

2015: Super Forever...



Trustees – Joining and Defending Class Actions

Moira Saville, King & Wood Mallesons

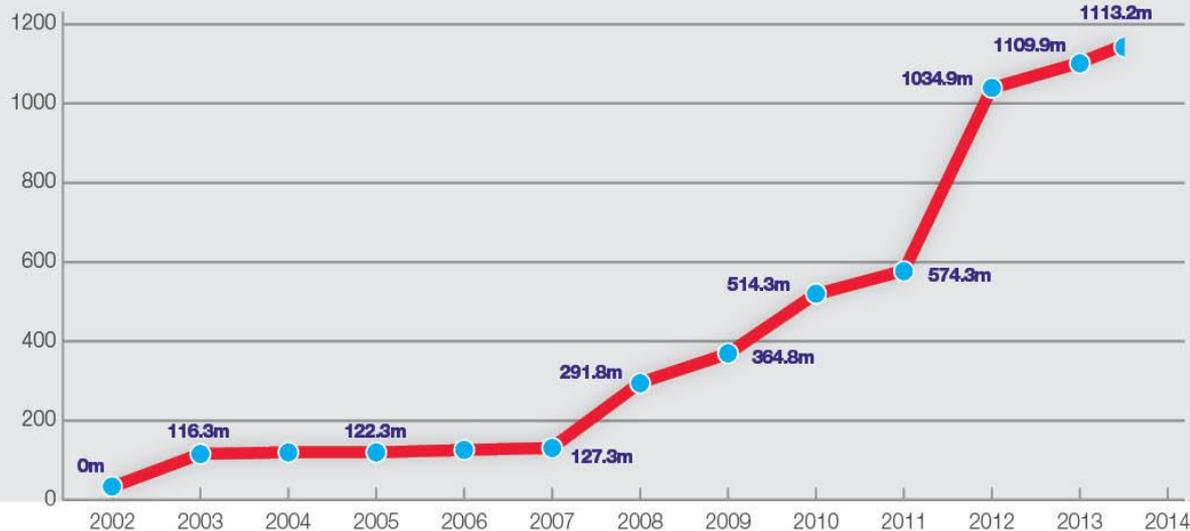
20 February 2015

2015: Super Forever...



Trustee as class member – an investment

Figure 1: Significant securities class action settlements



2015: Super Forever...



Trustee as class member – balance sheet

Class member vs plaintiff in own right

- No adverse costs risk – borne by litigation funder
- Funder provides security for costs
- No discovery by class members
- No cross examination regarding investment decision making, reliance
- No publicity

BUT

- No/little control over conduct of proceedings or settlement
- Must pay funder premium – 25-40%



Law Council
OF AUSTRALIA

Legal Practice Section

2015: Super Forever...



Trustee as defendant

- high probability of success – tendency to follow the regulator;
- possible to establish loss without determination of individual issues;
- high total value of claims;
- respondent with sufficient resources / insurance to meet claims.



2015: Super Forever...



Potential claims

- Mis-selling, misrepresentation claims
- Systemic pricing errors
- Financial mismanagement
- Data breaches?

Examples

- Lifetrack (filed in 2005, settled in 2010)
- NAB/MLC Super and Life \$60m EU (2003)



2015: Super Forever...



On the horizon...



- diversification of claims
- diversification of funding models
- 'common fund'
- contingency fees

2015: Super Forever...



Trustee as defendant – key considerations

- Strategize early
- Is there a funder?
- Other stakeholders
- Settlement

