

# Conflicted Remuneration and Related-Party Insurance

**Woodsford Case Study**



Woodsford is funding a class action in Australia against AMP Limited, a Sydney headquartered financial services company providing superannuation and investment products, financial advice, and banking products (through AMP Banking) including home loans and savings accounts, and its subsidiaries on behalf of people who obtained certain AMP life insurance policies or financial products from AMP advice licensees.

## The Consolidation of Two Class Actions

The class action is being run by two law firms, Shine Lawyers and Piper Alderman.

Two class actions were originally filed. The first class action alleges that AMP-related financial advisers recommended insurance policies to their clients, that were issued by AMP Life, and which were more expensive than other substantially equivalent policies available in the market (the “AMP Insurance Class Action”). It is alleged that AMP advice licensees failed to inform their clients that they could obtain substantially similar or better insurance policies from alternative insurers for lower premiums. Shine Lawyers are acting for the lead applicant in the AMP Insurance Class Action. The second class action alleges that commissions paid to financial advisers as a result of recommendations to their clients to purchase or renew products were in breach of the adviser’s obligations under the Corporation Act to act free from conflict and in their clients’ best interests the “AMP Commissions Class Action”. Piper Alderman are acting for the lead applicant in the AMP Commissions Class Action.

On 21 December 2020, the Federal Court ordered the consolidation of the AMP Insurance Class Action and the AMP Commissions Class Action, meaning the two claims are now progressing as one.

## Royal Commission and Regulatory Intervention

The class action comes in the wake of revelations in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry as well as an Australian Securities and Investments Commission (ASIC) enforcement action in which the Federal Court of Australia described



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the conduct engaged in by an AMP Financial Planning adviser as morally indefensible.

Some of the conduct uncovered in the Royal Commission showed a trend of advice licensees recommending in-house or related-party financial products in preference to other products, in order to receive commissions and incentives from the financial institutions with which they were affiliated. This may have been in disregard to the interests of the clients they were advising.

## De-classing Application

The applicants have successfully defended an attempt by AMP to de-class the class action. AMP argued that the claims of the group members should not continue as a group proceeding, but rather each group member should bring their claims individually. AMP filed an application in June 2021 which was heard in October 2021. In a judgment delivered by the Court on 25 November 2021, AMP's application to de-class was dismissed meaning the claims will continue as class actions. In a decision delivered by Justice Beach of the Federal Court, he reasoned that if he was to accede to the respondents' application:

*"...the likely counterfactual would be that either no proceeding would be brought at all or there would be a huge number of individual suits. After all, there are approximately 1.5 million group members. Either outcome would be the antithesis of the principal purposes of Pt IVA."*

## The Role of Woodsford

Woodsford is funding the legal costs associated with the class action as well as indemnifying the lead applicants against adverse costs.

In Australia, Courts generally apply the principle the costs follow the event, and the unsuccessful party in a litigation will usually be ordered to pay the other sides costs, subject to some exceptions. This means that lead applicants in a class actions bear the risk that if the class action they are bringing on behalf of group members is unsuccessful, they will be ordered to pay a respondent's costs, which may be significant and run into the millions of dollars. In the AMP class action, Woodsford is indemnifying the lead applicants in respect of adverse costs they may become liable to pay.

Thus, in addition to funding the costs of the legal team and other third-parties such as experts, Woodsford also assumes the risk of a cost order which might be made in the event the claim is unsuccessful. Pursuant to the Litigation Funding Agreements entered into between Woodsford and the lead applicants, in return for assuming the significant risks of paying the legal teams and assuming the adverse costs risk for the lead applicants, if a recovery is made in the class action, Woodsford is entitled to the repayment of its costs, plus a success fee.

If the claim settles, the Court will be required to approve any settlement agreed between the parties, including any payments to Woodsford and the legal team.

## Summary

The funding provided by Woodsford crucially allows the applicants and group members to seek redress. Woodsford assumes the heavy burden of risk associated with the class action in return for a percentage of any award or settlement.

Woodsford is delivering access to justice for a large group of individuals who have been adversely impacted by a catastrophic breakdown in governance at AMP. We are confident that we will deliver recompense to those directly affected and influence the future behaviour of AMP and the financial services industry as a whole, who now know they will be effectively held to account for this kind of behaviour.

The AMP class action is ongoing.

If you think you have been impacted by the alleged conduct of AMP described above you should visit the websites of [Shine](#) or [Piper Alderman](#).



## About Woodsford

Founded in 2010 and with a presence in London, New York, Brisbane, Philadelphia and Minneapolis, Woodsford is a leading ESG, access to justice and litigation finance business.

Whether it is helping consumers achieve collective redress, ensuring that investors and universities are properly compensated when Big Tech infringes intellectual property rights, or helping shareholders in collaborative, escalated engagement up to and including litigation with listed companies, Woodsford is committed to ensuring the highest ESG standards while providing access to justice.

Working globally with many of the world's leading law firms, our legal experience, investment, business and technical expertise, in tandem with our significant financial muscle, makes us a powerful partner and a formidable adversary.

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