

11 June 2020

Inquiry: "Litigation Funding and the Regulation of the Class Action Industry"

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100 Canberra ACT 2300

To the Parliamentary Joint Committee,

Personal Submission – Shareholder Class Action Perspective

My name is Rod Gibson and I am a director of Endeavour River Pty Ltd, which was the lead applicant in an investor class action against the Murray Goulburn entities in respect of continuous disclosure breaches and misleading and deceptive conduct with respect to the Company's financial forecast for FY2016.¹

I set out below my personal submission to the Parliamentary Joint Committee on Corporations and Financial Services' Inquiry regarding "Litigation Funding and the Regulation of the Class Action Industry".

1. Personal Investment History

I have had a lifelong interest in investing – I purchased my first shares at just 17 years old. After a long career working in the analyst and stockbroking industries, dealing in securities on a daily basis, I became a member of the ASX in 1988, a director dealing in securities, and later joined HSBC as head of its Melbourne dealing desk.

I retired in 1999, and now manage mine and my wife's self-managed superannuation fund. I keep abreast of developments on the stock market generally.

As a long-term investor who engages regularly with stock brokers, I digest news relating to the ASX market daily from a variety of news sources. I spend significant time conducting my own analysis of ASX company announcements and analyst reports, reviewing annual reports and statements of company chairs and CEO's. I carefully analyse a company's underlying financial information with a view to ensuring that when I do invest, I am making a sound and fully informed investment.

As a former stock broker, I take the continuous disclosure obligations set out in the Corporations Act and Listing Rules very seriously. In making my investment decisions, I operate on the understanding that all ASX listed companies have complied with those obligations and disclosed all information I need to know as an investor and market participant that might materially impact a company's share price or value.

¹ *Endeavour River Pty Ltd v MG Responsible Entity Limited & Anor* (VID1010/2018).

2. Murray Goulburn Investment

In May 2015, I became aware of the Murray Goulburn Initial Public Offering after reading about it in the newspaper. I was aware of the nature of the company and its flagship Devondale brand.

I engaged with my broker about participating in the IPO after conducting my own research about the capital raising and the company generally, reviewed the Product Disclosure Statement in detail, and conducted my own assessment of the company's profitability forecasts.

After the company's corrective disclosure in April 2016 and resulting share price drop, I attempted to speak with Murray Goulburn's CEO, a company director, or the company secretary. Concerned about the performance of the company, I wished to express my disappointment about the falling unit price, and raise my concerns that there had been inadequate disclosure of the underlying fundamentals of the company. Neither of the CEO, directors or company secretary were available to speak with me. I recall feeling frustrated and angry at the company's conduct and lack of accountability following the stock's shock underperformance and devaluation.

3. Impact of Class Action

I assumed the role of lead applicant in the proceeding after hearing about the class action and expressing my great disappointment in the management of Murray Goulburn, and the impact of the Company's conduct on myself and all other affected investors.

Endeavour River Pty Ltd was estimated to have lost almost \$92,000 flowing from its Murray Goulburn investment as a result of the inflation in the MG unit price over the course of the claim period.

Endeavour River received just over \$62,000 from the settlement of the class action, being a return of approximately 68%². The litigation funder in the case derived a commission of 25% of the total \$42m settlement following careful scrutiny by the Federal Court at the stage of settlement approval. I understand that the legal fees in the case were very conservative, weighing in at less than \$3m in a complex multiplicity context, and despite a compressed and expedited timetabling and case management framework.

Ultimately, just under 70% of the total settlement sum was returned to the pockets of group members, and the total legal costs in this case comprised less than 7% of the global settlement.

Although thousands of group members participated in the class action, there were zero objections to the proposed settlement received by the Court.

Without this case, and the many others like it, investors such as myself would have received no compensation for their losses, and would have very little recourse to efficiently and effectively pursue their rights in the context of corporate misconduct.

² Not inclusive of the court-approved Applicant's expense claim.

Without third party litigation funding, cases like the Murray Goulburn class action would simply not proceed. Law firms are just not capable of sustaining all class actions on their books without the availability of third party funding.

Investors like me, who trust in the efficiency of the market, and rely on Australia's continuous disclosure regime to give them confidence that their investments are sound and correctly valued, would not have any viable alternative vehicle through which to vindicate their rights when large and well-resourced listed companies break the law.

Sincerely,

Rod Gibson
Endeavour River Pty Ltd