

# FEDERAL COURT OF AUSTRALIA

## NOTICE ABOUT PROPOSED SETTLEMENT OF THE EXCEL TEXEL CLASS ACTION AGAINST MR WILSON

### A. IMPORTANT INFORMATION

1. This notice is being sent to people who have registered as Group Members in the Federal Court of Australia proceeding *Excel Texel Pty Ltd & Andrew Wyma v Frank Wilson* (NSD1983/2017). We call this the **Excel Texel Class Action**.
2. If you are receiving this notice, it is because you are a Group Member in the Excel Texel Class Action. The lawyers conducting the Excel Texel Class Action are **Gadens**, and litigation funding is being provided by **Ironbark**.
3. The Excel Texel Class Action was started against both Quintis Ltd and Frank Wilson, who was the Managing Director and CEO of Quintis at relevant times.
4. You may remember getting notices some time ago about a settlement with Quintis for approximately \$4.37 million. That amount was all that was left under an insurance policy that Quintis held and was the only available asset of Quintis (which went into administration) to meet any claim in both the Excel Texel Class Action and another class action against Quintis, *Geoffrey Peter Davis & Anor v Wilson* (or the **Davis Class Action**). In this notice that settlement is called the **Quintis Settlement**.
5. The Federal Court has already decided the Quintis Settlement is fair and reasonable, but not how to share it between the Excel Texel Class Action and Davis Class Action.
6. After the Quintis Settlement, the Excel Texel Class action continued against Mr Wilson.
7. The Applicants in the Excel Texel Class Action and Mr Wilson have now reached a settlement of \$13.5 million to resolve the claims of all Group Members in the Excel Texel Class Action. In this notice that settlement is called the **Excel Texel Wilson Settlement**. The Excel Texel Wilson Settlement is separate to the Quintis Settlement.
8. The Federal Court must decide whether the Excel Texel Wilson Settlement should be approved as a fair and reasonable settlement for the class members. The judge will have a hearing to decide whether the settlement is fair and reasonable on 24 February 2025 at the Federal Court in Sydney.
9. This notice is approved by the Court and explains some things about the Excel Texel Wilson Settlement to allow you to work out whether you agree or disagree with it.

## **B. PROPOSED SETTLEMENT OF THE EXCEL TEXEL CLASS ACTION**

### **B.1 Background to the Excel Texel Wilson Settlement**

10. The Excel Texel Class Action alleges that Mr Wilson engaged in misleading or deceptive conduct and was liable for breaches of Quintis' continuous disclosure obligations. The **Excel Texel Claims** were about what was disclosed to the ASX about contracts Quintis had for the sale of sandalwood or its oil with Galderma and China, during the period from 26 February 2016 to 10 May 2017. (The claim period was originally 1 July 2015 to 10 May 2017, but the claims in respect of the period from 1 July 2015 to 25 February 2016 were withdrawn).
11. The Davis Class Action alleges that Mr Wilson engaged in misleading and deceptive conduct about Quintis' "biological assets" – or how many sandalwood trees it could expect to grow and how much oil it could expect they would contain. These **Davis Claims** were added to the Excel Texel Class Action in July 2022 as secondary claims.
12. The Federal Court heard evidence in the trial of the Excel Texel Class Action together with the Davis Class Action between 18 March and 19 April 2024. The Court had set down dates for the Applicants and Mr Wilson to come back and make final legal arguments in the trial. Before that could happen, the Applicants and Mr Wilson agreed on the Excel Texel Wilson Settlement.
13. The settlement of the Excel Texel Class Action will be recommended to the Court by the Applicants based on the differences between the Excel Texel Claims and the Davis Claims. This affects how the Applicants will ask the Court to distribute the Excel Texel Wilson Settlement among the group members in the Excel Texel Class Action. A document called a "settlement distribution scheme" says how the different claims are being treated in making payments to group members, if the settlement is approved.

### **B.2 Excel Texel Wilson Settlement**

14. By the Excel Texel Wilson Settlement, Mr Wilson has agreed to pay a settlement sum of \$13.5m in exchange for the Applicants and group members releasing him from liability for the claims they make in the Excel Texel Class Action.
15. Mr Wilson does not make any admissions as part of the Excel Texel Wilson Settlement and denies liability for any of the claims.
16. If the settlement is approved by the Court then it will be 'binding' on everyone who is a group member in the Excel Texel Class Action. Being 'bound' means that you release your claims against Mr Wilson and will not be able to raise the same claims in any other proceedings against him. Your rights to sue Mr Wilson will be replaced by the rights given to you under the Excel Texel Wilson Settlement and any document the Court approves saying how it is to be distributed.

### **B.3 Distribution of the Excel Texel Wilson Settlement**

17. The Excel Texel Class Action has been running for a very long time. The Excel Texel Wilson Settlement was only reached after the parties had a hearing of the evidence. Unfortunately, the legal costs incurred over that time are substantial.
  - a. Ironbark has been funding much of the legal costs involved in running the Excel

Texel Class Action, and also provided security for costs to protect the Applicants in the event they had a trial and lost (in whole or in part).

- b. Gadens have also provided support by incurring considerable additional legal expenses in running the Excel Texel Class Action on a conditional basis (meaning that they would only recover those costs if the outcome was successful). Gadens will also incur more costs in getting the settlement approved and in administering the settlement.
18. The Applicants would have been unable to commence or continue the Excel Texel Class Action without Ironbark's funding or security for costs; and without Gadens incurring legal costs conditionally.
  19. The following deductions will be sought from the Excel Texel Wilson Settlement:
    - a. A deduction will be sought on account of legal costs incurred in running the Excel Texel Class Action, and in having approved and administering the Wilson Settlement. That amount is presently estimated to be about \$7m in total.
    - b. A deduction will also be sought by way of litigation funding commission to Ironbark, of no more than 30% (or \$4.05m).
    - c. Deductions in the amount of not more than \$10,000 each will be in favour of each of the Applicants who played an active role in running the Excel Texel Class Action on behalf of all the group members.
  20. The Court will decide whether these deductions are fair and reasonable. It will be proposed that that all those deductions be made from the Excel Texel Wilson Settlement before distributions are made to group members, so that all group members will proportionately contribute to both those amounts from their recoveries in the settlement, whether or not they have signed an agreement with Ironbark or a retainer with Gadens.
  21. It is proposed that the remainder of the Excel Texel Wilson Settlement following such deductions as the Court approves will be distributed between group members in the Excel Texel Class Action who purchased shares in Quintis between 26 February 2016 and 10 May 2017.
  22. The amount remaining to be distributed to group members is expected to be approximately \$2.45m. You can download the settlement distribution scheme to find out how payments to group members will be calculated and made.
  23. The Court is appointing a "contradictor" in this case. A contradictor is an independent barrister who will make submissions to assist the Court in considering whether to approve the settlement, or parts of it.

#### **B.4 Quintis Settlement**

24. As explained above, by the separate Quintis Settlement, Quintis has agreed to pay approximately \$4.37 million to settle both the Davis Class Action and the Excel Texel Class Action. The Federal Court decided that the Quintis Settlement was fair and reasonable because that was the only asset Quintis had left after it had gone into administration.
25. The Court has not yet decided how to divide the Quintis Settlement between the

Excel Texel Class Action and Davis Class Action. As part of the approval of the Excel Texel Wilson Settlement, the Applicants will ask the Court to decide what to do with the Quintis Settlement.

26. When the Court considers how to divide up the Quintis Settlement, this might result in additional amounts being available to be paid to group members in the Excel Texel Class Action.
27. For example, if 50% of the Quintis Settlement was allocated to the Excel Texel Class Action, then the total amount available for distribution to group members in the Excel Texel Class Action from both settlements would be increased by approximately \$2.185m, less any further deductions approved by the Court on account of costs and commission. This would mean the total amount to be distributed to group members in the Excel Texel Class Action from both settlements would be approximately \$3.9m (or 25%).

### C. WHAT DO YOU NEED TO DO?

<i>If you <u>support</u> the proposed settlement</i>	<ul style="list-style-type: none"> <li>You do not have to do anything, and you will get any money payable to you once the Court has determined how and when the Settlement Sum is to be allocated and distributed.</li> </ul>
<i>If you <u>disagree with</u> the proposed settlement (or how it is proposed to be distributed)</i>	<ul style="list-style-type: none"> <li>You should tell the Judge and the parties why.</li> <li>This is best done by sending written material for the Court to consider well before the hearing. This should be done by sending the material to <a href="mailto:nswreg@fedcourt.gov.au">nswreg@fedcourt.gov.au</a> or to Gadens at <a href="mailto:Martin.VanAardt@gadens.com">Martin.VanAardt@gadens.com</a>. The Court would prefer if this was sent by <b>14 September 2024</b>. You can also tell the Court your concerns at the hearing. Arrangements will be made to allow you to do this if you want.</li> </ul> <p>Even if you object, you will still receive money from the settlement if it is approved and you are eligible for a payment.</p>

### D. WHERE TO GET MORE INFORMATION

28. If you want any more information or documents, including the settlement distribution scheme, you can download them from the website (which is <https://classactions.gadens.com/Actions/Details/8>) telephone Gadens on (02) 8349 3613, or email Gadens at [Martin.VanAardt@gadens.com](mailto:Martin.VanAardt@gadens.com). Please do not contact the Court directly.
29. Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Gadens, or seek your own legal advice. Please bear in mind that while you should contact Gadens for further information as necessary, if you do not require further assistance, it is in the interests of all class members to keep any further costs to a minimum.

**NOTICE OF OBJECTION TO PROPOSED SETTLEMENT**

No. NSD1983 of 2017

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**EXCEL TEXEL PTY LTD & anor**

Applicants

**FRANK CULLITY WILSON**

Respondent

Complete this form if you wish to submit an objection to the Proposed Settlement.

If you do **NOT** wish to object to the proposed settlement, you do **NOT** need to return this form.

**Please note** that if you submit a Notice of Objection to Proposed Settlement, your name and your specific circumstances (including transaction details and grounds of objection) may be read out in Court and/or referred to in orders and/or judgments of the Federal Court.

Your Notice of Objection will be considered by the Court when it is determining whether to approve the Proposed Settlement.

If you wish to object to the Proposed Settlement, or any aspect of it, your Notice of Objection and any evidence/submissions in support must be received by the Court by 4.00 pm (AEDT) on **14 September 2024**.

Any Notice of Objection received after this deadline may not be considered by the Court when it is determining whether to approve the Proposed Settlement.

To: The Federal Court of Australia, by email to [nswreg@fedcourt.gov.au](mailto:nswreg@fedcourt.gov.au)  
cc: Gadens Lawyers, by email to [Martin.VanAardt@gadens.com](mailto:Martin.VanAardt@gadens.com)

The person identified below gives notice pursuant to order 17 of the orders of the Court made on 13 August 2024 that the person is a Group Member in the Excel Texel class action and **OBJECTS** to the Proposed Settlement of this proceeding, for the reasons outlined.

**A. DETAILS OF OBJECTOR**

☐ I am a registered Group Member.

Name	
ACN/ABN [ <i>if company</i> ]	
Person completing this form	
Capacity [ <i>e.g., individual, partnership, trustee/agent</i> ]	
Registered or Unregistered group member	
Telephone	
Email	
Postal address	

**B. ATTENDANCE AT HEARING AT 10.15AM (AEST) ON 24 FEBRUARY 2025**

- ☐ I do not intend to appear, but wish for my submissions to be considered in my absence
- ☐ I intend to appear before the Court at the hearing at 10:15AM (AEST) on 24 February 2025.

[*please tick one*]

If you intend to appear, please complete the following:

- ☐ I will appear on my own behalf
- ☐ I will be represented by a lawyer:.....

[*please tick one if you intend to appear*]

**C. GROUND(S) OF OBJECTION**

Please state the reasons in support of your objections to the Proposed Settlement [*set out in the space below any submissions you wish to make, attach additional pages if necessary*]:

If you are completing the Notice of Objection on behalf of an individual shareholder you must sign and have your signature witnessed.

If you are completing the Notice of Objection on behalf of a company with a sole director or as the sole trustee, the sole director or sole trustee must sign and have their signatures witnessed.

If you are completing the Notice of Objection on behalf of a company or trust (with more than one director or trustee), two directors of the company, a director and a company secretary of the company, or two trustees must sign. A witness signature is not required.

By signing below, I confirm that the information I have provided in this form is true, complete and correct:

Signed:	
Name	
Position	
Date	
Witness Signature	
Name of Witness	

Second signature:	
Name	
Position	
Date	
Witness Signature	
Name of Witness	