

Brisbane Floods Class Action (Wivenhoe Dam) Seqwater appeal judgment

- The Supreme Court of New South Wales Court of Appeal has found the remaining defendant, Seqwater, not liable to the group members in the Brisbane Floods Class Action (Wivenhoe Dam) in Australia
- The lawyers for the group members are assessing the implications of the Appeal Judgment, which overturns several key findings of the first instance decision, and, in conjunction with Omni Bridgeway and the representative plaintiff, will determine whether to seek leave to appeal to the High Court
- Omni Bridgeway confirms that its recognised income of \$95.3 million and its unrecognised estimated further income of approximately \$18 million from the unconditional Partial Settlement with the State and Sunwater are unaffected by the Appeal Judgment
- Omni Bridgeway expects that any adverse costs ultimately determined payable to Seqwater will be met from the Partial Settlement

Omni Bridgeway Limited (ASX:OBL) (**Omni Bridgeway**) announces that the Supreme Court of New South Wales Court of Appeal (**Court of Appeal**) has overturned the first instance decision in finding the remaining defendant, Seqwater, not liable to the group members in the Brisbane Floods Class Action (Wivenhoe Dam) in Australia (**Appeal Judgment**).

The lawyers acting for the group members, Maurice Blackburn, together with the counsel team, are reviewing the detailed findings in the Appeal Judgment and assessing whether leave should be sought to appeal to the High Court of Australia (**High Court**). Any application for leave to appeal will need to be made by 6 October 2021.

The litigation has been funded by Omni Bridgeway (with a 50% co-funder) and the investment forms part of Omni Bridgeway's balance sheet portfolio. Following the \$440 million settlement with the State of Queensland (**State**) and Sunwater for their combined 50% of apportioned liability (**Partial Settlement**), half of the investment was derecognised with \$95.3 million of income recognised in FY21.

Omni Bridgeway has received \$30.3 million of this income in cash with the balance of \$65 million remaining a current receivable and anticipates receiving approximately \$18 million of further (and as yet unrecognised) income in FY22 from the Partial Settlement during the finalisation of the distribution scheme, administered by Maurice Blackburn.

At 30 June 2021, the Wivenhoe Dam investment had a carrying value of \$20.8 million (including overheads), representing 4.0% of the group's litigation investments of \$524.8 million and 2.7% of the group's consolidated net assets of \$762.3 million.

Following a detailed review of the judgment a decision will be taken regarding what level of impairment may be necessary, if any, against this carrying value. Any asset impairment booked will be a non-cash item in line with IFRS accounting standards and will be expensed at the time of creation. The level of any impairment will be continually assessed and may be reversed as appropriate pending developments in the future.

The costs of the appeal have been ordered in favour of Seqwater but no orders have been made yet with regard to Seqwater's costs of the trial at first instance. Both sets of costs will be subject to the outcome of any High Court appeal which may be made. Ultimately, Omni Bridgeway expects that any costs payable to Seqwater will be met from the Partial Settlement.

Omni Bridgeway's previous estimate of potential income from the Seqwater component of this investment was stated to be subject to a number of assumptions, including that Seqwater's appeals were dismissed in full.

Omni Bridgeway will continue to review the judgment and its financial implications, including the estimated portfolio value and the estimated completion timing ascribed to this investment within our investment portfolio, and all relevant assumptions will be clarified in our Investment Portfolio Update at 30 September 2021.

Managing Director & CEO and Chief Strategy Officer- US, Andrew Saker, said: *"This is a disappointing development in a highly complex case that has been in litigation for the better part of a decade and we will carefully consider the avenues for appeal to the High Court. Unfortunately for all involved, the case against Seqwater may be far from resolved. Importantly, this decision has no impact on the settlement that has been agreed with the State and Sunwater and the distribution process to group members will proceed in parallel with any High Court considerations."*

Background

The case related to the operation of the Wivenhoe and Somerset dams in January 2011 and the severe flooding in the Brisbane region which caused damage and loss to thousands of people and businesses.

The claim was brought in 2014 as a class action by a representative claimant on behalf of group members. The trial commenced in December 2017 and took over a year to complete.

On 29 November 2019, the Supreme Court of New South Wales (**Supreme Court**) found the State of Queensland, Sunwater and Seqwater, liable in negligence to the group members.

Seqwater lodged an appeal against the decision, whilst the State and Sunwater settled the judgment against them through the Partial Settlement which was approved by the Supreme Court on 3 May 2021.

The Seqwater appeal was heard in the Court of Appeal in May 2021 and the Appeal Judgment was handed down on 8 September 2021.

This announcement is authorised for release to the market by the Disclosure Committee.

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