

Form 3 Interlocutory process
(rule 2.2, 15A.4, 15A.8 and 15A.9)

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
DIVISION: CORPORATIONS**

No. VID 562 of 2010

**IN THE MATTER OF: SONRAY CAPITAL MARKETS PTY LTD (IN LIQUIDATION)
ACN 104 482 993**

**RE AN APPLICATION BY GEORGE GEORGES & JOHN ROSS
LINDHOLM
IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF
SONRAY CAPITAL MARKETS PTY LTD (IN LIQUIDATION) ACN 104 482
993**

Plaintiffs

A. DETAILS OF APPLICATION

This application is made under s 477(2B) of the Act and/or the inherent jurisdiction of the Court.

This application is for directions to be given to the plaintiffs and other orders in relation to an indemnity and other relief.

On the facts stated in the supporting affidavit(s), the plaintiffs apply for the following relief:

1. An order that:
 - (a) In the event that the assets of Sonray are insufficient to pay the Remuneration and Expenses, the plaintiffs be paid the Remuneration and Expenses from the money held in the Trust Fund.
 - (b) the plaintiffs be indemnified out of, or alternatively have an equitable lien over, the Trust Fund for all the Remuneration and Expenses.

Filed on behalf of: The Plaintiffs
Prepared by:
Norton Rose Australia
RACV Tower, 485 Bourke Street
MELBOURNE VIC 3000

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Ref: AFK: 2698457
Attention: Steven Palmer

2. A direction pursuant to ss 479(3) or 511 of the Act that, if the assets of Sonray are insufficient to pay the Remuneration and Expenses under paragraph 1, the plaintiffs would be justified, and would otherwise be acting reasonably in causing the Remuneration and Expenses under paragraph 1 to be paid from the Trust Fund.
3. The Court to note that to the extent that there is money payable to the plaintiffs in respect of their administration and/or liquidation of Sonray and that money is not otherwise actually paid to the plaintiffs out of the assets of Sonray the questions of:
 - (a) the manner and source of the payment of that money; and
 - (b) whether that money became payable by reason of tasks undertaken by the plaintiffs other than those identified in the definitions of Remuneration and Expenses; and
 - (c) whether the plaintiffs may recover that money from the Trust Fund;are reserved, with the plaintiffs having liberty to apply in respect of those questions on reasonable notice to all other affected persons, including any representative party appointed by the Court pursuant to paragraphs 5 and 6 below.
4. A direction, for the purposes of paragraph 1 above, that:
 - (a) the matter be referred to the Registrar for assessment of the plaintiffs' proper remuneration;
 - (b) the plaintiffs file an Interlocutory Process seeking an order for the amount of any remuneration sought by the plaintiffs;
 - (c) subject to these orders, the Registrar assess any application for remuneration lodged by the plaintiffs as though it were an application by an Official Liquidator for approval of his or her remuneration;
 - (d) at least 21 days before filing the Interlocutory Process seeking the order, the plaintiffs must serve on:
 - (i) any person who has notified them of an interest in, or an intention to claim against, the Trust Fund;

- (ii) any representative party appointed by the Court pursuant to paragraphs 5 and 6 below;
 - (A) a notice in accordance with Form 16 of the *Federal Court (Corporations) Rules 2000* (Cth) amended as necessary;
 - (B) a copy of any affidavit upon which the plaintiffs intend to rely, such affidavit containing at least the information that would be required by s 473(12) of the Act if that section applied; and
 - (C) a copy of the Orders made on this application.
- (e) a document may be served on any person by sending the document by email to that person's email address;
- (f) within 21 days after the last service of the documents mentioned in sub-paragraph (d), any interested person so served may give to the plaintiffs a notice of objection to the remuneration claimed, stating the grounds of objection;
- (g) if the plaintiffs do not receive a notice of objection within the period mentioned in sub-paragraph (f) the plaintiffs may file an affidavit, made after the end of that period, in support of the interlocutory process seeking an order stating:
 - (i) the date, or dates, when the notice, affidavit and orders required to be served under sub-paragraph (d) were served; and
 - (ii) the plaintiffs have not received any notice of objection to the remuneration claimed within the period mentioned in sub-paragraph (f); and
 - (iii) the plaintiffs may endorse the interlocutory process with a request that the application be dealt with in the absence of the public and without any attendance by the plaintiffs ; and
 - (iv) the application may be so dealt with;

- (h) if the plaintiffs receive a notice of objection within the period mentioned in sub-paragraph (f), the plaintiffs must serve a copy of the Interlocutory Process seeking the order on each affected person so served who has given a notice of objection;
 - (i) any affidavit in support of the Interlocutory Process seeking the order must:
 - (i) state the nature of the work carried out by the plaintiffs; and
 - (ii) state the amount of remuneration claimed; and
 - (iii) include a summary of the receipts taken and payments made in respect of the Trust Fund by the plaintiffs for the period for which remuneration is claimed; and
 - (iv) state particulars of any objection of which the plaintiffs have received notice.
5. An order pursuant to O 6 r 8 of the *Federal Court Rules* that Roland Ward be joined as a respondent to the Interlocutory Process.
 6. An order pursuant to O 6 r 13(2) of the *Federal Court Rules* that Roland Ward be appointed to represent all persons claiming an entitlement in respect of the Trust Fund.
 7. An order that the person joined and appointed under paragraphs 5 and 6 be indemnified out of the Trust Fund for his/her legal expenses reasonably incurred in so acting.
 8. An order, to the extent necessary, that the plaintiffs be indemnified from the Trust Fund in relation to any costs incurred in respect of the procedure referred to in paragraph 4 above.
 9. Orders pursuant to section 477(2B) of the Act that:
 - (a) the liquidators have approval to enter into the Mediation Funding Deed; and
 - (b) the liquidators have approval to enter into the Mediation Agreement.

10. An order that the plaintiffs' costs and expenses of this application be paid from the Trust Fund on an indemnity basis.
11. A direction that any affected person has liberty to apply to vary the orders obtained on this application within 14 days of the date on which they are made on 3 days written notice to the plaintiffs.
12. A direction that the plaintiffs have liberty to apply generally.
13. Such further or other orders as may be just or necessary.

Definitions

In this Interlocutory Process, the following words have the following meanings:

Act means the *Corporations Act 2001 (Cth)* (**Act**);

Expenses means expenses incurred by the plaintiffs in respect of their administration and liquidation of Sonray relating to the Trust Fund, including:

- (a) investigating the Trust Fund;
- (b) identifying the source of money held in the Trust Fund;
- (c) identifying entitlements to and/or claims against the Trust Fund;
- (d) identifying claims which may be brought to benefit the Trust Fund;
- (e) reviewing and dealing with claims by any person to any entitlements in respect of the Trust Fund;
- (f) instructing lawyers to:
 - (i) advise in relation to any of the matters referred to above; and
 - (ii) commence this application.

Mediation Funding Deed means the loan deed between Sonray and Saxo Bank A/S a copy of which is at exhibit GG-2 Tab-13 to the affidavit of George Georges sworn on 28 October 2010 and filed in this proceeding.

Mediation Agreement means the proposed mediation agreement between Sonray, Saxo Bank A/S and other parties in relation to the conduct of a mediation to resolve claims concerning the affairs of Sonray and the Trust Fund a copy of which is at exhibit GG-2 Tab-8 to the affidavit of George Georges sworn on 28 October 2010 and filed in this proceeding.

Remuneration means such remuneration of the plaintiffs as the Court will approve in respect of their administration and liquidation of Sonray relating to the Trust Fund including:

- (a) investigating the Trust Fund;
- (b) identifying the source of money held in the Trust Fund;
- (c) identifying entitlements to and/or claims against the Trust Fund;
- (d) identifying claims which may be brought which may directly or indirectly benefit the Trust Fund or reduce other claims against it;
- (e) reviewing and dealing with claims by any person to any entitlements in respect of the Trust Fund;
- (f) instructing lawyers to:
 - (i) advise in relation to any of the matters referred to above; and
 - (ii) commence this application.

Segregated Accounts means:

Australia and New Zealand Banking Group account numbers 013006-1087-85428, 120824CAD00001, 120824USD00001, 120824NZD00001, 120824JPY00001, 120824GBP00001, 120824EUR00001, 120824CHF00001;

Hong Kong Shanghai Banking Corporation account numbers 002-225333-002, 003-225333-003, 001-225333-901, 001-225333-160, 001-225333-904, 001-225333-900, 001-225333-902, 001-225333-903, 001-225333-159, and

Macquarie Cash Management Account number 961009129 .

Sonray means Sonray Capital Markets Pty Ltd (In Liquidation) (ACN 104 482 993)

Trust Fund means:

- (a) the money held in the Segregated Accounts at the date of commencement of the Administration;
- (b) the proceeds of the liquidation, since that date, of financial instruments and other assets that have been purchased with funds from the Segregated Accounts, which proceeds have been deposited into one or more of the Segregated Accounts;
- (c) any property to which section 984A of the Act applies; and
- (d) any other money or property that the Court declares is subject to or held on constructive trust for the benefit of some or all of the creditors of Sonray.

Date: 29 October 2010

 Norton Rose Australia
 Solicitors for the Plaintiffs
 Signed by Steven Palmer, Partner

This application will be heard by the Federal Court of Australia at Commonwealth Law Courts, 305 William Street, Melbourne, Victoria at 9.30 am/pm on 22 November 2010

B. NOTICE TO RESPONDENT(S) (IF ANY)

Not applicable

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

This Interlocutory Process is filed by Norton Rose Australia for the Plaintiffs.

D. SERVICE

The Plaintiffs' address for service is c/- Norton Rose Australia, RACV Tower, 485 Bourke Street, Melbourne, Victoria, 3000

It is intended to serve a copy of this Interlocutory Process on any person listed below:

Contradictor: Roland Ward of 9 Telopea Street Mount Colah NSW 2079 c/- Slater and Gordon Lawyers, 485 La Trobe Street Melbourne Vic

Australian Securities and Investments Commission of level 24 120 Collins Street Melbourne Vic