

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV-2008-409-348

BETWEEN

E M HOUGHTON
Plaintiff

AND

T E C SAUNDERS and others
First Defendants

**CREDIT SUISSE PRIVATE
EQUITY INCORPORATED**
Second Defendant

**CREDIT SUISSE FIRST
BOSTON ASIAN MERCHANT
PARTNERS LP**
Third Defendant

**MEMORANDUM OF SENIOR COUNSEL FOR PLAINTIFF
CONCERNING MINUTE DATED 18 FEBRUARY 2020**

20 February 2020

Next Event Date:

Judicial Officer: Justice Dobson

Instructing solicitor

Antony Hamel Lawyer
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1. This memorandum is filed by senior counsel for the plaintiff in his capacity as an Officer of the Court: it is not the result of instructions from the plaintiff nor with the authority of the plaintiff.
2. Counsel has taken this step against the background that this is a class action over which the Court exercises a supervisory jurisdiction. The scope of supervision is uncertain because the boundaries have not yet been worked through in New Zealand or indeed in Australia, although there the Courts had been prepared to intervene quite extensively in the conduct of class actions.
3. Counsel's concern is that the inability of Joint Action Funding Limited (Mr Gavigan) to obtain funds to pay security for costs or to pay the costs associated with the running of the litigation puts at risk the claims of the more than 3,600 claimants without their knowledge that their claims are in jeopardy.
4. Accordingly, counsel supports the defendants' proposal that their application and memorandum in support should be sent to each of the claimants involved in the litigation. The logistics of that step will require some consideration as to how despatch of that material is managed.
5. Counsel has not yet had the opportunity to formulate a proposal to be put to the claimants but the concept is that Mr Gavigan for Joint Action Funding Limited should have a very limited time to comply with the order to provide security for costs and to satisfy the Court as part of its supervisory jurisdiction that sufficient funds have been secured to fund the ongoing litigation; the claimants should be offered the opportunity to take over the conduct of the litigation in the event that security and funds have not been provided within the time limit; on the basis that a group of claimants would fund the litigation and a committee of them would manage the ongoing litigation. Counsel seeks the opportunity to refine and submit a comprehensive proposal.

6. Counsel is not available to attend the judicial telephone conference scheduled for this Friday (21 February 2020). He has a professional commitment to a meeting out of Wellington and cannot be available at the scheduled time. He asks for the conference to be rescheduled. If that is not regarded as appropriate, he will simply abide any decision.

Dated 20 February 2019

A handwritten signature in blue ink, appearing to read 'CR Carruthers', is positioned above a horizontal line.

CR Carruthers, QC
Senior counsel for the Plaintiff