

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/12/2019 9:27:16 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID1360/2019
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v TAL LIFE LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads "Sia Lagos".

Dated: 16/12/2019 3:39:17 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



ORIGINATING PROCESS

No. _____ of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

IN THE MATTER OF TAL LIFE LIMITED (ACN 050 109 450)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

TAL LIFE LIMITED (ACN 050 109 450)
Defendant

A. DETAILS OF APPLICATION

This application is made under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), ss 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), and s 1101B(1)(a)(i) of the *Corporations Act 2001* (Cth) (**Corporations Act**) each as in force with respect to conduct that occurred in the period December 2013 to July 2014, and the inherent or implied jurisdiction of the Court.

The plaintiff (**ASIC**) seeks declarations of contraventions of the ASIC Act, the Corporations Act and the *Insurance Contracts Act 1984* (Cth) (**ICA**), pecuniary penalty orders and ancillary orders, including costs against the defendant (**TAL**).

In this Originating Process, terms which are defined in the Concise Statement dated 13 December 2019 (**Concise Statement**) have the same meaning as they do in that document.

On the facts stated in the Concise Statement, ASIC claims:

Against the Defendant

1. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that on 17 December 2013, by the First Claims Pack Representation, TAL expressly or impliedly represented that it had a contractual entitlement to all of the Second Insured's medical records, when TAL did not have such a contractual entitlement, and thereby:

- (a) in trade or commerce, in connection with the supply or possible supply of financial services, made a false or misleading representation

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concerning the existence or effect of a condition, right or remedy in contravention of s 12DB(1)(i) of the ASIC Act;

- (b) in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act;
- (c) engaged in conduct, in relation to a financial product, that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act; and/or
- (d) breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.

2. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that on 17 December 2013, by the Second Claims Pack Representation, TAL expressly or impliedly represented that it had a contractual entitlement to any information required by TAL from any insurer, employer, or accountant or other relevant holder of information, when TAL did not have such a contractual entitlement, and thereby:

- (a) in trade or commerce, in connection with the supply or possible supply of financial services, made a false or misleading representation concerning the existence or effect of a condition, right or remedy in contravention of s 12DB(1)(i) of the ASIC Act;
- (b) in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act;
- (c) engaged in conduct in relation to a financial product, that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act; and/or
- (d) breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.

3. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that in requesting the Second Insured's medical records with reliance upon executed authorities obtained further to the contraventions referred to in paragraph 1 above, TAL breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.



4. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that on 3 July 2014, in avoiding the Policy in the Avoidance Letter on the basis of purported non-disclosure or misrepresentation:

- (a) with reliance upon the medical history of the Second Insured, as acquired by TAL further to the contraventions referred to in paragraph 1 above; and/or
- (b) without first:
 - (i) giving notice to the Second Insured of its retrospective investigation into her medical history; and/or
 - (ii) affording the Second Insured any or any reasonable opportunity to address concerns as to non-disclosure,

TAL breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.

5. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that on 3 July 2014, in alleging, in the Avoidance Letter, that the Second Insured had failed to disclose and/or misrepresented her medical history and thereby breached her duty of disclosure pursuant to s 21 of the ICA:

- (a) with reliance upon the medical history of the Second Insured, as acquired by TAL further to the contraventions referred to in paragraph 1 above; and/or
- (b) without first:
 - (i) giving notice to the Second Insured of its retrospective investigation into her medical history; and/or
 - (ii) affording the Second Insured any or any reasonable opportunity to address concerns as to non-disclosure,

TAL breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision implied in a contract of insurance requiring each party to such a contract to act towards the other party, in respect of each matter arising under or in relation to it, with the utmost good faith.

6. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that on 3 July 2014, in alleging, in the Avoidance Letter, that the Second Insured had breached her duty of good faith pursuant to s 13 of the ICA:

- (a) with reliance upon the medical history of the Second Insured, as acquired by TAL further to the contraventions referred to in paragraph 1 above; and/or



(b) without first:

- (i) giving notice to the Second Insured of its retrospective investigation into her medical history; and/or
- (ii) affording the Second Insured any or any reasonable opportunity to address concerns as to non-disclosure,

TAL breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision implied in a contract of insurance requiring each party to such a contract to act towards the other party, in respect of each matter arising under or in relation to it, with the utmost good faith.

7. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that on 3 July 2014, in impliedly threatening to, or indicating it was more likely to, seek recovery of amounts paid out by TAL pursuant to the policy, in the event the Second Insured sought to challenge the avoidance of the policy, TAL breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.

Penalties

8. An order pursuant to s 12GBA(1) of the ASIC Act that, within 30 days of the order, TAL pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of the TAL's conduct declared to be contraventions of s 12DB(1)(i) of the ASIC Act.

Other Orders

9. An order that TAL pay ASIC's costs of and incidental to the proceeding.
10. Such further or other orders as to Court considers appropriate.

Date: 13 December 2019

A handwritten signature in blue ink, appearing to read "Small", is written over a dotted line.

Signature of plaintiff's legal practitioner

This application will be heard by at the Federal Court of Australia, 305 William Street, Melbourne, Vic 3000 at am/pm on



B. NOTICE TO DEFENDANT

TO:

TAL LIFE LIMITED (ACN 050 109 450)

Level 16, 357-363 George Street

Sydney NSW 2000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing:

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Registrar

This originating process is filed by Johnson Winter & Slattery for the Plaintiff.

D. SERVICE

The plaintiff's address for service is c/- Johnson Winter & Slattery, Level 34, 55 Collins Street, Melbourne VIC 3000.

It is intended to serve a copy of this originating process on the defendant.