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Thousands to benefit from proposed Fincorp class action settlement

Australians who lost money in failed investment company, Fincorp Investments Limited, will be eligible for compensation under a proposed settlement scheme negotiated between Slater & Gordon and Fincorp's trustees, Sandhurst Trustees Limited.

The Federal Court of Australia has today authorised the release of details of the compensation scheme to the estimated 5,100 Australian investors who stand to benefit from the offer.

Slater & Gordon litigation lawyer Odette McDonald said the proposed settlement would benefit thousands of "mum and dad and retiree investors" who had lost their savings when Fincorp collapsed.

"These people were lead to believe, through clever marketing and other endorsements, that Fincorp was as safe as investing in a bank, when it clearly wasn't."

"This proposed settlement is a victory for the thousands of small investors who were misled by Fincorp."

Ms McDonald said to be eligible to participate in the proposed settlement scheme, claimants must have invested in secured and/or unsecured notes issued by Fincorp on or after 7 December 2004, held those notes as at 23 March 2007, and suffered loss or damage.

She said the representative applicants, Mark and Rhonda Harrison of Queensland, had lost \$330,000 of savings that they had invested in Fincorp when the company collapsed in 2007.

"Thousands, in a similar situation to the Harrisons', will be able to recover some of their outstanding losses if the settlement is approved."

"What is particularly significant is that unsecured noteholders, who have received nothing through the liquidation and receivership of Fincorp and who thought that they had no chance of recovering any of their investment, will be eligible to receive a return of some of their lost capital under the proposed settlement scheme."

Ms McDonald said the total size and value of the settlement would be determined by the number of people who decide not to opt out of the open class action.

"The proposed settlement scheme has a sliding scale of compensation to reflect the strengths and weaknesses of different claims," she said. "If approved, the class action will result in a multi-million dollar settlement."

Mr Harrison, an employment consultant, said he saw the result as a "win for mum and dad investors" and he was pleased that the matter was coming to an end.

"My wife and I put all of our savings from the sale of our family home and money received from a workcover matter into the hands of Fincorp in the belief that it was a safe investment," Mr Harrison said.

"We put the money in there while we searched for a new house because we were moving interstate at that time. The news of the collapse was an absolute shock. It was devastating."

"It is a great relief for us to be able to reach a resolution and to know that we will, in the end, receive the majority of our investment back."

Media Release

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Slater & Gordon was able to pursue compensation from the appointed trustees of Fincorp, Sandhurst Trustees Limited, under a provision of the *Corporations Act* 2001 that deals with trustee responsibilities. The case represents one of the first times the provisions have been used to pursue compensation from a trustee following a corporate collapse.

Ms McDonald said the use of the provisions under the Corporations Act was a significant legal milestone.

"These laws mean that when a company like Sandhurst acts as trustee for a company raising money from the public, and when the fund raising company involved folds, there might still be an avenue for justice and the recovery of lost investments."

Slater & Gordon's clients approved the settlement offer last week. The settlement will now be subject to approval by all group members and the Federal Court.

Slater & Gordon, head of commercial and project litigation, Ken Fowle, said the result again demonstrated the importance of Australia's class action system.

"Class actions are by far the most affordable, effective and transparent way of achieving justice when big business fails its customers," Mr Fowle said.

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Fincorp proposed settlement media background

The collapse of the Fincorp group of companies in March 2007 placed at risk over \$200million invested by around 8000 'mum and dad' investors. After Westpoint, it was the second major Australian fixed-interest investment scheme to collapse and has since been followed by high profile companies including Bridgecorp, Australian Capital Reserve, Elderslie Finance, and Asset Loans.

The Corporations Act required Fincorp's trustee, Sandhurst, to "exercise reasonable diligence" to ascertain whether the property of Fincorp would be sufficient to repay Fincorp note holders when their investments became due. It was alleged in the class action that Sandhurst failed to discharge its responsibilities, resulting in fundraising by Fincorp beyond the time when Fincorp was in a position to repay investors. Sandhurst was appointed trustee to Fincorp in March 2004 pursuant to two Trust Deeds.

On 24 August 2009, a class action was commenced on behalf of Mr and Mrs Mark and Rhonda Harrison in the Federal Court of Australia Melbourne District Registry. Mediation commenced on 1 September 2010.

As part of the Liquidation and Receivership of Fincorp, investors holding secured notes have received 55 cents in every dollar originally invested and are due to receive a further one cent. Unsecured note holders have received no dividend from the liquidation and receivership of Fincorp. The proposed settlement will pay between six and 75 cents of outstanding capital on both secured and unsecured notes.

The Federal Court has authorised Slater & Gordon to notify investors of the proposed settlement and invite them to indicate whether they wish to participate in the settlement or opt out of the class action. If a sufficient number of investors opt out of the class action then the settlement will not proceed. The court has nominated a hearing date (May 20) in which it will consider whether to approve the proposed settlement, in accordance with the requirements of Australia's class action laws. Sandhurst maintains that it has no liability to investors and will defend the class action if the settlement does not proceed.

An approximate state by state and overseas breakdown of the number of people who may be eligible to participate in the proposed class action is listed below:

NSW – 3215; Vic – 808; WA – 425; QLD – 403; SA – 248; ACT – 85; NT – 16; TAS – 79 and OS – 29.