action is not successful?**

Nothing.

9. **Who should sign the participation documents?**

The litigation documents can be signed by either the registered holder of the Bonds or by the beneficial owner of the Bonds if the custodian or nominee company that is the registered owner is unwilling or unable to sign those documents.

Upon any settlement or judgment, only one party, whether that be the legal owner (the registered holder) or the beneficial owner, may recover losses arising from the same Bonds.

10. **What if I decide to withdraw from the action?**

You will be entitled to end your participation in the action on the grounds provided for in the litigation funding agreement. You may also be entitled to seek an order that you not be included in any proposed settlement, if you are dissatisfied with such a proposed settlement.

If you end your participation in the action, you will cease to be a class member for the purposes of the class action and will not be eligible to participate in any settlement or judgment in favour of the participants. However, you would be free to take any action you may be advised, to recover your losses, outside of the class action.

11. **How much time will I have to devote to the legal proceedings?**

Initially we will only require you to provide the details of your investment in the Bonds as requested in the litigation funding agreement. Later on, you may need to provide further information to substantiate your claim in the event of a settlement or judgment.

Most class members do not need to give evidence at the hearing of a class action. The process is designed to determine the representative applicant's case and issues that are common to all class members. It is extremely rare that class actions proceed beyond the determination of the common issues, without being settled or resolved for all class members.

12. **What do I have to do to participate in the class action?**

In order to obtain legal representation by Hicksons and become a participant in the proposed class action, you must sign the litigation funding agreement and the Hicksons retainer agreement. To find out more and to obtain the litigation funding agreement documentation, please contact:  
[Andrew.Langham@plfmanagement.com.au](mailto:Andrew.Langham@plfmanagement.com.au).

If you are unclear regarding any matters relating to the litigation funding documentation, we encourage you to seek your own legal advice before signing the documents.

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13. **Who are the lawyers for the class action?**

Hicksons Lawyers are retained as the lawyers for the class action. They are a mid-tier, full-service law firm with a proven track record in delivering results in complex commercial litigation. More information may be found on their website at [www.hicksons.com.au](http://www.hicksons.com.au)

The partner responsible for conduct of the action is Chris Moore, who has had significant experience with class actions, since the commencement of the class action procedure in the Federal Court in the early 1990's. Chris appeared as counsel in one of the first major class actions to run to trial under the class action regime when it was originally introduced (*McMullin v ICI Operations* [1997] 541 FCA; 72 FCR 1). Chris' bio may be found on the Hicksons website and he is ably supported by an experienced litigation team.

14. **Who do I contact for further information about the case?**

If you would like further information regarding the class action, please contact:

**Premier Litigation Funding Management**

[Andrew.Langham@plfmanagement.com.au](mailto:Andrew.Langham@plfmanagement.com.au)

**Hicksons**

Email: [chris.moore@hicksons.com.au](mailto:chris.moore@hicksons.com.au)